

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 34845 OF 2013

C.Chinnasamy

.. Petitioner

- Vs -

1. The State of Tamil Nadu, rep. By
The Secretary to Government
Health and Family Welfare Department,
Chennai - 9.
2. The Director of Medical and Rural Health Services,
Chennai -6. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent relating to the order issued in G.O. (D) No.926, Health and Family Welfare (K2) Dept., dated 31.07.2008 and quash the same and also direct the respondents to give promotion to the petitioner to the next higher level post and consequently revise his salary and other pensionary benefits.

For Petitioner : Mr. R.Chandrasekaran

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he was selected and appointed through T.N.P.S.C. to the post of Junior Assistant and joined the service on 14.10.1974. Subsequently, the petitioner was promoted to the post of Assistant and was working as Selection Grade Assistant, Government Hospital, Rajapalaiyam. Though the petitioner ought to have been included in the panel for promotion to the post of Superintendent in the year 2002-2003, but his name was not included in the panel, as a charge memo u/r 17 (a) of the Tamil Nadu Civil Services (D & A) Rules (for short 'the Rules') was pending.

2. It is the case of the petitioner that the petitioner's duty is to submit the diet register for perusal and checking of the Medical Officer in-charge of Kitchen, periodically. It is the further case of the petitioner, that inspite of her diligent

efforts to submit the diet register, the same could not be submitted on time to the higher authorities as the said register was in custody of the staff nurse in-charge of kitchen. Since the diet register was not submitted on time, a charge memo, dated 19.07.2008, was issued to the petitioner stating that he failed to submit the diet register for perusal and checking of the Medical Officer in charge of Kitchen, periodically and further the petitioner has failed to submit the diet bill received from staff nurse on 25.04.2000 to the Medical Officer on the same day but submitted it only on 03.06.2000 after a lapse of 40 days and the bill was sent to treasury for encashment on 13.06.2000 and due to the belated action, the Tamil Nadu Civil Supply Corporation failed to supply Rice, which resulted in non-supply of diet to the inpatients on 12.06.2000 and 13.06.2000, thereby leading to unnecessary criticism. It is the further case of the petitioner that the act of the petitioner is only an administrative lapse not by her.

3. The petitioner submitted his explanation to the charge memo on 17.08.2000, denying all the three charges levelled against him. However, not satisfied with the explanation, enquiry was ordered and the enquiry officer conducted enquiry and submitted report stating that the charge against the petitioner was proved. Explanation dated 17.08.2000 was submitted by the petitioner, but the 2nd respondent, without considering the explanation in proper perspective, passed an order imposing a punishment of stoppage of increment for a period of six months without cumulative effect on the petitioner vide order dated 24.11.2000. Against the order of punishment, the petitioner preferred appeal to the second respondent on 14.02.2001. However, no order was passed on the said appeal. In the meanwhile the promotion panel was prepared for the post of office Superintendent for the year 200-2003. Due to Medical Officer's instructions, the petitioner remitted the increment amount for 6 months on 05.05.2000 even though his appeal was pending. The petitioner preferred another appeal before the 1st respondent on 22.01.2004 through proper channel. However, to his shock and surprise the 2nd respondent passed an order dated 08.03.2004 holding that the petitioner's appeal has been withheld as per Rule 27 of Tamil Nadu civil Services (D&A) Rules, for the reason that the petitioner has made belated appeal. In spite of several representations made by the petitioner, since no order was forthcoming on his appeal, the petitioner filed WP. No.9421/2006 praying for disposal of his appeal dated 22.01.2004 and 06.04.2004, and this Court vide order dated 05.04.2006, directed the respondents to dispose of his appeals within 3 months. However no orders were passed and the petitioner retired from service on 30.04.2006.

4. Challenging the punishment imposed by the second respondent, the petitioner filed WP. No.33526 of 2006 before this Court. Pending the writ petition, the 1st respondent rejected the appeal by order dated 01.12.2006, confirming the

punishment imposed on the petitioner. Thereafter the petitioner made repeated representations but the same were not considered. Hence, left with no other alternative, the present petition has been filed.

5. Learned counsel appearing for the petitioner submits that the charge itself has been framed without proper application of mind which vitiates the charge. It is the further submission of the learned counsel appearing for the petitioner the petitioner has highlighted the cause of non-submission of the registers on time, which was purely due to the same being in the custody of the staff nurse, and the lapse was neither wilful nor wanton, but is only due to administrative delay for which the petitioner should not be penalized. However, ignoring all the materials, as reflected in the enquiry report, only with a vindictive mindset, the 2nd respondent has imposed the punishment, which has prejudiced the entire career of the petitioner. The appellate authority has also not considered the materials in proper perspective while confirming the order and, the orders deserve to be set aside with a further direction to the respondents to grant all consequential service and monetary benefits to the petitioner.

6. Per contra, learned Special Government Pleader appearing for the respondents, submitted that after analysing all the materials it was held that the petitioner has not performed his duty diligently and, therefore, the petitioner was imposed with punishment u/s 17 (a). It is the further submission of the learned Special Government Pleader that the punishment imposed u/r 17 (a) by the disciplinary authority, which is only a stoppage of increment for six months without cumulative effect, which itself speaks volumes about the thoroughness of the disciplinary authority in perusing all the materials placed before him and imposing the punishment, which reveals proper application of mind. It is the further submission of the learned Special Government Pleader that minor punishment has been imposed on the petitioner only due to the fact that the administrative delay has been one of the causes for the lapse, which the petitioner ought to have tried to avoid and only in that scenario, minor punishment was imposed. In fine, it is the submission of the learned Special Government Pleader, that the totality of the circumstances reveals proper application of mind by the concerned authorities while passing the impugned orders and, therefore, no interference is called for.

7. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record.

8. It is evident from the record that a minor punishment only has been imposed on the petitioner. The appellate authority, while considering the report holistically, accepted the finding of the disciplinary authority. The findings of the

enquiry officer were provided to the delinquent and on receipt of the explanation, the disciplinary authority has considered the same and keeping in mind the finding rendered by the enquiry officer and the reasons for the lapse, was of the considered view that the petitioner has also been a tool in the lapse committed, and in view of the position occupied by the petitioner, which is a lower cadre has imposed a minor punishment on the petitioner.

9. Though it is the contention of the learned counsel for the petitioner that the reasons given by the petitioner has not been properly considered by the enquiry officer as also the authorities, however, it is seen that the disciplinary authority, considering the position of the petitioner in the hierarchy and also the reason for his non-submission of the registers on time, has applied his mind and has only imposed a minor punishment. It is not the case of the petitioner that there is no delinquency on his part. The petitioner himself has accepted that there is delinquency, but has only come forward to state that it is not on his account, but due to various other factors, which has been explained by him in his explanation, which has weighed with the disciplinary authority in imposing te minor punishment.

10. On an overall appreciation of the entire materials available on record, this Court is of the considered view that the imposition of a very minor punishment, cannot be said to be arbitrary or unreasonable in the facts and circumstances of the case. The said punishment, by no stretch of imagination could be held to be shocking the conscience and disproportionate to the delinquency. Therefore, no interference is called for with the impugned order.

11. For the reasons aforesaid, this writ petition fails and the same is dismissed. However, there shall be no order as to costs.

सत्यमेव जयते

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

Jrs

To

1. The Secretary to Government
Health and Family Welfare Department,
Chennai - 9.

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

+lcc to the Government Pleader, S.R.No. 24673

W.P. NO. 34845 OF 2013

GJ(CO)
GN(17/08/2020)



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