

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.21325 OF 2012
AND M.P.NO.2 OF 2012

T.Thankaretinam

... Petitioner

Vs.

- 1.The State of Tamil Nadu
Rep. by its Secretary
Department of Health & Family Welfare
Fort St. George, Chennai - 600 009.
 - 2.The Director of Public Health & Preventive Medicine
Teynampet,
Chennai - 600 006.
 - 3.The Deputy Director of Health Service
Tiruvallur District,
Tiruvallur - 602 001.
 - 4.The Block Medical Officer
Primary Health Centre
Minjur - 601 203.
Tiruvallur District.
 - 5.The Medical Officer
Primary Health Centre
Minjur - 601 203.
Tiruvallur District.
 - 6.The Medical Officer
Additional Primary Health Centre
Kattur,
Tiruvallur District.
- Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings of the third respondent Deputy Director of

Public Health, Tiruvallur, in Na.Ka.No.810/E1/2003 dated 07.03.2012 imposing the punishment of censure on the petitioner, quash the same.

For Petitioner : Ms.Mary Sowmi Rexi
for M/s.Isaac Mohanlal

For Respondents: Mr.P.Chinnadurai
Additional Government Pleader

O R D E R

The petitioner was appointed as Village Health Nurse. While discharging duties, she was asked to administer polio drops to the children under the Program called National Polio Drop Program. She attended the duty as directed by her superiors. However, on 28.02.2003, based on the Attendance Register, the Senior Civil Surgeon of Government Primary Health Centre, Minjur, Ponneri Taluk had imposed a punishment of stoppage of salary for two days, viz., 11.02.2003 and 14.02.2003. Thereafter, another charge memo was issued vide Na.Ka.No.810/A3/2003 dated 12.11.2003 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The gravamen of the charge was that the petitioner absented herself from duty on 11.02.2003 and that she disobeyed the orders of her superiors. The petitioner submitted her explanation to the charges. Again, a fresh charge memo was issued cancelling the previous charge memo dated 12.11.2003 vide proceedings in Na.Ka.No.810/E2/2003 dated 06.07.2009 of the third respondent. Again, for the very same set of charges, the petitioner submitted her explanation and requested the respondents to drop the charges as she had already suffered punishment for the same set of charges by virtue of order passed under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. The Enquiry Officer conducted oral enquiry, in which, the petitioner alone participated and none appeared on behalf of the Department. Ultimately, the Enquiry Officer has held that on the basis of the documentary evidence, the charges were proved. Based on the findings in Proceedings Na.Ka.No.890/01/2003 dated 07.03.2012, the Disciplinary Authority, the third respondent herein, imposed the punishment of Censure on the petitioner. Aggrieved over the same, the petitioner is before this Court.

2. The grievance of the petitioner is that the third respondent-Disciplinary Authority, after extracting the contents stated in the enquiry report as well as in the charge memo, has imposed the punishment of Censure. Since the petitioner had given her objections to the enquiry report it is incumbent upon the Disciplinary Authority to independently apply his mind, which he has not done.

3. From the perusal of the materials, it is also inferred that none of the Departmental witnesses, namely, the Civil Medical Officer, who had given the punishment, the Nurses as well as the villagers who have given the alleged complaints were not examined during the enquiry proceedings. Not even the letter submitted by the Medical Officer as well as by the Nurse, which was taken as a basic material for framing the charges was not marked as exhibits before the Enquiry Officer. Further, there was no opportunity for the petitioner to cross examine the authors of the documents to prove its veracity.

4. It is also pertinent to note that in the enquiry report as well as in the punishment order, the factum of previous punishment of withholding the salary for two days is recorded. It is well settled principle that for initiating disciplinary proceedings afresh the punishment imposed earlier shall be withdrawn setting out the reasons for the same. Without withdrawing the punishment and after implementing the said punishment, initiating disciplinary proceedings for the second time, on the very same set of charges amounts to double jeopardy. Irony of fact that in spite of recording the previous punishment, the disciplinary authority has not whispered anything on that aspect. The objections filed by petitioner was also not considered. The disciplinary authority in a mechanical manner extracted the charge memo, enquiry report in his order and without discussion and without assigning reasons has imposed the punishment. Such an order without reasons on the face of it is violative of principles of natural justice.

5. Further, disciplinary proceedings initiated for minor penalty proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules was converted by issuing a charge memo for major penalty proceedings under Rule 17(b), that too after a period of six years stands without any reason therefor. Hence, the initiation of disciplinary proceedings after a period of six years and the punishment imposed without any evidence and without assigning reasons, stands vitiated for delay, violation of

principles of natural justice, non-application of mind and thereby arbitrary, illegal besides double jeopardy. In such circumstances, I have not hesitation to set aside the order of punishment imposed on the petitioner.

6. Accordingly, the proceedings in Na.Ka.No.810/E1/2003 dated 07.03.2012 of the third respondent is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

TK
To

- 1.The Secretary
Department of Health & Family Welfare
Fort St. George,
Chennai - 600 009.
- 2.The Director of Public Health & Preventive Medicine
Teynampet,
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- 6.The Medical Officer
Additional Primary Health Centre
Kattur,
Tiruvallur District.

+1cc to Mr.Isaac Chambers, Advocate, S.R.No.11043
+1cc to the Government Pleader, S.R.No.11375

W.P.NO.21325 OF 2012

MR (CO)
CB (31/07/2020)



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