

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 06.01.2020

Order Pronounced on : 28 .02.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 18070 of 2014
and MP.No. 1 of 2014

Dr.S.Padmarajan ... Petitioner

Vs

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

2. The Director,
Medical and Rural Health Services,
Chennai-600006.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records connected with the order passed by the 1st respondent in G.O.(D) No.1284 dated 22.11.2013 and quash the same.

For Petitioner : Mr. R.D. Ashok Kumar,

For Mr.S.N. Ravichandran

For Respondents : Mr.J.Ramesh, AGP

O R D E R

The prayer sought for in the Writ Petition is to call for the entire records connected with the order passed by the 1st respondent in G.O.(D) No.1284 dated 22.11.2013 and quash the same.

2. Brief facts leading to the writ petition is that the writ petitioner was appointed as Medical Officer in the year 1981 at the Primary Health Centre at Poonthottam in Thanjavur on completion ten years of service, he was sanctioned selection grade in the year 1991. While he was working in Government Hospital at Udumalpet, on 11.10.2008, one Dr.Soundararajan and one Dr.Jagadeeswaran entered into his chamber and started to abuse him in filthy language and threatened him that he would be

put behind bars by foisting false case. As he had already applied for leave to the then JDHS, Tiruppur, he went on leave from 13.10.2008. Subsequently he was transferred on 28.10.2008 and directed to join immediately at the Government Head Quarters Hospital, Tiruppur. As he was on conditional bail and had to sign at the Judicial Magistrate Court, Mettupalayam every day, he informed the same to the DMS and subsequently, his transfer order was modified and he was directed to join duty at the Government Hospital at Kottur. Since the petitioner has availed continuous leave, he was issued with a charge memo, framing two charges against him in Ref.No. 4538/SC2/2/10 dated 02.06.2010. On enquiry, the aforesaid allegations were held to be proved by the enquiry officer's report dated 14.12.2010 and he has also made further explanation dated 29.09.2011 on the said enquiry report. The petitioner was permitted to retire from service without prejudice to the above disciplinary proceedings by a show cause notice dated 24.01.2013 and he submitted a reply dated 14.03.2013 to the said show cause notice, but the 1st respondent without considering the same, had passed G.O.(D) No. 1284 dated 22.11.2013 ordered punishment of pension cut of 200/- per month for a period of six months for proven charges. Challenging the same, the present writ petition is filed.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the documents available on record.

4. The learned counsel for the petitioner submitted that in respect of allegation that the writ petitioner had allegedly used vulgar and indecent names and derogative community allegations against one Dr.S.Soundararajan, he was issued a Charge Memo and enquiry concluded as charges were not proved. Further, the complaint preferred by one Dr.S.Soundararajan against the writ petitioner, which was tried as S.C. No. 22/2009 before the Principal Sessions Judge (Special Court), Coimbatore was ended in acquittal on 30.11.2010. Therefore the punishment awarded by the 1st respondent in view charges that the writ petitioner was absent from duty for the period of 12.10.2008 to 31.07.2009 cannot be justifiable. Because, during the said period he was suffering mental agony due to the above said false complaints, both departmentally and by the Criminal Court. Therefore, the same is liable to be quashed.

5. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner did not join duty at Government Headquarters Hospital, Tiruppur, where he was transferred first and he unauthorisidely absented himself from duty by simply sending leave applications, without obtaining prior permission of the authority concerned. As per the Tamil Nadu Leave Rules, leave

cannot be claimed as a matter of right. The petitioner did not join duty, as instructed by the Joint Director of Health Services, Coimbatore and even did not join duty at Government Hospital, Kottur, immediately, when he was issued modified posting. Thus, he was on unauthorised absence from duty from 12.10.2008 to 31.07.2009 for more than 9 months and also disobeyed the orders of the superiors, for which disciplinary action was taken and punishment of pension cut of Rs.200/- p.m for a period of six months was imposed on him. His reluctance in rendering his service to the poor public, by proceeding on unauthorised absence for more than 9 months, stating his personal reasons shows that he had not acted as a responsible Public Servant and he cannot expect empathy in this matter and the 1st respondent has correctly exercised his power as the disciplinary authority and hence, the punishment order passed is sustainable law.

