

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1158 of 2021

N.Babu

...Petitioner

Vs.

1. State of Tamil Nadu,
rep. by Principal Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai 600 009.
2. The Director of Indian Medicine and Homeopathy,
Arumbakkam,
Chennai 600 106.
3. The District Siddha Medical Officer,
Collectorate Campus,
Salem 636 001.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records relating to the impugned order issued by the 2nd Respondent in Se.Mu.No.15853/Ni2/1/19, dated 08.10.2020 and to quash the same.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.P.V.Selvakumar,
Addl. Government Pleader

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 08.10.2020 passed by the 2nd Respondent in Se.Mu.No.15853/Ni2/1/19, imposing the punishment of stoppage of increment for a period of one year with cumulative effect.

2. According to the Petitioner, he was issued with a Show Cause Notice dated 09.01.2020 by the 2nd Respondent under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. It is his case that, a detailed enquiry may not be required, if the proceedings are initiated under Rule 17(a),

provided, the punishment is going to be minor in nature. Under Rule 17(a), severe punishment can also be imposed. However, in terms of Rule 17(a) of the aforesaid Rules, a detailed enquiry has to be conducted and procedures contemplated under Rule 17(b) have to be followed, if the punishment is going to be stoppage of increment for one year with cumulative effect. It is further stated by the Petitioner that, punishment can be modified by this Court, if the matter is remanded.

3. Respondents have filed a detailed counter. Relevant portion of the same, is extracted hereunder:

"With reference to the averments made in Ground (a) and (e) of the Affidavit, it is submitted that, lot of complaints have been received from the DSMO/Block Medical Officer, PHC, Malliyakarai and also from the public, to the 2nd Respondent against the Petitioner, based on that, necessary disciplinary action has been initiated against the Petitioner (Thiru. N.Babu, Pharmacist, Government Primary Health Centre, Malliakarai, Salem District) under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, for dereliction of duty and a Show Cause Notice has been issued to him vide Ref.No.15853/E2/1/2019, dated 09.01.2020 of the second Respondent, being the appointing Authority. As per Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, "the penalties mentioned in items (i) to (iii), (v) and (ix) under Rule 8 or 9 shall be imposed by the Authorities. It is also submitted that, the proviso under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules states that, in every case, where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government Servant or to withhold increments of pay without cumulative effect for a period exceeding three years or to withhold increment of pay with cumulative effect for any period the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty. In the instant case, the Petitioner has been appointed only during 2008 and comes under the Contributory Pension Scheme and not eligible for pension as per the Tamil Nadu

Pension Rules. Hence, the proviso under Rule 17 (a) is not applicable to the Petitioner. The punishment has been imposed on him for the lapses committed by him after considering the explanation submitted by the Petitioner on the lapses. Hence, there is no violation of Rules in this regard. "

4. Learned Additional Government Pleader contended that, the Petitioner who has been appointed in the year 2008, comes under the Contributory Pension Scheme and he may not be entitled to pension under the Pension Rules. Whether the Petitioner is entitled to pension is not the issue. The issue is, whether the Respondents have violated the procedures contemplated under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, before imposing a major punishment.

5. Admittedly, a detailed enquiry is required when the punishment of 'stoppage of increment for one year with cumulative effect' is imposed, even for the charge framed under Rule 17(a) of the Rules. Since the Respondents have violated the procedures, the punishment imposed on the Petitioner has to be interfered with, and the matter has to be remanded to the Authorities for fresh consideration on merits.

6. It is submitted by the learned counsel for the Petitioner that, in order to give a quietus to the matter, the punishment imposed on the Petitioner can be suitably modified, even though, the Petitioner is not responsible for any misconduct and that, the punishment of stoppage of increment for one year with cumulative effect is not going to affect him.

7. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, in order to bring down the life of litigation, this Court modifies the punishment of "stoppage of increment for one year with cumulative effect" imposed on the Petitioner into that of "stoppage of increment for one year without cumulative effect." This Court records that, the procedure adopted by the Respondents is not appreciable.

The Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected W.M.P.Nos.1298 and 1300 of 2021 are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

(aeb)

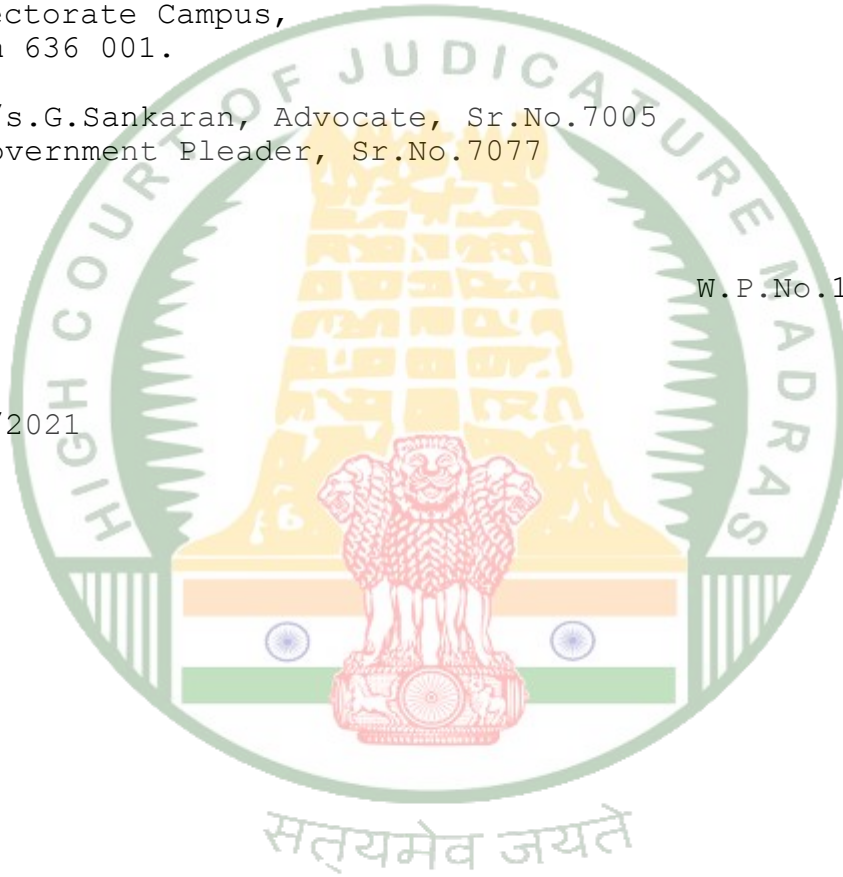
To:

1. The Principal Secretary to Government,
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3. The District Siddha Medical Officer,
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+1cc to M/s.G.Sankaran, Advocate, Sr.No.7005
+1cc to Government Pleader, Sr.No.7077

W.P.No.1158 of 2021

JP II (CO)
KKV/18/03/2021



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