

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE C. SARAVANAN

WRIT APPEAL NO. 2130 OF 2019

Dr. R. Meera

..Appellant

Versus

1. The Principal Secretary to Government
Health and Family Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009
2. The Director of Public Health
and Preventive Medicine
No.359, Anna Salai
Teynampet, Chennai - 600 006
3. Dr. P. Vadivelan
Inquiry Officer
Additional Director of Public Health
and Preventive Medicine
formerly Joint Director of Public Health
and Preventive Medicine
O/o. The Director of Public Health
and Preventive Medicine
No.359, Anna Salai, Teynampet
Chennai - 600 009

..Respondents

Appeal filed under Clause 15 of The Letters Patent against the Order dated 08.04.2019 passed in WP No. 10741 of 2018 on the file of this Court.

WP 10741 OF 2018 PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the final order dated 08.02.2018 vide G.O.(D) No.208 passed by the first respondent and quash the same as illegal, unwarranted and Non-Est in the eye of law and further direct the first respondent to include the petitioner's name in the promotion panel of the year

2014-15 vide G.O.(D).No.1137 dated 11.09.2015 to the post of Joint Director issued by the first respondent.

For Appellant : Mr. M. Ravi
For Respondents : Mr. S.R. Rajagopal
Additional Advocate General
assisted by
Mrs. A. Srijeyanthi,
Special Govt. Pleader

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J)

The appellant herein has come forward with this writ appeal aggrieved by the order dated 08.04.2019 passed by the learned single Judge dismissing her writ petition No. 10741 of 2018 inter alia refusing to quash the order passed by the first respondent in G.O. (D) No. 208 dated 08.02.2018, as prayed for by her.

2. The appellant was initially appointed as Health Officer in Tamil Nadu Public Health Subordinate Service during 1995 as Filaria Officer at Chidambaram. Subsequently, she was transferred and posted as Municipal Health Officer at Karaikudi. While working in the post of Municipal Health Officer, the appellant was also transferred and worked at Cuddalore and Villupuram Municipalities. In the year 2005, the appellant was promoted as Deputy Director of Health Services and posted at Udhagamandalam. While she was serving as Deputy Director, a charge memo was issued to her containing five charges, however, after a preliminary enquiry, charge Nos. 2, 3, 4 and 5 were dropped by the first respondent by G.O. (D) No.233 dated 10.03.2011 and a fresh charge memo dated 15.09.2011 was issued to the appellant by the second respondent. The lone charge against the appellant is as follows:-

"That Dr. R. Meera while working as Deputy Director of Health Services, Udhagamandalam. During the year 2007, as scheme implementing authority for the scheme Rogi Kalyan Samidhi (Patient Welfare Society) has violated the guidelines for use of funds allotted to the Primary Health Centres under the said Scheme and caused purchase of unapproved items like TV, DVD, UPS and VKT OP cards to the tune of Rs.10.35 lakhs, by way of getting false quotations and directly dealt with suppliers in violation of guidelines and purchased the products, thereby committing criminal misconduct and misappropriation of government money."

3. On receipt of the charge memo, the appellant submitted her explanation dated 27.09.2011 contending that during her tenure as Deputy Director, Udhagamandalam, several audits were conducted to scrutinise the financial transactions and there was no objection raised by the audit. The funds allotted under the scheme was properly utilised during her tenure and there was no mismanagement, as alleged. The appellant has given a detailed account together with documentary evidence to show that the charge levelled against her is unsustainable. In and by the explanation dated 27.09.2011, the appellant also sought for certain documents, which were permitted to be perused by her on 08.03.2012. Notwithstanding the explanation offered by the appellant, the second respondent, by proceedings dated 11.10.2012, has intimated her that it is proposed to conduct an enquiry into the charges. It was also intimated therein that for the purpose of conducting an enquiry, the third respondent was appointed as an Enquiry Officer. Accordingly, the third respondent called upon the appellant to attend an enquiry on 10.06.2014. The enquiry officer/third respondent, after conclusion of enquiry, submitted his report to the second respondent on 24.06.2016 holding that the charge against the appellant stands proved. When the enquiry report was communicated to the appellant, she submitted her further representation on 05.10.2016 giving a detailed account on the evidence brought on record during the course of enquiry and also submitted that none of the witnesses examined during enquiry have given any adverse statement against her. It was also submitted that inspite of the evidences recorded during the course of enquiry, the enquiry officer has concluded that false quotations have been obtained by her and she had directly dealt with the suppliers in violation of guidelines and purchased the unapproved product. Therefore, while denying the charges and also the conclusion reached by the enquiry officer/third respondent holding the charge against her as proved, the appellant prayed the second respondent to exonerate her from the charges.

