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W.A.(MD)No.772 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A. (MD)No.772 of 2020

and

C.M.P. (MD)No.4403 of 2020

Against W.P(MD).No 21568 of 2019

1. The State of Tamil Nadu,
Rep. but its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.

2.The Commissioner / Director of
Indian Medicine and Homeopathy,
Arumbakkam, Chennai.

..Appellants/ Respondents

Vs.

Dr.K.Saleem

.. Respondent /Petitioner

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order dated 18.02.2020 passed by this Court in W.P.(MD) No.21568 of 2019.

Prayer in WP(MD). 21568/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court calling for the records pertaining to the orders passed by the 1st respondent in G.O.(D) NO.1258, Health and Family Welfare (D1) Department dt.01/08/2019 and quash the same and direct the respondents to give promotion to the petitioner to the post of Reader and Professor with all monetary benefits from the date on which the petitioner junior was given promotion and include the petitioner name in the panel for promotion to the post of principal for the year 2019-2020 as per the seniority

For Appellants : Mr.K.P.Krishnadass
Special Government Pleader

For Respondent : Mr.V.Panneer Selvam

JUDGMENT

(Judgment of the Court was delivered by **M. SATHYANARAYANAN, J**)

The official respondents in W.P.(MD)No.21568 of 2019 are the appellants

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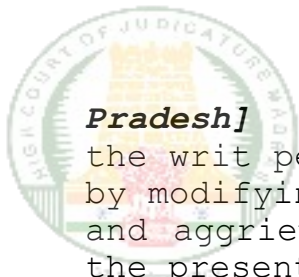


2. The respondent in the present appeal filed the said writ petition praying for issuance of writ of certiorarified mandamus to call for the records relating to the order of the first respondent dated 01.08.2019 in G.O.(D)No.1258, Health and Family Welfare(D1) Department and quash the same and consequently direct the respondents to give promotion to the petitioner to the post of Reader and Professor with all monetary benefits from the date on which his junior was given promotion and include the petitioner's name in the panel for promotion to the post of Principal for the year 2019-2020 as per the seniority.

3. The writ petition, after contest, came to be allowed vide impugned order dated 18.02.2020 and challenging the legality of the same, the present writ appeal is filed.

4. The respondent/writ petitioner was appointed as Assistant Medical Officer (Siddha) and posted at District Head Quarters Hospital, Cuddalore District on temporary basis and subsequently he was granted study leave to study M.D., and after completion he was posted to Government Hospital at Kadaladi in Ramanathapuram District and again transferred to Primary Health Centre, Devipattanam, Ramanathapuram District and thereafter transferred to Government Hospital at Srivilliputhur, Virudhunagar District in the year 2003. The petitioner made a request to the second appellant to transfer him to his home District ie., Tirunelveli District through proper channel on 26.11.2008 and it was also forward by the District Medical Officer to the second appellant and the said transfer request was urged on the ground that he should take care of his father who is aged about 75 years and since the said request was not considered, he filed a writ petition in W.P.(MD)No.3908 of 2009 praying for appropriate orders and however disciplinary proceedings has been initiated against the petitioner in the form of show cause notice dated 27.07.2009 under Rule 17(a) of the Tamil Nadu Civil (Disciplinary and Appeal) Rules, stating that he used some external pressure with regard to his request. The petitioner submitted his explanation and however it was not properly considered and the second respondent has imposed a punishment of stoppage of increment for a period of six months without cumulative effect and challenging the same, he preferred an appeal before the first appellant, who vide order dated 01.08.2019 in G.O.(D)No.1258, Health and Family Welfare (D1) Department, has modified the same to the stoppage of increment for three months without cumulative effect. Challenging the legality of the same, he has filed the writ petition.

5. The learned single Judge has taken note of the fact that in respect of the official who was similarly placed especially Dr.C.Vijayan, the first appellant passed an order dated 03.08.2010, in Ref.No.16611/E2/1/2009 only with warning without imposing any punishment. The learned single Judge has taken note of the said proceedings as well as the decision rendered by the Honourable Supreme Court in **(2013)3 SCC 73 [Rajendra Yadav Vs. State of Madhya**



Pradesh] which speaks about the doctrine of equality and allowed the writ petition directing the first respondent to pass fresh order by modifying the original punishment from censure to that of warning and aggrieved by the impugned order in allowing the writ petition, the present appeal is filed by the appellants/official respondent.

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6. The learned Special Government Pleader appearing for the appellants would submit that admittedly warning is not a punishment and in the light of the fact that the respondent/writ petitioner has brought upon pressure in respect of his request for transfer, it would amount to misconduct and taking into consideration the facts and circumstances, the first appellant has correctly passed the order for postponement of increment for three months without cumulative effect and would further add that in the matter of punishment, this Court, in exercising its jurisdiction under Article 226 of the Constitution of India, would not normally interfere with and hence prays for setting aside the order passed by the learned Single Judge in W.P.(MD)No.21568 of 2019, dated 18.02.2020.

