



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2020

CORAM:

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

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

and

W.M.P (MD) Nos.18242 and 18243 of 2019

Dr.K.Saleem

... Petitioner

/vs./

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

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

... 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 pertaining to the orders passed by the first respondent in G.O(D) No.1258, Health and Family Welfare (D1) Department, dated 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 Petitioner
For Respondents

: Mr.V.Panneer Selvam
: Mr.M.Karuppasamy
Government Advocate

ORDER

The petitioner herein who was levelled with certain charges, was initially awarded the punishment of stoppage of increment for the period of six months without cumulative effect. On the same set of charges, one Dr.C.Vijayan was also proceeded with departmental enquiry.



2.The petitioner herein had filed an appeal against the original punishment of stoppage of increment before the Government, which came to be modified into one of stoppage of increment for three months without cumulative effect. Aggrieved against the same, the petitioner has preferred a writ petition in W.P(MD) No.17096 of 2018 and this Court, by an order dated 12.03.2019, had observed as follows:-

6.It is apparent from the impugned order dated 17.10.2017 passed by the first respondent that the grounds raised in the review application had not been discussed. Further, the order dated 03.08.2010 passed in respect of the similarly placed persons was also not considered. In such circumstances, considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side and also applying the observations of the Supreme Court in the decision cited on the side of the petitioner, this Court is inclined to set aside the orders impugned herein.

7.In such view of the matter, the impugned orders are set aside and the matter is remitted back to the first respondent, who, in turn, is directed to consider the case of the petitioner afresh, in the light of the order passed on 03.08.2010 with regard to the similarly placed person and pass appropriate orders, on merits and as per law, within a period of four weeks from the date of receipt of a copy of this order.

3.Pursuant to the remand ordered as above, the present impugned order has been passed by the first respondent herein by awarding the punishment of censure. The said punishment is under challenge in the present writ petition.

4.The learned counsel for the petitioner would submit that when the co-delinquent had been awarded the punishment of warning on the same set of charges, the censure awarded on the petitioner would amount to discrimination. Since the punishment of censure would have a bearing on his service benefits, the petitioner sought for interference to the impugned order of punishment.

5.The learned Special Government Pleader on the other hand would reiterate the stand taken by the respondents that the punishment of warning awarded to the co-delinquent namely Dr.C.Vijayan, has been decided to be reviewed, since the punishment of warning was not in conformity with the levelled charges. Since the Government intends to review the punishment in the case of Dr.C.Vijayan, there is no infirmity on the part of the respondents in awarding the punishment of censure to the case



of the petitioner also.

6.I have given a careful consideration to the submissions made by the respective counsels.

7.When the charges against the two of the delinquents are one and the same, imposition of two different punishment of warning and censure would not only be discriminatory, but also illegal. The Hon'ble Apex Court in the decision reported in (2013) 3 SCC 73 in the case of Rajendra Yadav Vs. State of Madhya Pradesh referred to the doctrine of equality and thereby held that the disciplinary authority cannot impose disproportionate punishment to co-delinquent, who are party to the same transaction or incidence. The relevant portion of the order reads thus:-

9.The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10.The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G. Dasayan, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11.In Shaileshkumar Harshadbhai Shah case (supra), the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of



voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

8.The aforesaid dictum is self-explanatory. When it is not in dispute that the delinquency insofar as the petitioner as well as the co-delinquent namely Dr.C.Vijayan is one and the same, there is no justification on the part of the respondents to impose two different punishments to them. By adopting the ratio laid down by the Hon'ble Apex Court in the case of **Rajendra Yadav**, it can be said that the punishment of censure awarded to the petitioner would be disproportionate as well as discriminatory.

9.The learned Special Government Pleader appearing for the respondents would submit that the Government intended to review the punishment imposed on Dr.C.Vijayan, who is the co-delinquent. I am not in agreement with such a submission made. If at all the Government was of the view that the punishment of warning was not proportionate to the levelled charges, insofar as Dr.C.Vijayan is concerned, the appropriate mode of handling the issue would be to extend the same punishment of warning to the petitioner instead of recommending for review of the punishment of warning to the co-delinquent.

10.A mere contemplation to review the order of the co-delinquent may not give an authority to the Government to impose a different and disproportionate punishment to a co-delinquent, who has been levelled with similar charges. Such an action is impermissible in view of the ratio laid down by the Hon'ble Apex Court in the case of **Rajendra Yadav**. While that being so, the imposition of censure on the petitioner, in contemplation of a review to be filed in the case of the co-delinquent is an action which requires to be deprecated and consequently, the impugned order is liable to be set aside.



11. In view of the aforesaid reasons, the impugned order passed by the first respondent in G.O(D) No.1258, Health and Family Welfare (D1) Department, dated 01.08.2019, is set aside and the first respondent herein is called upon to pass fresh order by modifying the original punishment from censure to that of warning. Such an action shall be taken atleast within a period of six weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:-

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

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

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-7152[F] dated
19/02/2020)

Order made in
W.P. (MD) No.21568 of 2019
Dated: 18.02.2020

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TR(03.03.2020) 5P 4C