

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.2076 of 2012

M.Inian .. Petitioner

-vs-

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
2. The Director,
Office of the Director of Medical and
Rural Health Services, Chennai-600 006.
3. The Joint Director,
Joint Director of Health Services,
Cuddalore, .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the G.O.(D) No.1242 dated 02.12.2010 on the file of the first respondent and to quash the same and consequently, to direct the first respondent to provide the consequential service benefits to the petitioner.

For Petitioner :: Mr.V.Subramanian

For Respondents:: Mr.A.N.Thambidurai, Spl.G.P.

ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2.This writ petition is directed against the impugned order dated 02.12.2010 passed by the Principal Secretary to Government, ordering the punishment of stoppage of increment for a period of two years with cumulative effect on the petitioner. The order further states that the stoppage of increment would also affect his pension and the impugned order further states that the punishment would be inclusive of the period of leave, if any, spent by him before the period of punishment was completed.

3. Mr.V.Subramanian, learned counsel appearing for the petitioner submitted that when the petitioner was serving as a

25.9.2000, attended one patient by name Mr.K.Kandasamy, S/o Mr.Kovilan, who was suffering from severe abdominal pain. Therefore, when the petitioner administered I.V., needle on the right hand of the patient in the presence of Dr.Raja Mohan, who was also looking after the patient, the said doctor has also accepted the proper administration of the I.V., needle on the said patient. Hence the charge levelled against the petitioner that he had improperly administered the I.V., needle on the right hand of the patient and thereafter counter puncture of vein or arterial puncture along with the fluid extravasation has resulted in tissue necrosis that has finally led to the swelling in the right hand of the patient which consequently led to the amputation of the right hand, cannot be put against the petitioner. Ignoring the fact that the petitioner administered the I.V., needle on the right hand of the patient only in the presence of Dr.Raja Mohan, who has also accepted the proper method followed by the petitioner, the respondents ought not to have issued the charge memo levelling two charges against the petitioner. However, on receipt of the charge memo, the petitioner submitted his defence refuting the allegations under the charges. But the disciplinary authority, dissatisfied with the explanation offered, appointed an inquiry officer, who also, on completion of the inquiry, gave a report holding that both the charges levelled against the petitioner were proved and thereafter, the disciplinary authority, furnishing a copy of the report, issued a second show cause notice calling for written representation on the part of the inquiry officer. On receipt of the same, the petitioner submitted a detailed representation that was not properly looked into. As a result, the punishment of stoppage of increment for a period of two years with cumulative effect was imposed against the petitioner affecting his pension, is unjustified. Therefore, the same is liable to be interfered with.

4. Learned counsel appearing for the petitioner also submitted that when a civil suit was also filed before the Sub Court at Madurantakam by the patient Mr.Kandasamy seeking damages, the trial Court has found that only the doctors were responsible and the finding given by the trial Court clearly shows that the amputation was made only because of the negligence of the doctors, who attended the plaintiff/patient and that the plaintiff/patient has to be compensated monetarily. Since the judgment of the trial Court failed to mention the fault of the medical negligence committed by the petitioner, the punishment imposed against the petitioner is not sustainable in law. Adding further, he submitted that when the petitioner submitted a detailed representation on 5.3.2010 to the first respondent, making it clear that the petitioner cannot be held guilty on the charge no.1 for the various reasons stated in the documents, his representation has not been considered, because the impugned order does not reflect the consideration of the petitioner's representation. Hence,

the impugned order is also liable to go on the ground of non application of mind.

5. A detailed counter affidavit has been filed by the respondents refuting the charges made against him.

6. At the outset, the first submission made by the learned counsel appearing for the petitioner that there is a finding made by the Sub Court, Madurantakam in O.S.No.130 of 2002 dated 29.4.2004, cannot be entertained. The reason being that the petitioner was not made as a party and that the suit was filed by the patient claiming compensation from the hospital. The trial Court has given a finding that the amputation was made only because of the negligence of the doctor, who attended on the plaintiff Kandaswamy. That shows that when the petitioner, Mr.Inian was administering the I.V., needle on the right hand of the patient, the said Dr.Raja Mohan was looking at the patient. Therefore, when Dr.Raja Mohan and Mr.Inian had admittedly administered the I.V., needle, the improper administration of the I.V., needle on the right hand of the petitioner has led to the necrosis formulation, which resultantly ended in the amputation of the right hand of the patient. Hence, the compensation was ordered. That clearly shows that the doctors looking at the petitioner while administering the I.V., needle on the patient were found responsible. Therefore, it is not open to the petitioner to say that since the petitioner was not shown in the judgment of the trial Court, he cannot be held responsible. One thing cannot be overlooked here. It is the admitted case that first of all, the petitioner was working as a Staff Nurse at the Government Hospital, Madurantakam and on 25.9.2000 as night duty nurse, he only attended the patient who was suffering from abdominal pain and he had also admitted that he only administered the I.V., needle on the right hand. As it has been conclusively held against the petitioner that the I.V., needle administered by him on the right hand of the patient was improper, the charges levelled against the petitioner having been held to be proved before the inquiry officer, which came to be accepted by the disciplinary authority, the punishment of stoppage of increment for a period of two years with cumulative effect imposed on the petitioner having an effect on his pension, cannot be interfered with by this Court.

7. In view of all the above, the writ petition fails and it is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai-600 009.
2. The Director,
Office of the Director of Medical and
Rural Health Services,
Chennai-600 006.
3. The Joint Director,
Joint Director of Health Services,
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A.SK(20/07/2020)



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