4. On consideration of the report of the enquiry officer as well as the further explanation dated 05.10.2016 submitted by the appellant, the second respondent passed the order in G.O. (D) No.208, Health and Family Welfare (D2) Department dated 08.02.2018 imposing the punishment of stoppage of increment for a period of three years with cumulative effect. Assailing the order dated 08.02.2018 of the second respondent, appellant has filed WP No. 10741 of 2018 before this Court.

5. The learned single Judge, upon hearing the submission of the counsel for both sides has dismissed the writ petition with the following observations:-

"13. Considering the facts and circumstances of the case, this Court is of the considered opinion that the arguments advanced by the learned counsel for the writ petitioner, with reference to the merits of the allegations can never be adjudicated at this point of time. Only in the event of any explicit findings of an enquiry officer or procedural violations in the matter of adherence of Discipline and Appeal Rules

14. The Judicial Review can be exercised by the High Court. The findings of the Enquiry Officer in normal circumstances, can never be interfered with the High Court while adjudicating the validity of the punishment imposed on the delinquent official. Only on exceptional circumstances, where it is established that the findings are absolutely perverse, the Court would not interfere with the findings. The Government finding of the Enquiry Officer would be relied on normal circumstances. Thus the arguments advanced in respect of the merits of the allegations can never be interfered with and the only ground raised by the writ petitioner is the delay. The order of punishment is issued on the Government level. Since the writ petitioner was holding the post of Deputy Director of Health Services on consolidation process in respect of State Level Officer and the files are to be approved by the various other nodal department of the Secretary.

15. This being the procedures to be followed, the administrative delay caused would not be a ground for the exoneration of the writ petitioner from the order of punishment.

16. This being the factum, the writ petitioner has not established any acceptable legal ground for the purpose of quashing the order of punishment and the other grounds raised by the petitioner in relation to the merits are neither candid nor convincing.

17. Accordingly, the writ petition is stands dismissed. No costs. Consequently, connected miscellaneous petition is closed."

6. Assailing the order of the learned single Judge, the learned counsel for the appellant would vehemently contend that this is a case of no evidence against the appellant and

therefore, the appellant is entitled for quashing the order of punishment imposed against her. According to the learned counsel for the appellant, the charge against the appellant is that she had contravened the guidelines issued by the Government in implementing the Rogi Kalyan Samidhi (Patient Welfare Society) scheme whereby she had obtained quotations directly or instructed to obtain quotations directly from the companies for purchase of unapproved items. However, the fact remains that the appellant had not obtained quotations, as alleged. Further, it is not her duty to obtain quotation. The appellant, as an implementing authority allotted the funds to the Primary Health Centres and it was the respective Block Medical Officers, who have utilised the funds allotted from the Mission Director and purchased the items. There was no evidence made available to show that the appellant had obtained any quotation from any of the suppliers or purchased the items at her own whims and fancy. Even assuming without admitting that the appellant had colluded with the Medical Officers and caused wrongful loss to the exchequer, then the Medical Officers concerned also ought to have been subjected to disciplinary proceedings. However, the appellant was selectively victimised by the second respondent and proceeded only against her with the departmental proceedings. Further, for the alleged occurrence that had taken place in the year 2007, the charge memo was issued in the year 2011, enquiry officer was appointed in the year 2012 and the enquiry was concluded only on 24.06.2016. Even after conclusion of the enquiry, the final order in the disciplinary proceeding was passed only on 08.02.2018. Such a prolonged disciplinary proceedings conducted against the appellant had prejudiced her and therefore, on the ground of delay also, the order passed by the second respondent imposing the punishment of stoppage of increment has to be set aside.