6. Admittedly, there is no dispute that the writ petitioner, while he was working at the Government Hospital, Udumalpet was issued with modified transfer order dated and posted to Government Hospital, Kottur, Coimbatore District and relieved on 12.10.2008 forenoon and instead of joining duty, he unauthorisedly absented from 12.10.2008 to 31.07.2009 by violating Rule 20 of Tamil Nadu Government Servants Conduct Rules. Against which disciplinary proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the charges framed on the petitioner were also held to be proved by the Enquiry Officer and awarded punishment of pension cut of Rs.200/- per month for a period of one year and the said punishment was modified subsequently as pension cut of Rs.200/- per month for a period of six months, which is impugned in the writ petition.

7. In the light of the above undisputed factual position, it is to be seen whether the charges framed and proceedings initiated against the petitioner for his unauthorised absence for the above said periods and the punishment awarded for the said charges are valid or not.

8. The learned counsel for the writ petitioner has relied upon the judgment of the Hon'ble Supreme Court reported in (2012) 3 SCC 178 in the case of Krushnakat B.Paramar Vs. Union of India & Another. The relevant paragraphs are extracted hereunder;

"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an

employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence will not amount to misconduct."

9. In the present case, though the writ petitioner has given reason for his inability to join duty in his reply to the Charges that he was on conditional bail at that time and had to sign at the Judicial Magistrate Court, Mettupalayam every day and he was not in a position to discharge his duties, even after his conditions were relaxed, he did not join duty. But, he sent leave application extending leave for the period from 12.10.2008 to 19.10.2008 and from 20.10.2008 onwards, in various spells without obtaining prior sanction of competent authority. He joined duty on 01.08.2009, thus, he was on unauthorised absence from duty from 12.10.2008 to 31.07.2009 and disobeyed the orders of the superiors, for which disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was initiated against him and he was issued with the Charge memo Ref.No. 4538/SC2/2/2010, dated 02.06.2010 by the 2nd respondent herein.

10. After enquiry, for proven charges, punishment of pension cut of Rs.200/- per month for a period of one year was awarded. Further, TNPSC in its letter No.4232/DCD-C1/2013-1, dated 05.08.2013 has given opinion that the reasons stated by the writ petitioner for his unauthorised absence can be considered. Accepting the opinion given by the TNPSC, the Government has modified the said punishment as pension cut of Rs.200/- per month for a period of six months, which this Court finds it valid and does not require any interference..

11. Further, the learned counsel for the petitioner has produced a letter of the Director of Medical and Rural Health Services, Chennai in Ref.No. 69953/E3/2/2011, dated 21.09.2015 sent to the Principal Accountant General (A&E), GAD-II, Chennai, wherein it has been stated that the unauthorised absence period from 12.10.2008 to 31.07.2009 of the writ petitioner has been regularised as EOL and no leave is pending to be regularised in respect of the writ petition .

12. Considering the facts and circumstances of the case, it is useful to refer the judgment of the Hon'ble Supreme Court in Appeal (Civil) No. 939/2003, dated 03.01.2006 the case of State of Rajasthan & another Vs.Mohammed Ayub Naz, wherein the Supreme

Court citing various judgments, held that the punishment of removal imposed on the government servant who remain absent for three years is absolutely correct and not disproportionate as alleged by the respondent. The relevant portion is extracted below;

" This Court in Om Kumar and Ors. v. Union of India, [2001] 2 SCC 386 while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant material and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for.

