



WEB COPY

W.P(MD)No.3978 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.02.2020

DELIVERED ON : 02.11.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD)No.3978 of 2014

P.Venkatesh Kumar

... Petitioner

Vs.

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

2.The Director,
Public Health and Preventive Medicine Department,
Chennai - 600 006.

3.The Deputy Director,
Health Services,
Kovilpatti,
Thoothukudi District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings dated 02.05.2013 in G.O.(D).No.407 passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner with backwages and all monetary benefits.

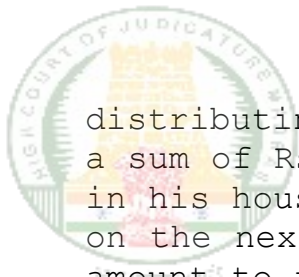
For petitioner : Mr.V.Sasikumar

For respondents : Mr.D.Muruganandham,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the order rejecting the mercy petition filed by him for reappointment as Junior Assistant.

2. The learned counsel appearing for the petitioner submitted that on 23.01.1995 the petitioner was appointed as Junior Assistant on compassionate ground at Nagalapuram Primary Health Centre, Thoothukudi District. During the year 1996, he was in charge of



distributing salary to the employees. On 31.10.1996, after drawing a sum of Rs.16,246/- from the Treasury, the petitioner kept the same in his house as there was no security available in the Office. But, on the next day, he fell ill suddenly and hence, he handed over the amount to the Office through his mother. While so, to the shock and surprise, he was issued a charge memo and placed under suspension. However, the suspension order was subsequently revoked and he was reinstated. On 11.02.2000, another charge memo was issued alleging that a sum of Rs.8,488/- was misappropriated by him during the period 21.06.1999 to 07.07.1999. However, the petitioner was again reinstated on 26.07.2000 by the 3rd respondent. But, at the time of enquiry, an untoward incident had happened between the petitioner and the Medical Officer, for which a criminal case has been registered in Crime No.37 of 2000 under Sections 294(b), 353 and 506 (ii) IPC and then, he was arrested and he was under judicial custody for three days. Though the trial Court has convicted the petitioner under Section 353 IPC and the appellate Court has also confirmed the same, a learned Single Judge of this Court has set aside the said order in the revision and acquitted the petitioner from the said charge by order dated 24.06.2009.

3. The learned counsel appearing for the petitioner would further submit that in the meantime, the 3rd respondent issued a charge memo on 11.06.2000 alleging two charges. They are (a) the petitioner has dishonestly retained a sum of Rs.8,228/- due to family reason and (b) the petitioner misbehaved with the Medical Officer of the Primary Health Centre and thereby, violated Rule 20 (1) of Tamil Nadu Government Servant Conduct Rules. After enquiry, the 3rd respondent, by the impugned order dated 26.07.2000, dismissed the petitioner from service holding that the petitioner himself admitted before the Enquiry Officer about the first charge and that the second charge is proved. Aggrieved by the same, the petitioner has filed an appeal before the second respondent. The second respondent has dismissed the appeal. Thereafter, the petitioner has filed a Mercy Petition before the first respondent seeking reappointment. But, the first respondent has dismissed the said petition. Challenging the said order, the petitioner is before this Court.

4. The learned counsel for the petitioner further submitted that the petitioner has not committed any misappropriation and he has retained the money only due to ill-health and even assuming that the petitioner committed temporary misappropriation, the punishment of dismissal from service is exorbitant. The first respondent, without considering the above aspects and also the order passed by this Court acquitting the petitioner from the criminal case, has erroneously rejected the mercy petition. Thus, he prayed to allow



5. The learned Additional Government Pleader appearing for the respondents submitted that the petitioner deserves no consideration for reappointment into service, as he has not changed his attitude and he has misappropriated the Government money thrice. Further, the petitioner had misbehaved with his higher official ie., the Medical Officer. The petitioner himself has accepted in paragraph No.4 of his affidavit that an untoward incident had happened between himself and the Medical Officer. Though the petitioner stated that he fell ill suddenly, due to which he could not hand over the amount, the petitioner's mother herself in her letter dated 08.11.1996 has stated that the petitioner, while working at Primary Health Centre, Boothalapuram, kept the festival advance amount and salary amount of the staff which encashed on 18.10.1996 and 31.10.1996 in the house and he has distributed only part of the amount to the staff and left somewhere else from the house on 05.11.1996. The petitioner's mother has further stated in her letter that on noticing the MTC-70 Register (1), Salary Distribution Register (4 Nos.), totally five registers, three keys and Rs.16,241/- kept in the almirah of the house, she has handed over the same to the Boothalapuram Primary Health Centre Staff concerned in the presence of Deputy Director of Health Services. Hence, the petitioner was placed under suspension on 11.11.1996. However, subsequently, he was reinstated into service on 07.02.1997 by giving a chance. Even thereafter, he has dishonestly retained the money and misbehaved with the Medical Officer and hence, after enquiry, he was dismissed from service.

6. The learned Additional Government Pleader appearing for the respondents further submitted that it is a settled legal position that the criminal proceeding is entirely different from departmental inquiry and only preponderance of probability is enough in deciding the departmental proceedings. The petitioner has no *locus standi* to get a favourable order on the basis of fate of the criminal case. Considering the same, the first respondent has dismissed the Mercy Petition filed by the petitioner and therefore, the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

7. Heard the learned counsel appearing for both sides and perused the records carefully.

8. It is seen from the record that the petitioner has not filed an appeal against the concurrent orders dismissing him from service passed by the second and third respondents. He has filed only Mercy Petition before the first respondent seeking to reappoint him in the post of Junior Assistant by pardoning his act and considering his pathetic condition.



9. A perusal of the impugned order shows that the first respondent has rejected the Mercy Petition holding that the petitioner had already indulged in temporary misappropriation in two other instances in which two other disciplinary proceedings were initiated against him by the Deputy Director of Health Services, Kovilpatti, but the same could not be proceeded further as he has been dismissed from service with regard to another incident.

10. It is needless to say that it is the discretion of the Government to either allow or reject the mercy petition. The judicial review in this matter is very limited. If there is any misconception or non consideration, this Court may direct the respondents to consider the matter afresh. In this case, it is not stated so. The first respondent has categorically stated that the petitioner has been given chances for changing his attitude, but he has not utilized the same. Mercy cannot be shown to an employee who had repeatedly acted dishonestly and disobediently. There is no merit in this petition. Hence, this writ petition is liable to be dismissed.

11. In the result, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To

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

2.The Director,
Public Health and Preventive Medicine Department,
Chennai - 600 006.

3.The Deputy Director, Health Services,
Kovilpatti, Thoothukudi District.

order made in
W.P (MD) No.3978 of 2014
02.11.2020

KG(CO)

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