



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.9212 of 2015

and

M.P (MD) .Nos.2 and 3 of 2015

Dr.P.Sudharsen

... Petitioners

vs.

1.The State of Tamil Nadu

Represented by its Secretary to Government
Health and Family Welfare Department
Secretariat
Chennai 600 009

2.The Secretary

Tamil Nadu Public Service Commission
Chennai

3.The Director of Public Health & Preventive Medicine

Office of the Director of Public Health
& Preventive Medicine
No.359, Anna Salai
Chennai 600 006

4.The Deputy Director of Health Services

Palani
Dindigul District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings in R.No.24981/E5/A3/2013, dated 18.04.2013 and the consequential order passed by the 2nd respondent vide his proceedings memorandum No.6783/OTD-A4/2006 dated 19.01.2015 and quash the same as illegal and consequentially to direct the 2nd respondent to publish the result of the petitioner in the Special Qualifying Examination - 2007 for regularization of temporary service in the post of Assistant Surgeon in the Tamil Nadu Medical Service and reinstate the petitioner as Assistant Surgeon with all other consequential benefits.

For Petitioner : Mr.H.Mohamed Imran

For M/s.Ajmal Associates



For R1, R3 & R4 : Mr.S.Dhayalan
Government Advocate

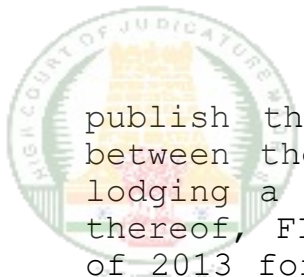
For R2 : Mr.K.K.Senthil

O R D E R

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The Writ petition has been filed to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings in R.No.24981/E5/A3/2013, dated 18.04.2013 and the consequential order passed by the 2nd respondent vide his proceedings memorandum No.6783/OTD-A4/2006 dated 19.01.2015 and quash the same as illegal and consequentially to direct the 2nd respondent to publish the result of the petitioner in the Special Qualifying Examination - 2007 for regularization of temporary service in the post of Assistant Surgeon in the Tamil Nadu Medical Service and reinstate the petitioner as Assistant Surgeon with all other consequential benefits.

2. The case of the petitioner is that as per G.O(D).No.31, Health and Family Welfare Department dated 03.03.2005, the Government decided to fill up the vacancies of Medical Officers in all the Government Health Institutions. The required qualification is M.B.B.S. degree duly registered with Tamil Nadu Medical Counsel. The person who are appointed under Rule 10(a)(i) will have to undergo Special qualifying Test to be conducted by the respondents and their services would be regularized upon successful participation in the Special Qualifying Test. Accordingly, the petitioner was appointed as Assistant Surgeon on 18.03.2005 on consolidated pay purportedly under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules. Though the appointments were made under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Services Rules, those appointments are only temporary in nature and it was intended to be made as permanent by following the above procedure. While appointing the petitioner, the communal reservation was strictly adhered. In pursuance of the petitioner's appointment, the Government vide G.O.(Ms).No.302, Health and Family Welfare (B2) Department, dated 20.11.2006 brought the petitioner and similarly placed persons under the time scale of pay and decided to absorb petitioner and similarly placed persons by conducting the special qualifying examination. While so, the petitioner also participated in the Special qualifying examination and the results were published on 02.11.2008 where the petitioner's name was withheld on account of verification of the genuineness of his community certificate, for which, an enquiry was conducted by the District Vigilance Committee and after thorough verification, the Committee submitted its report holding that the petitioner's community certificate is genuine. Though the report of the District Vigilance Committee was brought to the knowledge of the second respondent, no action was taken to publish the petitioner's result of Special qualifying examination. In spite of his repeated request, the second respondent did not



publish the result. While so, there was a difference of opinion between the petitioner and his wife and the same was resulted in lodging a police complaint alleging demand of dowry. In pursuance thereof, FIR was registered as against the petitioner in Crime No.5 of 2013 for alleged offences punishable under Sections 498A and 506 (i) I.P.C. The petitioner was directed to appear before the police official for enquiry. Accordingly, he appeared on 16.03.2013 and he was remanded to judicial custody. Subsequently, he was enlarged on bail vide order dated 23.03.2013 by the Judicial Magistrate, Palani.

3.Be that as it may, the third respondent vide his proceedings in R.No.24981/E5/A3/2013, dated 18.04.2013 terminated the petitioner from service without any reason. Though the order of termination was said to have been passed under Rule 10(a)(v) of the Tamil Nadu State and Subordinate Service Rule, no reason was assigned for termination. Under this circumstance, the petitioner was constrained to file a Writ petition in W.P(MD).No.8705 of 2013 to quash the order passed by the third respondent, dated 18.04.2013 and with consequential direction to regularize his service with all other consequential benefits. The said Writ petition is still pending. The learned counsel for the petitioner would submit that the second respondent by his impugned proceedings dated 19.01.2015 informed the petitioner that his provisional selection for the post of Assistant Surgeon in the special qualifying examination has been cancelled as his temporary service was terminated, since he has involved in a criminal case. The petitioner's result was earlier withheld for pending verification of the genuineness of his community certificate. The result of the community certificate was also furnished holding that the petitioner's community is genuine. Further, the criminal case foisted against the petitioner was also withdrawn and as such the respondents have no right to terminate the service of the petitioner. The action of the respondents in terminating the petitioner's service is wholly illegal. Hence, the petitioner is before this Court and prayed for allowing this Writ petition.

