



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2020

CORAM:

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

W.P.(MD).No.8688 of 2014

and

WMP(MD)Nos.1 and 2 of 2014, 2287 of 2018

R.Arumugam

... Petitioner

-Vs-

1.The Director,  
Medical and Rural Health Service,  
Teynampet, Chennai.

2.The Joint Director of Medical and Rural,  
Health Services and Family Welfare (I/c)  
Virudhunagar, Virudhunagar District.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the second respondent passed in his proceedings in Mu.Mu.No.5829/Si.Ma/2007, dated 08.07.2013 and quash the same and further direct the respondents to pay the regular salary for the period from 18.07.2007 to 08.12.2010 and once again from 09.12.2013 to till date and further direct the respondent to give all service and other monetary benefits for which the petitioner is entitled.

For Petitioner : Mr.A.Thirumurthy  
for M/s.Victory Associates

For Respondents : Mr.D.Muruganantham  
Additional Government Pleader

**ORDER**

The order of punishment issued by the second respondent in proceeding, dated 08.07.2013, imposing the punishment of stoppage of increment for three years without cumulative effect, is under challenge in the present writ petition.

2.The writ petitioner states that he was appointed as Cook-cum-Waterman in Primary Health Centre, Piranmalai, Sivagangai District on compassionate grounds. After the death of his wife, Late. P.Prema, the compassionate appointment was provided to the writ petitioner/husband. He was transferred to the Government Hospital, Kariyapatti and posted as Hospital worker in Government



Hospital, Kariyapatti. A criminal case was registered against the writ petitioner regarding the allegation of misbehavior with women patients, who were admitted in the Government Hospital, Kariyapatti for undergoing family planning operation on 13.07.2007. A complaint was lodged by one Selvi, Murugeswari and Ganthimathi. The petitioner was placed under suspension in proceeding, dated 18.07.2007 and he filed a writ petition in W.P.(MD)No.8834 of 2007, challenging the order of suspension. This Court passed an order directing the respondent to consider the representation of the writ petitioner and pass orders. His representation was considered and the order of suspension was revoked and he was reinstated into service. However, the criminal case was proceeded with in accordance with law. Meanwhile, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1973 against the writ petitioner by the second respondent in proceeding, dated 03.09.2009. The writ petitioner has not responded to the charge memo and in the affidavit filed before this Court, he has stated that the criminal case was pending and he has not submitted any reply to the charge memo. An enquiry was conducted and based on the enquiry, the disciplinary authority passed an order of punishment in proceeding, dated 08.12.2010, imposing the punishment of stoppage of increment for a period of three years without cumulative effect. However, the punishment was not given effect to.

3.The learned counsel appearing for the writ petitioner has also stated that no proper enquiry was conducted or the petitioner was provided with an opportunity to defend his case. However, the fact remains that an Enquiry Officer was appointed who in turn conduct the enquiry.

4.The criminal case was proceeded and the learned Judicial Magistrate No.II, Virudhunagar, delivered a judgment on 05.04.2013, acquitting the criminal charges against the writ petitioner in C.C.No.63 of 2008. Relying on the said criminal Court judgment, the learned counsel for the writ petitioner reiterated that the petitioner is entitled for all benefits and the order of punishment is to be set aside. Once the criminal case ended with an order of acquittal, the employees entitled for all the service benefits. Thus, the punishment is to be scrapped. The contention of the writ petitioner is that the order of punishment initially passed by the competent authority in proceeding, dated 08.12.2010 was not given effect to and the punishment of stoppage of increment for three years without cumulative effect was deducted from the salary of the writ petitioner. Therefore, the present impugned order imposing the very same punishment once again in proceeding, dated 08.07.2013 is improper. With reference to the same set of allegations, the impugned order of punishment is unsustainable in law.

<https://hcservices.ecourts.gov.in/hcservices/> 5. The learned counsel for the writ petitioner raised the



grounds of double jeopardy for the same set of allegations, the petitioner is punished twice. The authorities competent passed two punishment orders on 08.12.2010 and 08.07.2013.

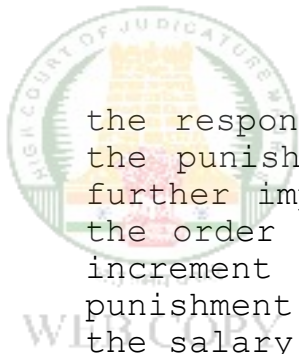
6.The learned Additional Government Pleader appearing on behalf of the respondents disputed the contentions by stating that only one punishment was imposed on the writ petitioner, the earlier order of punishment, dated 08.12.2010 was not given effect to.

