



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.1194 of 2013

Punithakumar

... Petitioner

Vs.

1.The Principal Health Secretary,
Secretariat,
Chennai.

2.The Director of Medical Services,
Tenampet,
Anna Salai,
Chennai.

3.The Deputy Director of Health and
Family Welfare,
Pudukkottai.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records in the proceedings of the first respondent in G.O(Pa)No.752 dated 28.06.2011 and quash the same.

For Petitioner	: Mr.J.Anand Kumar
For Respondents	: Mr.J.Gunaseelan Muthiah, Additional Government Pleader.

ORDER

1.The petitioner has filed the above Writ Petition to issue a Writ of Certiorari, to call for the records in the proceedings of the first respondent in G.O(Pa)No.752 dated 28.06.2011 and to quash the same.

2.The learned counsel appearing for the petitioner submitted that the petitioner, while he was serving as an Assistant Medical Officer, Subramaniamapuram Non-Taluk Rural Dispensary, Aranthangi Taluk, Pudukkottai District, was issued with six charges and the charges are as follows:

'a) During the inspection by the Deputy Director on 15.03.2005, the petitioner was not on duty. However, later in the attendance register it was

marked as O.D.



b) The second charge was that on 19.05.2005 during the inspection, the petitioner was not on duty during the evening hours, hence O.P was not functioning during the evening time.

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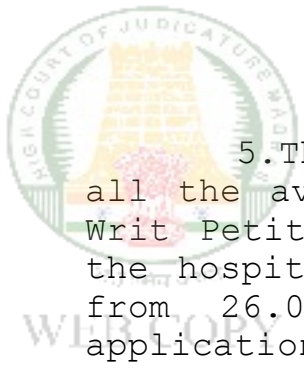
c) The third charge was that on 26.05.2005 at 08.00 a.m., a female child was given O.P ticket on the complaint of vomiting, however, till 10.15 the Doctor did not come to the duty, hence, the child was treated by the Homeopathy Doctor. Hence, there was a hue and cry in the hospital.

d) On the same date though several number of patients were recorded in OP nominal register only 37 new patients and 28 old patients were treated.

e) The last charge was that records were kept in the office room whereas office key was with an attender who was already retired from service.'

3.Subsequently, the petitioner was issued with charge-memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and disciplinary action was initiated against him. Based on the enquiry report submitted by the enquiry officer that all the charges have been proved, the first respondent has passed an order for stoppage of increment for two years with cumulative effect in his proceedings in G.O.(Pa)No.752 dated 28.06.2011. Challenging the same, the petitioner preferred an appeal before the first respondent on 20.07.2011 and till date, the same is pending.

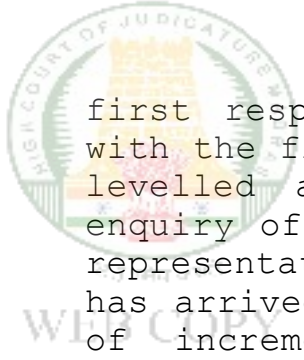
4.The learned counsel appearing for the petitioner further submitted that the first respondent has passed an order of punishment of stoppage of increment for a period of two years with cumulative effect and further stated that the said punishment will affect the pension of the petitioner and the order of punishment is highly excessive and disproportionate to the charges. In view of the order of punishment, the petitioner has been deprived of his valuable right of getting promotion and the petitioner is now at the verge of his retirement. Having cut the increments and deprived the promotions during the currency of punishment, the authority is not entitled to deprive the pension also. Each incident mentioned in the charge is only a day-to-day affairs of the hospital and it will not cause any hindrance or prejudice to any patient. The enquiry officer also held that due to difference of opinion between two Doctors charges have been framed, but ought not to have recommended for punishment and prayed for quashing the impugned order.



5.The respondents have filed the counter-affidavit denying all the averments made in the affidavit filed in support of the Writ Petition and submitted that the petitioner did not attend the hospital on 26.05.2005 because he was on leave for two days from 26.05.2005 to 27.05.2005 and he submitted the leave application to the third respondent on 25.05.2005 and another Doctor Farook Khan, who was working in the Hospital, has also given leave application and the Doctor was also absented from duty without any information and hence, he was under the impression that the other Doctor will be in the hospital and that is the reason no treatment was given to 10 year old child in the morning.

6.It is further stated that the petitioner himself had accepted that during the enquiry conducted on 10.12.2008 by the Joint Director of Health Services, Trichy the office key was not with an employee, who had retired from service, when the third respondent requested him to submit the operation theatre request registers and the alleged stock register. The petitioner has also stated that the registers were in the office and the key was not with him and the key was with the retired Nursing Assistant Sankaran and the petitioner had violated the procedure by giving the office key to a retired person. It is further stated that the petitioner violated Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules for lapses mentioned in charges 1 to 5 was also held proved. The petitioner has not attended duty and not conducted evening O.P on certain days on 26.05.2005, he had left the patients in lurch by not coming to duty in time, when another doctor was already on leave, which resulted in public demonstrating road roko, which resulted in law and order problem.

