

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :13.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.6599 of 2013

Dr.A.G.Ghouse Ahmed

...Petitioner

- Vs -

1.The Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. Director of Public Health and Preventive
Medicine, Chennai -6.

3.The Enquiry Officer/
Deputy Director of Health Services,
Vellore 9.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorari, to call for the records in G.O.(D) No.69, dated 23.01.2013 passed by the 1st respondent and quash the same.

For Petitioner : Mr.A.John Britto

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

ORDER

The present petition has been filed to call for the records in G.O.(D) No.69, dated 23.01.2013 passed by the 1st respondent and quash the same.

2.It is the case of the petitioner that he was appointed as Assistant Surgeon and entered into Government service on 23.02.1989 at Primary Health Centre, Vellore Health Unit District and thereafter he was transferred to Minnal Village in Vellore District and joined duty on 12.05.1989. The petitioner had applied for medical leave from 27.11.1992 to 26.12.1992 for 30 days and then applied for extraordinary leave for three

months from 27.12.1992 to 26.03.1993, due to personnel tragedies. Thereafter, he could not join duty after expiry of the leave period. It is the further case of the petitioner that the second respondent initiated disciplinary action against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for his unauthorised absence from duty and issued charge memo on 01.10.1996 and oral enquiry was conducted and the petitioner submitted his defence statement for the charge memo on 1.10.1996, and thereafter the second respondent appointed the third respondent as inquiry officer by his proceedings dated 18.10.1996, and he participated in the proceedings, which culminated in the submission of the enquiry report and after issuing second show cause notice and obtaining the explanation of the petitioner, the respondents, vide the impugned order, terminated the services of the petitioner vide G.O.(D)Ms.No.69 of Health and Family Welfare (D2) Department dated 23.01.2013 and the same was served on 03.02.2013, after his superannuation. Challenging the said impugned termination order, this petition was filed with the above said prayer.

3. Learned counsel appearing for the petitioner submitted that though the petitioner continuously took leave without any prior permission and also did not join duty after 1993, however, for the purpose of rejoining, he made several representations to the respondents. However after about 3 years, the charge memo dated 28.02.1996 was served on him. There is no explanation for the long delay in serving the charge memo and also for the delay of about 15 years in concluding the disciplinary proceedings and the delay is fatal to the proceedings initiated by the respondents. Hence, the impugned order passed by the first respondent dated 23.01.2013 is liable to be quashed.

4. Per contra, learned Special Government Pleader appearing for the respondents, on the basis of the counter, vehemently contended that the respondents after careful perusal of the report submitted by the enquiry officer and after affording opportunity to the petitioner, has passed a reasoned and detailed order for terminating the services of the petitioner. It is the further submission of the learned Special Government Pleader that the petitioner was time and again afforded opportunity by giving him fresh postings inspite of his absence repeatedly. However, the petitioner having no scant regard to the postings given, repeatedly did not join the post and went on leave and the act of the petitioner was the reason for the disciplinary enquiry and even in the disciplinary enquiry, it is the petitioner who was dragging on the proceeding, which resulted in the delay and the respondents, after obtaining the opinion of the Tamil Nadu Public Service Commission has passed the impugned order, which is just and reasonable. It is further submitted unless the punishment inflicted is disproportionate

and is shocking the conscience of the Court, the Courts shall not interfere with the said punishment and, accordingly, prays for dismissal of the petition.

5. This Court heard the submissions advanced by learned counsel appearing on either side and also perused the materials available on record.

6. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the Courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was

originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

8. A perusal of the materials available on record reveal that the petitioner was a chronic absentee and had absented himself repeatedly without obtaining the prior permission of the competent authority. It is to be stressed that the petitioner, being a member of the life saving unit and attached to the Health Department of the State, his presence is very much required and frequent absenting himself citing personal reasons cannot be a ground to condone the act of the petitioner. Further, it transpires from the records that in-spite of affording very many opportunities to the petitioner to rejoin duty, the petitioner did not join the post and absented himself and even after initiation of disciplinary proceedings did not properly and diligently partake in the disciplinary proceedings. That being the case, it is not open to the petitioner to come before this Court and raise the question of delay in completion of disciplinary proceedings to his advantage, more so, when he is the culprit for the delay. The respondents, taking all the factors into account and keeping in mind the avocation of the petitioner and his attitude in not being present in duty and frequenting on leave without prior approval, on a cumulative analysis, on the basis of the report submitted in the enquiry, have inflicted the punishment as stated above, which, by no stretch could be termed to be shocking or disproportionate. The petitioner has not proved that the punishment imposed on him is arbitrary or bad or the punishment is disproportionate to the gravity of the proved charges and is in contravention of the rules. It is trite that unless the punishment is shocking and disproportionate, the Courts shall not interfere with the said punishment and in the case on hand, the punishment being commensurate with the delinquency of the petitioner, this Court is of the view that no interference is warranted with the punishment imposed on the petitioner.

9. For the reasons aforesaid, this writ petition is dismissed as being devoid of merits. However there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To

- 1.The Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St. George,
Chennai 600 009.
- 2.Director of Public Health and Preventive
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- 3.The Enquiry Officer/
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Vellore 9.

+1 cc to The Government Pleader, Sr.No. 34120

W.P. NO.6599 of 2013

SAI (CO)
RMP (08/12/2020)