7.In view of the fact that the criminal case was pending during the relevant point of time, the criminal case was disposed of by the competent Court on 05.04.2013 and thereafter, in the year 2010, the order was reiterated and a revised order was passed in proceeding, dated 08.12.2010. Therefore, two punishments were not imposed and the said decision was clarified by the second respondent in Paragraph No.12 of the counter affidavit, which reads as under:-

*".....12.I humbly submit that now only the second respondent passed the punishment order for the charge memo dated 03.09.2009. It is pertinent to note that the second respondent categorically stated that the earlier punishment order issued against the petitioner by this second respondent on 08.12.2010 is not given effect and the same is seemed to be a withdrawn on the ground that the present punishment order imposed on the petitioner by the second respondent herein on 08.07.2013. Therefore, the second respondent issued only one punishment order against the writ petitioner on 08.07.2013 for the charge memo issued against him on 03.09.2009..."*

8.It is clarified by the respondents that the punishment of stoppage of increment for three years without cumulative effect was imposed once again, the writ petitioner with reference to the charges of the sexual harassment against the women patients in Government Hospital. No second punishment was imposed with reference to the same set of charges. The punishment was implemented once by deducting increment for three years without cumulative effect. Thus, the ground raised in this regard deserves no merit consideration.

9.This Court is of the considered opinion that the punishment order, dated 08.12.2010 is not under challenge. The order became final. Thus, the punishment was accepted by the writ petitioner and the increment was also recovered from the writ petitioner. The second order is to be construed as a reminder as the learned Additional Government Pleader states that 2010 order was not given effect to. However, the writ petitioner states that the said order was given effect to. This Court is of the opinion that



the respondents are bound to verify the said fact and ensure that the punishment order is implemented once and there cannot be any further implementation. Pursuant to the order of punishment, both the order of punishments speak about one punishment of stoppage of increment for three years without cumulative effect and the punishment is to be implemented once by deducting the increment from the salary of the writ petitioner for three years without cumulative effect.

10.As far as the merits of the case is concerned, the allegations against the writ petitioner are certainly serious in nature. An allegation of sexual harassment is framed as against the writ petitioner. However, he was acquitted from the criminal charges. Mere acquittal in a criminal case could not be a ground for the purpose of seeking exoneration from the departmental disciplinary proceedings. The standard of proof required for a criminal case to convict a person is fairly different. High standard of proof is required to convict a person under the criminal law. However, no such strict proof is required for the purpose of punishing an employee under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Preponderance of probabilities are enough to punish a Government employee for misconduct or indiscipline. Therefore, the comparison of an order of acquittal from the criminal Court is of no avail to the Government employees in seeking complete exoneration from the departmental proceedings. Thus, the acquittal order would not be helpful for the writ petitioner to get away from the order of punishment, which was otherwise imposed by conducting an enquiry.

11.This Court is of the considered opinion that the allegations set out in the charge memo itself portrays that the same requires serious consideration. The petitioner is working in a medical institution and therefore, he is expected to behave with the patients with utmost care and in a decent manner. There are three women patients in the present case, who all are unknown to the writ petitioner and no way connected with the petitioner in any manner. Thus, the allegation made out by those patients itself is to be looked into properly.

12.The contention of the writ petitioner that no opportunity for cross examination was provided, cannot be accepted. The writ petitioner had not participated in the process of enquiry. Thus, he cannot raise such objections at this point of time. The Enquiry Officer obtained statements from the victims and based on their statements, he proceeded with the enquiry and submitted his final report. The charge memo itself was framed based on the complaint given by three women patients. Admittedly, a criminal case was registered and the petitioner was acquitted from the criminal charges on the ground of benefit of doubt. The witnesses turned hostile and therefore, the criminal Court passed an order of acquittal. Mere acquittal is not a ground to seek exoneration from



the departmental disciplinary proceedings. As stated above, the standard of proof required to convict a person under the criminal law is strict and cannot be compared with the departmental disciplinary proceedings and the preponderance of probabilities are sufficient to punish an employee under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. This being the distinct nature of proceedings between the criminal proceedings as well as the departmental proceedings, mere acquittal is not a ground to seek exoneration from the charges framed by the competent disciplinary authority.

13. During the pendency of the criminal case, the disciplinary authority proceeded with the enquiry and based on the enquiry report, imposed the punishment of stoppage of increments for three years without cumulative effect. The punishment imposed itself establishes that the disciplinary authority has taken a lenient view and it is pertinent to note that the complaint of sexual harassment is to be dealt with under the provisions of the Sexual Harassment Act that was not done by the authorities competent. In fact, the complainants were directly examined by the authorities and their statements were recorded and accordingly, the punishment was imposed. When the victims appeared before the competent authorities and deposed before them and their statements were recorded, there is no reason to interfere with the order of punishment imposed against the writ petitioner and the authorities themselves had taken a lenient view by imposing the punishment of stoppage of increment for three years without cumulative effect.

14. This being the factum established, there is no other reason whatsoever to interfere with the quantum of punishment and accordingly, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P & A)

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/ /2020

Sub Assistant Registrar(CS)

sjj

**To**

1. The Director,  
Medical and Rural Health Service,  
Teynampet, Chennai.



2.The Joint Director of Medical and Rural,  
Health Services and Family Welfare (I/c)  
Virudhunagar, Virudhunagar District.

+1 CC to M/s.GP ( SR-21018[F] dated 03/11/2020 )

+1 CC to M/s.A.THIRUMURTHY, Advocate ( SR-20964[F] dated  
03/11/2020 )

W.P. (MD) .No.8688 of 2014  
02.11.2020

CK (CO)  
KK (18.11.2020) 6P 5C