

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.11.2020
CORAM
THE HONOURABLE MR.JUSTICE P.VELMURUGAN
W.P.No.27423 of 2005

M.Tamilselvi

... Petitioner

Vs.

1.State of Tamil Nadu rep.by
The Secretary to Government,
Health and Family Welfare (K1) Department,
Fort St.George, Chennai -9.

2.The Director of Medical
And Rural Health Services,
Chennai - 6. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in connection with proceedings issued in Ref.No.84704/SC11/1/99-1 dated 23.09.2002 passed by the Director of Medical and Rural Health Service, Chennai - 6 and G.O.Ms.No.226 Health and Family Welfare (K-1) Department dated 29.03.2005 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.K.Magesh
Special Government Pleader

O R D E R

The writ petition has been filed challenging the order of the first respondent dated 29.03.2005 confirming the order of the second respondent dated 23.09.2002 and consequently, to direct the respondents to reinstate the petitioner into service with all service benefits.

2. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents and perused the materials available on record.

3. According to the petitioner, she was appointed as a Pharmacist on temporary basis on 26.09.1991 under Rule 10(a)(i) of Tamil Nadu State and Subordinate Service Rules on

compassionate grounds in the Tamil Nadu Medical Subordinate Services. While, she was working as a Pharmacist in the Government Head Quarters Hospital, Cuddalore, a complaint was received from the Unemployed Pharmacists Union of Cuddalore stating that the petitioner obtained employment on compassionate grounds by suppressing the fact that her mother Tmt.Mangayarkarasi, was employed as a Staff Nurse in the said Department and also by producing false certificates pertaining to the income and employment of the family. Hence, the petitioner was issued with charge memo and subsequently, charges levelled against the petitioner were proved. Thereafter, the Disciplinary Authority by its proceedings dated 23.09.2002 passed an order of removal from service. Challenging the said the order, the petitioner filed an appeal before the Government and the same was rejected. Aggrieved over the same, the present writ petition.

4.The learned counsel for the petitioner would submit that there is no fault on the part of the petitioner, as she was aged about 12 years at the time of demise of her father and there is no condition that no other person in the family would be employed at the time of getting compassionate appointment. The appellate authority only relied upon the opinion of the Tamil Nadu Public Service Commission was passed the order, which is not sustainable in law. Therefore, removal from service is to be set aside. He would further submit that the respondents have taken stringent action of dismissal from service which is disproportionate to the charges. He would further submit that the petitioner served as Pharmacist for more than 10 years and hence, her punishment of removal from service may be modified as compulsory retirement.

5. The learned Special Government Pleader for the respondents would submit that at the time of submission of representation for compassionate ground appointment, the petitioner has suppressed the fact that her mother was employed as a Staff Nurse in the Government Service and the family pension is the only source of income for their family and also produced the false income certificate and obtained compassionate appointment. Subsequently, a complaint was received from the Unemployed Pharmacist Union, Cuddalore and thereafter, the petitioner was issued with charge memo and enquiry was conducted in detail and given a finding that the charges levelled against the petitioner were proved. Therefore, based on the enquiry report, the second respondent by its proceedings dated 23.09.2002 passed an order of removal from service. Thereafter, the appeal filed before the Government was also dismissed and without any merit the present writ petition

has been filed and the same may be dismissed.

6. The main contention of the learned Special Government Pleader is that the petitioner had suppressed the material fact and got employment. Subsequently, the same was proved, the second respondent imposed a punishment of removal from service and it is not disproportionate to the charges and hence, the writ petition may be liable to be dismissed.

7. Admittedly, the petitioner was appointed as a Pharmacist on temporary basis on 26.09.1991 under Rule 10(A)(i) of Tamil Nadu State and Subordinate Service Rules on compassionate grounds. Subsequently, her service was regularized and worked as a Pharmacist till 23.09.2002. In the meanwhile, the Department received a complaint against the petitioner and a charge memo was issued in Proceedings dated 23.09.2002 and nature of the charges are as extracted hereunder:

'Charge No.I : Tmt. Tamilselvei, pharmacist, Government Headquarters Hospital, Cuddalore has obtained compassionate ground appointment by suppressing the fact that her mother Tmt.Mangayarkarasi Subramaniam has been employed as Staff Nurse in Government Service (now working at Government Hospital, Vridhachalam).

Charge No.II : Tmt.Tamilselvi, Pharmacist, Government Headquarters Hospital, Cuddalore has produced false certificate regarding the income and employment of the family members obtained from the Tahsildar, Vridhachalam to get employment on compassionate grounds. She has produced the income certificate that income of her mother Tmt.Mangayarkarasi Subramaniam is Rs.4356/- (4356) per year as source of her husband's pension and her mother Tmt.Mangayarkarasi Subramaniam is not employed in Government service of private service.'

After due enquiry, the enquiry officer found that the petitioner had suppressed the material fact that her mother was working as a Staff Nurse in the Government Service and also produced the false income certificate and obtained compassionate appointment. Therefore, the charges levelled against the petitioner were proved and awarded a punishment of removal from service.

8. Admittedly, the petitioner's father was working as a Health Assistant, Primary Health Centre, Nallur and died on 01.05.1984.

Subsequently, family pension was given to her family. The petitioner was aged about 12 years, at the time of demise of her father. Subsequently, the petitioner submitted the representation before the Department seeking Compassionate ground appointment. It is a condition precedent that no other person would be employed in the entire family and hence, the contention of the learned counsel for the petitioner is not acceptable. The main purpose of the compassionate appointment is that after the death of the deceased Government Servant's, in their family, one of the eligible person can be appointed on compassionate appointment. Wherein, in this case, admittedly, at the time of death of the petitioner's father his mother was working as a Staff Nurse in the Government Service. Therefore, suppressing the said fact, the petitioner submitted her application and obtained compassionate appointment.

9. On a careful perusal of the records and the submission made by the learned counsel for the petitioner it is seen that the petitioner was aged about 12 years at the time of the death of her father and the submission that the petitioner has not suppressed any fact, is not acceptable. Therefore, under these circumstances, it cannot be stated that the petitioner is not aware of fact though she was working in the said Department for 10 years. Further, there is also a fault on the part of the Department that at the time of giving appointment, the Tahsildar, who had given certificate, should have verified the records properly. Hence, the petitioner alone cannot be blamed and the respondents also having played a part on the wrong committed by the petitioner. It means that the petitioner colluded with the officials got false certificate and obtained appointment. At one point of time, based on the complaint received from the Unemployed Pharmacist Union, on verification of the complaint, the officials in order to escape from their responsibility had taken action against the petitioner. However, this Court cannot encourage such action of the petitioner. There is no merit in the writ petition and hence, the same is liable to be dismissed.

10. However, this Court is of the opinion that the officials of the Department is also having some part in the wrong committed by the petitioner and the petitioner alone cannot be held responsible for that.

Hence, the order of removal from service is modified as compulsory retirement.

11. With the above modification, the writ petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

/true copy/
Sub Asst. Registrar

ms
To

1.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare (K1) Department,
Fort St.George,
Chennai -9.

2.The Director of Medical
And Rural Health Services,
Chennai - 6.

+1 cc to the Government Pleader sr36329

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