7. Above all, the learned counsel for the appellant would vehemently contend that the third respondent/Enquiry Officer has not furnished any reason to arrive at a finding of guilt as against the appellant. It is his submission that the enquiry report is bereft of any material finding of guilt as against the appellant. The enquiry officer in his report has merely extracted the statement of witnesses and details of cross-examination of such witnesses, which runs to several pages. Even under the heading "conclusion" once again, the enquiry officer reproduced the statement of the witnesses and ultimately, in the penultimate paragraph, it was stated that the charge against the appellant stands proved. In other words, there is no finding rendered by the enquiry officer to arrive at a conclusion that the charge against the appellant is proved. Even the second respondent/disciplinary authority, has mechanically arrived at a conclusion that the report of the enquiry officer deserves to be accepted to hold that the charge

against the appellant stands proved. The learned single Judge also did not consider that the charge against the appellant has not been proved by legally acceptable evidence. Therefore, the learned counsel for the appellant prayed for allowing this appeal.

8. The learned Additional Advocate General appearing for the respondents 1 and 2 would contend that in order to prove the charge against the appellant, an enquiry was conducted in which several witnesses were examined and they were also permitted to be cross-examined by the appellant. The appellant was given all due opportunity to defend the enquiry proceedings. The enquiry was conducted in accordance with principles of natural justice. When once the enquiry is held to be not vitiated, the interference of this Court in writ jurisdiction is limited. The learned single Judge has rightly refused to exercise his discretionary relief to substitute the findings arrived at by the second respondent in imposing punishment of stoppage of increment to the appellant. The appellant has not made out any case and therefore, he prayed for dismissal of the writ petition.

9. We have given our anxious consideration to the rival submissions made and perused the materials placed on record. As we are exercising appellate jurisdiction, we refrain ourselves from going into the merits or otherwise of the charge against the appellant.

10. It is well settled that when once the disciplinary authority has imposed a punishment, preceded by a valid enquiry, exercise of discretionary powers conferred under Article 226 of The Constitution of India is very limited. The judicial review in such case is very narrow unless it is shown that the order of punishment is vitiated by reason of irrelevant consideration of the material evidence or not considering the evidence on record. Thus, a delinquent government servant is always not prevented from invoking the writ jurisdiction to assail the order of punishment.

11. On going through the records, we find that there is delay in commencing and concluding the enquiry, however, such delay will not, in our opinion, vitiate the order of punishment. The mere delay in concluding the disciplinary proceedings will not, always, be a ground to interfere with the order of punishment. Therefore, we are not inclined to accept the submissions made by the counsel for the appellant with regard to the delay in commencing and concluding the disciplinary proceedings against the appellant herein.

12. In this case, in order to prove the charge against the appellant, an enquiry officer was appointed. It is true that during the course of enquiry, on behalf of the Department, witnesses were examined and they were subjected to cross-examination by the appellant. The appellant also marked 48 documents in support of her defence. The report of the enquiry officer dated 24.06.2016 is made available in page No. 92 to 121 of the typed set of papers. On going through the report of the enquiry officer, to our dismay, we could not find any reason given by the enquiry officer to conclude that the charge against the appellant is proved. The enquiry officer merely re-produced the statement of the 21 witnesses examined by the management as also the reply of the appellant/delinquent. The re-production of the statement of witnesses runs to several pages. Ultimately, under the heading "conclusion" the enquiry officer once again reproduced the deposition of the witnesses and suddenly, a conclusion has been arrived at to the effect that the charge against the appellant is proved. Thus, we are floundered as to what prompted the enquiry officer to arrive at a conclusion that the lone charge against the appellant stands proved. The report of the enquiry officer is bereft of any reasons for holding the charge against the appellant as proved. We also hasten to add that it is this report of the enquiry officer, which formed the basis for the second respondent to impose the punishment of stoppage of increment against the appellant.