7.It is also further stated that the petitioner had committed the lapses of tampering of the attendance register marking 'O.D' after the inspecting authority has put a question mark regarding the duty on 15.03.2005 for his absence on that day. Again on 19.05.2005, the petitioner was not present for his duty, when the third respondent inspected the Government Hospital, Subramaniapuram and evening O.P was not conducted. On 26.05.2005, the petitioner did not turn up for duty till 10.15 a.m., when another Doctor was already on leave from 24.05.2005 to 26.05.2005 and the patients have suffered very much without availability of any Doctor and the public had staged a road roko which resulted in law and order problem. These lapses were serious in nature and brought discredit to the Government and these acts were unbecoming of a Government servant, which warranted initiation of disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner. The



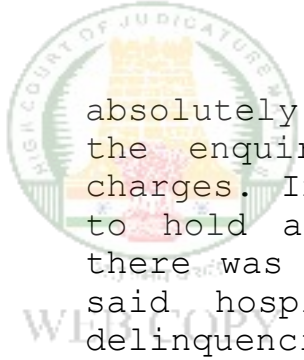
first respondent, on receipt of the enquiry report, has agreed with the findings of the enquiry officer and held that the charges levelled against as proved and communicated the copy of the enquiry officer's report to the petitioner to furnish his further representation and after obtaining the same, the first respondent has arrived at the conclusion imposing the punishment of stoppage of increment for two years with cumulative effect on the petitioner, which commensurate with the gravity of the charges.

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

9. On perusal of the materials available on record, it is seen that while the petitioner was working as an Assistant Surgeon at Government Hospital, Illupur, he was issued with charge-memo under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. On receipt of the said charge-memo, the petitioner submitted his explanation stating that on 15.03.2005, Nodal Officer called the petitioner through phone to attend a meeting at Pudukottai and the petitioner was not available at the hospital during inspection. The inspecting authority without knowing the fact that the petitioner went to attend the official meeting, marked the petitioner absent. However, after attending the meeting, the same was marked as OD. The said explanation of the petitioner for the first charge was not accepted by the enquiry officer and stated that on flimsy reason, the petitioner did not produce any phone record to show that he was called for meeting by the Nodal Officer and held that the charge was proved.

10. With regard to the second charge, the petitioner has given explanation that on 19.05.2005 due to the sudden stomach upset, the petitioner went to another hospital for taking drips. However, the other duty Doctor, who was supposed to be available in the hospital, without informing the petitioner had left the hospital, for which, the enquiry officer held that even though the petitioner was not well on the relevant date, he did not give necessary instructions and held that the charge has been proved.

11. With regard to the other charges, the petitioner submitted his explanation stating that already the petitioner applied for leave from 25.05.2005 to 27.05.2005. However, on coming to know the absence of Dr. Farook Khan, despite leave, he attended duty and all the patients were attended and no patients were left unattended and further stated that during inspection, suddenly the records were called for, the same could not be produced, but the inspecting authority alleged that the keys were with some other persons, for which, the enquiry officer held that



absolutely no material was produced against the petitioner during the enquiry and no witnesses were examined to establish the charges. In the absence of the witnesses, it is highly improbable to hold against the petitioner. The enquiry officer held that there was misunderstanding between two Doctors practising in the said hospital. Hence, difference of opinion led to present delinquencies. The first respondent, on perusal of the report submitted by the enquiry officer, has passed the impugned order.

12.From the materials available on record, further it is seen that even though the petitioner was not available in the hospital at the time when the incident has occurred due to road roko and the contention of the petitioner that since he was not feeling well and admitted in another hospital and taking drips, he could not attend the hospital on that day, even though the said Dr.Farook Khan was not available, the petitioner was under the impression that the said Dr.Farook Khan will attend the duty. Considering all these aspects, this Court is of the view that the authorities have not considered the same and passed the impugned order, which is excessive and also considering the submission made by the learned counsel appearing for the petitioner that in view of the order of punishment, the petitioner has been deprived of his valuable right of getting promotion and the petitioner is now at the verge of his retirement and the impugned order states that the same will affect the pension of the petitioner, this Court is inclined to modify the impugned order passed by the first respondent.

13.Accordingly, the punishment order of stoppage of increment for two years with cumulative effect and the said punishment will affect the pension has been modified as 'stoppage of increment for two years' and the words 'with cumulative effect' and 'the said punishment will affect the pension' have to be deleted, since in the appeal period all his promotion and other benefits have been deprived. In all other aspects, the order passed by the first respondent remains unaltered.

14.With these observations, the Writ Petition is partly allowed. No costs.

Sd/-

Assistant Registrar(CS)

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Sub Assistant Registrar(CS)



To

1.The Principal Health Secretary,
Secretariat,
Chennai.

2.The Director of Medical Services,
Tenampet,
Anna Salai,
Chennai.

3.The Deputy Director of Health and
Family Welfare,
Pudukkottai.

+1 CC to M/s.J.ANANDKUMAR, Advocate(SR-12584[F] dated 19/03/2020)

+1 CC to M/s.SPL.GP (SR-12668[F] dated 20/03/2020)

Order made in
W.P. (MD)No.1194 of 2013

Dated:
19.03.2020

SPU(06.05.2020) 6P 6C