



WEB COPY

W.P(MD)No.8753 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020

(Reserved on 07.01.2020)

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.8753 of 2011

T.Blessie

... Petitioner

vs.

1)The Director of Medical and Rural Health Services,
DMS Compound,Teynempet,
Chennai-6.

2)The Deputy Director of Health Services,
Old Police Station Road,
Samadhanapuram,Palayamkottai,
Tirunelveli.

3)The Medical Officer,
Government Primary Health Centre,
Ukkirankottai,Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its order in Ref.No.38741/N1/2/2011 dated 23.07.2011 and quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service with all other attendant benefits.

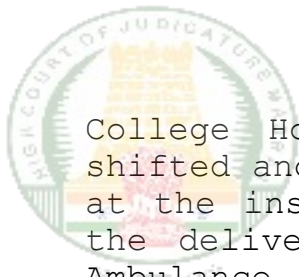
For Petitioner : Mr.Mohammed Ayub
for M/s.Veera Associates

For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its order in Ref.No.38741/N1/2/2011 dated 23.07.2011 and quash the same and consequently direct the respondents to reinstate the petitioner with continuity of service with all other attendant benefits.

2.Learned counsel for the petitioner would state that the petitioner joined as a staff nurse in the 3rd respondent Primary Health Centre on 24.01.2008 on contract basis. On 24.04.2009, one patient namely, Kannuthai was admitted at 11.00 p.m. and delivered a girl baby around 04.00 a.m. She developed a problem called ''Adherent Placenta'' and started over-bleeding and therefore, the duty Doctor Padma decided to shift her to Tirunelveli Medical



College Hospital. Accordingly, through the Ambulance, she was shifted and after two hours, she died. According to the petitioner, at the instructions of the duty Doctor Padma, she had assisted in the delivery, given injection and accompanied the patient in the Ambulance along with the duty Doctor to Tirunelveli Medical College Hospital. Subsequent to the incident, she was transferred to three Primary Health Centres within a span of 27 months from 24.04.2009 to 23.07.2011. While so, on 10.06.2011, the 2nd respondent had called the petitioner to his office and instructed to sign a pre-written paper saying that it is the usual routine and the petitioner was not allowed to read the paper. On 23.07.2011, the impugned order was passed terminating the service of the petitioner on the allegation that she has derelicted her duties in handling the delivery case of Tmt.K.Kannuthai which resulted in the death of the patient. Challenging the said order, the present writ petition has been filed. According to the learned counsel, without giving any opportunity of hearing to the petitioner, the impugned order was passed in blatant violation of principles of natural justice. Further, when the petitioner has discharged her duties in the above case at the instructions of the duty doctor, she alone has been discriminately given punishment. Thus, he would pray for setting aside the impugned order with consequential prayer.

3.The 1st respondent has filed counter affidavit. The learned Government Advocate appearing for the respondents would state that on the representation of the mother of the deceased patient, the then Additional Director, conducted enquiry and submitted his report which was examined by the Government and finally, the Government requested the Director of Public Health and Preventive Medicine, Chennai, to take appropriate action against the Medical Officer Dr.Padma, staff nurse Ms.Blessie, Block Medical Officer Dr.Sivagami Ebinezer and the driver Tvl.Navakumar and Pannerselvam and thereafter, the Deputy Director of Health Services, Tirunelveli, has addressed a letter in D.O.No.6205/A4/10 dated 13.06.2011 to the Director of Medical and Rural Health Services, Chennai, informing that with regard to the maternal death of Tmt.Kannuthai on 25.04.2009, departmental disciplinary action was initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against Dr.P.Padma and Dr.R.Sivagami and also instructed to conduct inquiry against Tmt.Blessie and proceed action against her. Accordingly, the Deputy Director of Health Services, Tirunelveli, conducted oral enquiry on 10.06.2011 and on completion of enquiry, held that the petitioner was responsible for the aforesaid issue and also submitted the following particulars:-

'a.Tmt.T.Blessie, Nurse (On contract basis), in RCH Delivery Case Sheet has not wrote any detials.

b.Inj. Methergine 2 amp. Given before separation of placenta not as per protocol.

c.Inj. Syntocinon is not given.

d.No proper treatment given during referral.