4.The learned counsel for the petitioner in support of his contention relied on the order of this Court reported in **(2012) 1 MLJ 728 (G.Selvin Stephen Vs. The Deputy Inspector General of Police, Technical Services, Police Telecommunication Branch, Chennai- 4)** in which, paras 15 to 21 read as follows:

"15.As rightly contended by the learned counsel for the petitioner, the mere involvement in a criminal case could not be construed as misconduct. It is a different matter, if a charge memo is issued on the same allegations, for which, a criminal prosecution is also initiated. The allegation in the charge memo is that he was shown as an accused in Crime No.453 of 2001 under Section 420 of IPC on the file of Ukkadam Police Station, Coimbatore. Among four witnesses examined in the enquiry,



the first and fourth witness deposed about the registration of criminal case and the arrest of the petitioner based on the complaint. Both the witnesses 1 and 4 were police officials. The charge was not that the petitioner had cheated one Venugopal to the tune of Rs.1,80,000/- and the same Venugopal was not examined in the enquiry.

16. On the other hand, the charge was that the petitioner was an accused in the criminal case.

17. Therefore, in my considered view that mere involvement in the criminal case could not be made as a charge in a departmental proceeding.

18. As rightly contended by the learned counsel for the petitioner, the Department could place the petitioner under suspension during the pendency of the criminal case. Rule 3(e)(1) of the Rules is extracted in this regard as hereunder.

"3(e)(1) A member of service may be placed under suspension from service, where:-

(i) an enquiry into grave charges against him is contemplated or is pending, or

(ii) a complaint against him of any criminal offence is under investigation or he is under trial and if such suspension is necessary in the public interest"

19. Further as rightly contended by the learned counsel for the petitioner, if the Government employee is convicted in a criminal case, the Department could proceed against him under Rule 3(c)(i)(1) of the Rules.

20. Rule 3(c)(i)(1) of the Rules is extracted as hereunder:

"The requirement of sub-rule (b) shall not apply where it is proposed to impose on a member of the service any such penalty as is referred to in the Clause (i) of that sub-rule on the basis of fact which have led to his conviction in a criminal Court (Whether or not he has been sentenced at once by such court to any punishment), but he shall be given a reasonable opportunity of making any representation. (G.O.Ms.No.2642, Home, dated 20.10.1982)"

21. As stated above, the Department is not helpless and they could place him under suspension or they could take a departmental action on the alleged charges, for



which, a criminal case is instituted. In this case, both did not take place. It is stated that the criminal case is still pending. Hence, the dismissal based on the second charge is bad and illegal."

where it has been found that mere involvement in the criminal case itself could not be construed as misconduct.

5.The learned Government Advocate appearing for the respondents 1, 3 & 4 and the learned counsel appearing for the second respondent would submit that since the petitioner involved in a criminal case, his service was terminated. Hence, they prayed for dismissal of this Writ petition.

6.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the official respondents and the learned counsel appearing for the second respondent.

7.Perusal of record shows that the result of Special Qualifying Examination has been withheld only on account of verification of the genuineness of the petitioner's community certificate and after conducting enquiry by the District Vigilance committee, it is seen that the petitioner's community certificate is genuine one. Hence, the petitioner ought to have been appointed. On account of his difference of opinion between the petitioner and his wife, a criminal complaint has been lodged. Due to that, the petitioner was arrested and remanded to judicial custody and subsequently, he was enlarged on bail. Now, the criminal case against the petitioner was ended in acquittal and the complaint lodged by his wife was also withdrawn and the same was enclosed in the typed set of papers where the criminal case was ended in acquittal by an order dated 29.01.2015 in C.C.No.225 of 2013 on the file of the learned Judicial Magistrate, Palani. Now, there is no impediment for the respondents to reinstate the petitioner into service since the criminal proceedings itself ended in acquittal. It is also seen that the result has been withheld only on account of verification of community certificate and the concerned District Vigilance Committee submitted its report holding that the petitioner's community certificate is genuine. Therefore, there is no justification to keep him out of service by the respondents. In view of the above, this Court is of the opinion that the action of the respondents in terminating the petitioner's service is wholly illegal. Therefore, the impugned order passed by the third respondent dated 18.04.2013 and the consequential order passed by the second respondent dated 19.01.2015 are set aside. The respondents are directed to publish the result of the petitioner in the Special Qualifying Examination and to reinstate him into service, within a period of twelve weeks from the date of receipt of a copy of this order.



8. With the above directions, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

To

1. The Secretary to Government
State of Tamil Nadu
Health and Family Welfare Department
Secretariat
Chennai 600 009
 2. The Secretary
Tamil Nadu Public Service Commission
Chennai
 3. The Director of Public Health & Preventive Medicine
Office of the Director of Public Health
& Preventive Medicine
No.359, Anna Salai
Chennai 600 006
 4. The Deputy Director of Health Services
Palani
Dindigul District.
- +1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-1506[F] dated 10/01/2020)
- +1 CC to M/s.K.K.SENTHIL, Advocate (SR-1745[F] dated 13/01/2020)
- +1 CC to M/s.Special Govt.Pleader (SR-1928[F] dated 20/01/2020)

W.P. (MD) No.9212 of 2015

and

M.P (MD) .Nos.2 and 3 of 2015

10.01.2020

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