13. In this context, we are fortified by the decision of the Honourable Supreme Court in Raj Kishore Jha vs. State of Bihar reported in 2003 (11) Supreme Court Cases 519 wherein it was held that reasons are the heart beat for any conclusion. It introduces clarity in an order and without the same it becomes lifeless. Further, failure to give reasons amounts to denial of justice. Reasons are the live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

14. Applying the aforesaid observations made by the Honourable Supreme Court to this case, we find that even in this case, the report of the enquiry officer is bereft of any material reasons as to how the charge against the appellant is held proved, what was the material considered for arriving at such a conclusion or whether such a material is relevant for consideration. None of the above are available in the report of the enquiry officer. There is no discussion in the report of the enquiry officer as to what was the evidence considered by him, in what way such an evidence is relevant to hold that the charge against the appellant is proved or whether the defence raised by

the appellant to disprove the charge is probable. The report of the enquiry officer runs into pages which only contain the reproduction of the statement of witnesses and nothing more. The disciplinary authority also simply concluded that the report of the enquiry officer deserves to be accepted to hold that the charge against the delinquent is proved and consequently to impose the punishment of stoppage of increment. As the enquiry officer did not assign any reason for his conclusion, which was also mechanically accepted by the second respondent, we find it difficult, as an appellate authority, to test the correctness or otherwise of the orders under appeal before us. It is in those circumstances, we are inclined to interfere with the order passed by the disciplinary authority, which was confirmed by the learned single Judge.

15. In the result, we set aside the order dated 08.04.2019 passed in WP No. 10741 of 2018, confirming the order passed by the first respondent in G.O. (D) No.208, Health and Family Welfare (D2) Department dated 08.02.2018. Consequently, we allow the writ appeal with a direction to the third respondent/enquiry officer to pass an order afresh by assigning reasons for his conclusion. Such an exercise shall be done by the third respondent within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government
Health and Family Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009

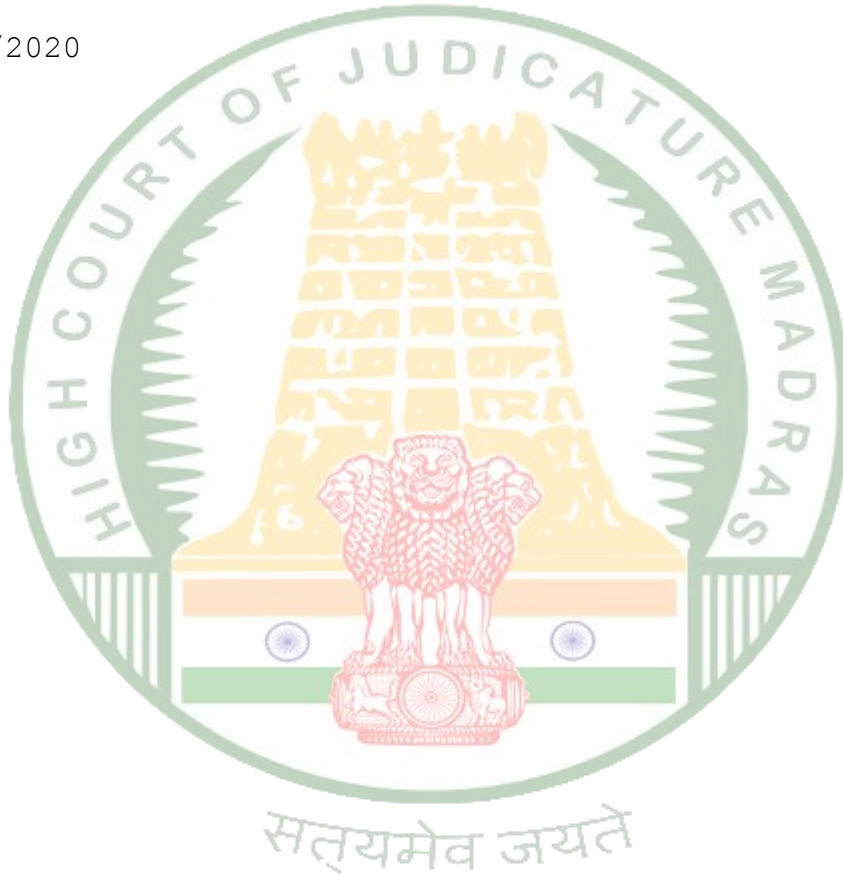
2. The Director of Public Health
and Preventive Medicine
No.359, Anna Salai
Teynampet, Chennai - 600 006

3. The Additional Director of Public Health
and Prevention Mediation,
No.359, Anna Salai,
Teynampet,
Chennai-600006.

+1cc to the Government Pleader, SR.NO. 27559

WA No. 2130 of 2019

RR(CO)
KKV/13/10/2020



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