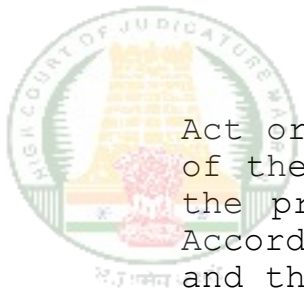


4.He would further submit that based on the examination of the petitioner's case, Government's recommendation, inquiry report etc., it was ensured that the petitioner, contract basis staff nurse, had derelicted in her duty and therefore, she was rightly terminated from service vide impugned order. Therefore, he would submit that the interference of this Court is not necessary.

5.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

6.Perusal of record shows that admittedly even in the counter affidavit, it is stated that the enquiry conducted against the petitioner is oral and the termination order has been passed by the 1st respondent without giving any notice. No charge memo was issued and without conducting any regular departmental enquiry, straightaway, the termination order has been passed which is in violation of Article 311(2) of the Constitution of India. The termination on the ground of dereliction of duty will certainly cause stigma against the employee though she is a contractual employee and it will be carried on to her entire career and the abovesaid fact had been dealt with by this Court in a judgment reported in (2008) 5 MLJ 1284, where this Court has held as follows:-

'The impugned order does not indicate the basis on which the allegations were said to have been proved. Whereas, it proceeds on the basis that the explanations offered by the petitioner, are false and without any basis. Though the respondent in their counter affidavit has contended that the appointment of the petitioner is not in accordance with the procedure and that he was not sponsored by the employment exchange, it is not the ground for termination and therefore, it is not open to the respondents to gain support from the counter affidavit. It is settled law that the impugned order has to stand or fall, for the reasons contained therein and that the respondents cannot improve their case by the averments in the counter affidavit. The petitioner was a part-time employee. Serious charges of misappropriation has been levelled against the petitioner and that he cannot be simply be terminated without holding a regular departmental enquiry. Termination on the grounds of misappropriation certainly casts a stigma. When an employee has denied the charges by way of explanation, the authorities have no other alternative, except to conduct a detailed enquiry and give sufficient opportunity to the employee. When statute contemplates a procedure for termination of an employee, part-time employees are also entitled to the protection under Article 311(2) of the Constitution of India and that the procedure contemplated under the Tamil Nadu Panchayat



Act or any other Rule has to be followed. Therefore, I am of the view that the impugned order passed in violation of the principles of natural justice, warrants interference. Accordingly the impugned order of termination is set aside and the matter is remitted back to the second respondent to conduct an enquiry into the charges, after giving sufficient opportunity to the petitioner. However, in respect of regularisation is concerned, it depends upon the decision in the disciplinary proceedings.''

7.Now, almost 10 years have been lapsed and the said duty doctor Padma is still in service and the petitioner who cannot act without the directions of the duty doctor, has been sent out without even conducting any enquiry which is discriminative. Further, perusal of record also shows that one of the grounds in which she was terminated is, she has not written the case details. Whereas, at page 6 of the typed set of papers, the petitioner has written the patient's details bearing O.P.No.8358, namely, Kannuthai, W/o. Uchimahali, aged 27 years, got admitted on 24.04.2009 at 11.00 p.m and delivered a female baby on 25.04.2009 at 03.59 p.m through normal delivery conducted by duty doctor Padma along with the staff nurse/petitioner. It is also the contention of the petitioner that she had assisted more than 200 deliveries and assisted more than 100 deliveries after the incident and therefore, she is aware of the procedure to be followed that too under the instructions of the duty doctor. Even the impugned order does not refer to any notice or charge memo and the petitioner who is a contract employee has been made as a scapegoat on the ground of dereliction of duty and had been terminated from service which in my considered opinion, is totally against the principles of natural justice and therefore, I am inclined to interfere with the impugned order.

8.Accordingly, the order in Ref.No.38741/N1/2/2011 dated 23.07.2011 passed by the 1st respondent is quashed and the respondents are directed to reinstate the petitioner with continuity of service with all other attendant benefits, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To

1)The Director of Medical and Rural Health Services,
DMS Compound,
Teynempet, Chennai-6.

2)The Deputy Director of Health Services,
Old Police Station Road,
Samadhanapuram,
Palayamkottai, Tirunelveli.

3)The Medical Officer,
Government Primary Health Centre,
Ukkirankottai,
Tirunelveli District.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-2932[F] dated
+1 CC to M/s.SPL.GP (SR-3179[F] dated 27/01/2020)

PRE-DELIVERY ORDER MADE IN
W.P(MD)No.8753 of 2011
DATED : 07.01.2020

SMA/05/02/2020/5P/6C