In this context, we can usefully refer to the case of B.C. Chaturvedi v. Union of India and Ors., AIR (1996) SC 484 (3 Judges) wherein this Court held thus:

"Ramaswamy, J for himself and B.P. Jeevan Reddy, J.-Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, - it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

V. Ramana v. A.P. SRTC and Ors., [2005] 7 SCC 338 [Arijit Pasayat and H.K. Sema, JJ.] The challenge in the above matter is to the legality of the judgment rendered by a Full Bench of the Andhra Pradesh High

Court holding that the order of termination passed in the departmental proceedings against the appellant was justified. This Court in para 11 has observed thus:

"The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

13. In the instant case, the petitioner, being a doctor, his attitude of unauthorised absence from duty from 12.10.2008 to 31.07.2009 without obtaining prior permission from the competent authority and disobeying the order of the higher authority is not acceptable and the disciplinary action initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is very much proper. Further, his reluctance in rendering his service to the poor public, by proceeding on unauthorised absence from duty, shows that he had not acted as a responsible public servant.

14. As far as punishment imposed on the petitioner, this Court is of the opinion that the petitioner was wilfully been absent for more than 9 months, which fact is very proved from the perusal of records. Hence, the punishment awarded as pension cut of Rs.200/- per month for a period of six months is absolutely correct and not disproportionate as alleged by the writ petitioner and does not require any interference.

15. In the result, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

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

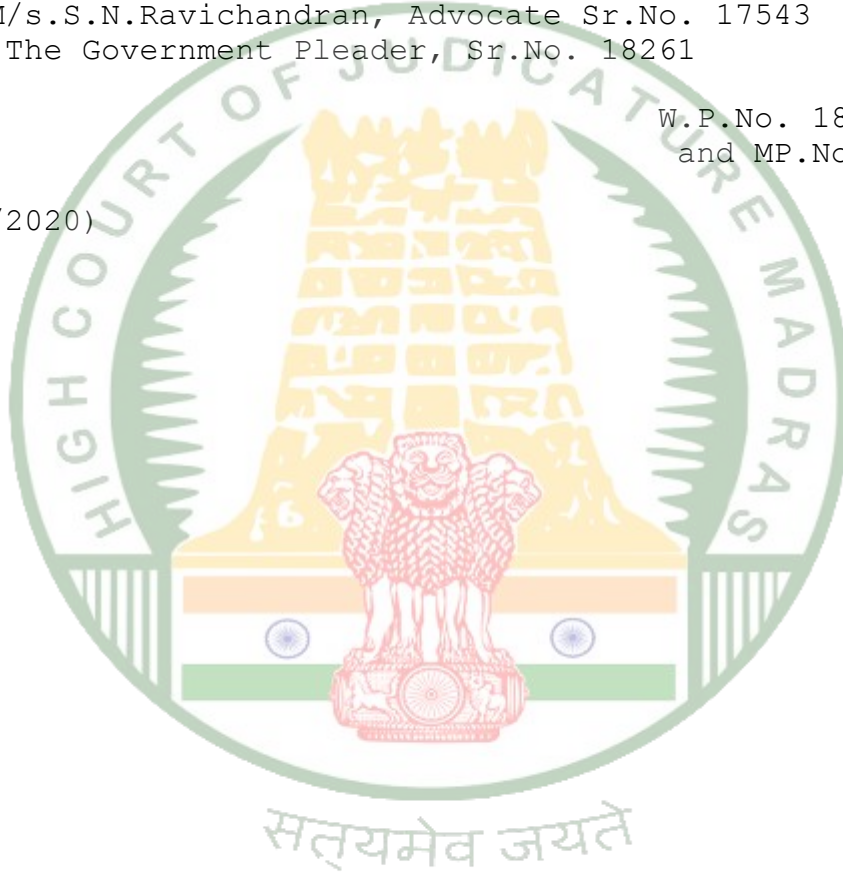
2. The Director,
Medical and Rural Health Services,
Chennai-600006.

+1 cc to M/s.S.N.Ravichandran, Advocate Sr.No. 17543

+1 cc to The Government Pleader, Sr.No. 18261

W.P.No. 18070 of 2014
and MP.No. 1 of 2014

MR(CO)
RMP(21/07/2020)



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