

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.08.2020

CORAM:

THE HON'BLE MR. JUSTICE V.PARTHIBAN

WP No.11111 of 2020

and

WMP No.13556 of 2020

Selvi P.Rajalakshmi

.. Petitioner

vs

1. The Director,
Public Health & Preventive Medicine,
Chennai - 600 006.

2. The Deputy Director of Health Services,
Chengalpattu HUD.,
Ullavur - Chengalpattu Road,
Chengalpattu - 603 002. ... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records in the Proceedings dated 17.07.2020 in R.No.116348/DA/S4/2012 on the file of the first respondent and quash the same and direct the first respondent to reinstate the petitioner in service with all service benefits.

For Petitioner : Mr.V.Chandrakanthan

For Respondents: Mr.Karthikeibalan
Government Advocate.

O R D E R

This matter is taken up through web hearing.

2. The writ petition has been filed seeking for the following prayer:

"for issuance of Writ of Certiorarified Mandamus, calling for the records in the Proceedings dated 17.07.2020 in R.No.116348/DA/S4/2012 on the file of the first respondent and quash the same and direct the first respondent to reinstate the petitioner in service with all service benefits."

3. The petitioner was working as a Village Health Nurse under the control of the respondents. A complaint was registered against her for demanding illegal gratification and on the basis of the complaint, she was charged with Section 7, 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 by the Inspector of Police, Vigilance and Anti-Corruption, City Special Unit-III, Chennai-35, in Crime No.19/AC/2012CC2/Chennai. In view of involvement in the criminal case, she was also placed under suspension on 28.11.2012.

4. Subsequently, a charge memorandum was issued against her on 27.02.2013. As far as the criminal case is concerned, after conclusion of the trial, the Chief Judicial Magistrate, Kancheepuram District at Chengalpet, passed judgment on 20.11.2019, convicting the petitioner in S.C.No.7 of 2013, and imposed a sentence of one year of rigorous imprisonment with fine of Rs.1,000/- and in default, three months simple imprisonment and another two years rigorous imprisonment with a fine of Rs.5,000/- and in default, three months simple imprisonment, for various counts of charges under the Prevention of Corruption Act, 1988.

5. According to the petitioner, an appeal has been preferred against the judgment dated 20.11.2019, before this Court in CrI.A.No.826 of 2019 and the same is pending. In view of the above development, it appears that an order was passed on 17.07.2020, by the 1st respondent dismissing the petitioner from service, which is the subject matter of challenge in the writ petition.

6. The learned counsel appearing for the petitioner would submit that while passing the order of dismissal from service, no opportunity was afforded to the petitioner and therefore, the order is liable to be interfered with, as being violative of the established principles of natural justice. Moreover, the learned counsel also submitted that this Court has granted stay of sentence imposed on the petitioner in pursuance of the conviction handed out by the trial Court and the dismissal order passed by the 1st respondent was invalid.

7. This Court is unable to appreciate as to how the present writ petition can be maintained in the facts and circumstances of the case. First of all, the contention that the petitioner was not given proper opportunity of submitting an explanation, before the impugned order was passed, is incorrect. From her own pleadings, it is seen that when show cause notice was issued on 14.02.2020, under the provisions of the service rules, repeatedly, time had been requested on behalf of the petitioner on the ground that of Covid-19 situation and also she was not able to get Advocate's guidance. Such repeated extension sought

by the petitioner appears to be not for bonafide reasons, but simply to prevent the authority from passing orders, taking into consideration the conviction of the petitioner.

8. Even otherwise, when the petitioner had been convicted by competent Criminal Court for indulging in corrupt practices, the order of dismissal is the only choice for the appointing authority to pass in terms of the service regulations. The authority in this regard has no discretion to pass any other order. In matters of corrupt practices, there cannot be any mitigating circumstances for the authority to weigh any other option of granting of different punishment. In such circumstances, even any explanation from the petitioner's side would be of no legal impediment. In any event, the authority had given show cause notice and waited for considerable time, before the final impugned action was taken. Further, mere suspension of sentence will not entitle the petitioner to challenge the dismissal order, as the conviction has not been stayed at all. Therefore, when the conviction is in operation, the natural corollary of such contingency is the dismissal order and the 1st respondent, has rightly passed the order of dismissal.

9. Therefore, this Court does not find any cause of action for entertaining the writ petition, at this stage. This Court therefore finds that writ petition is not maintainable at this stage and therefore, the same is dismissed.

10. It is always open to the petitioner to renew her claim against the respondents depending upon the outcome of the criminal appeal filed by her, before this Court, against the conviction of the trial Court. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Director,
Public Health & Preventive Medicine,
Chennai - 600 006.

2. The Deputy Director of Health Services,
Chengalpattu HUD.,
Ullavur - Chengalpattu Road,
Chengalpattu - 603 002.

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RMP (29/09/2020)



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