7. Per contra, the learned Counsel appearing for the respondent/writ petitioner has drawn the attention of this Court to the proceedings of the first respondent dated 03.08.2010 pertains to Dr.C.Vijayand would submit that the said official is also similarly placed and he was issued with warning and whereas the respondent/writ petitioner was imposed with the punishment of postponement of increment for three months without cumulative effect and the learned Judge has taken into consideration the well legal settled position and parity and has rightly interfered with the impugned order and hence, prays for dismissal of the writ appeal.

8. This Court carefully considered the rival submissions and also perused the materials placed on record.

9. It is relevant to extract hereunder the proceedings of the first respondent dated 03.08.2010 in Ref.No.16611/E2/1/2009:

"The following lapses were pointed out against DR.C.VIJAYAN, working as Assistant Medical Officer (Siddha) at the Siddha Wing, attached to the Government Hospital, Vaitheeswarankoil, Nagapattinam District, vide this Office Show-cause Notice 1st cited.

Lapse No.1

"The said DR.C.VIJAYAN, Assistant Medical Officer (Siddha), while working at the above said place, has brought external pressure on undersigned to consider him for postings either in Trichy or Perambalur District. Thus, the said DR.C.VIJAYAN, Assistant Medical Officer (Siddha) has knowingly and only at his instigation brought external influence on



the undersigned to further his personal interests in violation to rule 18 of the Tamil Nadu Government Servants' Conduct Rules, 1973 and hence he has violated the said rule".

WEB COPY The said Show-cause Notice was served on the delinquent Officer on 08.12.2009 and has submitted his explanations 2nd cited to the same. He in his explanations towards lapse No.1 has submitted that his wife Dr.T.SenthamilSevi is working as Assistant Medical Officer (Siddha), Govt.Primary Health Centre, Poolambadi, Perambalur District and that there is an intercaste marriage and that there is no support from their families and as such his wife is taking care of their infant with much difficulty, without any help from elders. He has stated that therefore he had sought transfer to Trichy under compelling family situation. He has submitted that he is not aware that bringing external pressure is a fault on his part and the mistake is taken place due to his ignorance. He has submitted that in future he will not violate rule 18 and cause trouble to administration. He has prayed that his mistake may be excused.

The case has been examined with the connected records and it has been decided to warn the delinquent Officer for his act.

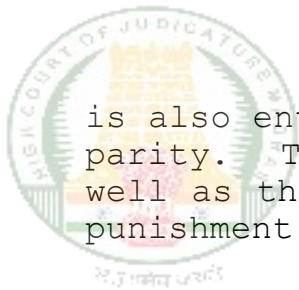
Therefore, DR.C.VIJAYAN, Assistant Medical Officer (Siddha) attached to the Siddha Wing, Government Hospital, Vaitheeswarankoil, Nagapattinam District is hereby warned for the lapses pointed out against him vide this Office Memo first cited and to avoid such action and to be more careful in future.

RAMESH KUMAR KHANNA

Principal Secretary / Commissioner of
Indian Medicine and Homoeopathy."

(extracted as such)

10. Though in the grounds, the appellants/official respondents took a stand that the steps are being taken to remove the above said order dated 03.08.2010 pertains to Dr.C.Vijayan, the fact remains that despite of lapse of merely ten years, no such view has been done. In the considered opinion of this Court, the respondent/writ petitioner is similarly placed by that of Dr.C.Vijayan, upon whom the first respondent has shown benevolence in the form of warning and therefore, the respondent/writ petitioner



is also entitled to similar benevolence by applying the principle of parity. The learned Judge has taken note of the factual aspect as well as the legal position and rightly interfered with the order of punishment.

11. This Court on an independent application of mind and appraisal to the relevant materials placed and also considering the rival submissions, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the learned single Judge for allowing the writ petition and this Court finds no merits in this writ appeal.

12. In the result, this **writ appeal is dismissed**, confirming the order, dated 18.02.2020 passed in W.P(MD)No.21568 of 2019. The appellants/official respondents are granted **ten weeks** from the date of receipt of a copy of this order to comply with the order dated 18.02.2020 passed in W.P(MD)No.21568 of 2019, as confirmed in this appeal and communicate the decision taken to the respondent/writ petitioner. Consequently, the connected Civil Miscellaneous Petition is also dismissed. No costs.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SSL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Chennai.
2. The Commissioner / Director of
Indian Medicine and Homeopathy,
Arumbakkam, Chennai.

W.A. (MD)No.772 of 2020
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