



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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|---------------|------------|
| RESERVED ON:  | 18.02.2021 |
| DELIVERED ON: | 25.02.2021 |

CORAM:

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

**W.P. (MD)No.14545 of 2020**

**and W.M.P. (MD) Nos.12204 & 15756 of 2020**

**(Through Video Conference)**

D.Bhuvaneswari

... Petitioner

Vs

1) The Director,  
Tamil Nadu Medical and  
Rural Health Services,  
Chennai 600 006

2) The Joint Director of Health Services,  
Sivagangai District, Sivagangai.

3) The Joint Director of Medical and Rural  
Health Services,  
Pudukottai, Pudukottai District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned proceeding in Ref.No.29317/SC2/1/2017 dated 24.07.2020 passed by the first respondent and to quash the same.

For Petitioner : Mr.V.Santhakumaresan

For Respondents : Mrs.J.Padmavathi,  
Special Government Pleader

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**O R D E R**

The petitioner herein, while serving as a Staff Nurse in Government Hospital, Ilayankudi, Sivganganai District, was served with a charge memo in Ref.No.2032/E1/2017, dated 03.06.2019, contemplating disciplinary proceedings for violation of Rules 9 and 20(1) of the Tamil Nadu Government Servants Conducts Rules, 1973 (hereinafter referred to as the 'Rules').

2. The nature of the charge was that, the petitioner had obtained a private loan, which she would not be able to repay and such loan was obtained without the prior permission of the higher



officials and therefore, she was charged under Rule 9 of the said Rules, which relates to "*insolvency and habitual indebtedness*" as well as under Rule 20(1).

3. Pursuant to an enquiry conducted, an enquiry report dated 23.03.2020 was filed by the third respondent holding the charges proved pursuant to which, the first respondent herein had called upon the petitioner to make further representation based on the findings of the Enquiry Officer. Challenging the said order dated 24.07.2020, the present writ petition has been filed.

4. The learned counsel for the petitioner submitted that Rule 9 cannot be attracted since it pertains to "*habitual indebtedness*" and the charges does not mention any habitual borrowings on the part of the petitioner. He would also submit that Rule 20(1) is also not attracted, since the charges, as well as the enquiry report, would reveal that the conduct alleged by the Authorities, does not indicate such acts, which could amount to lack of integrity or devotion to the duty.

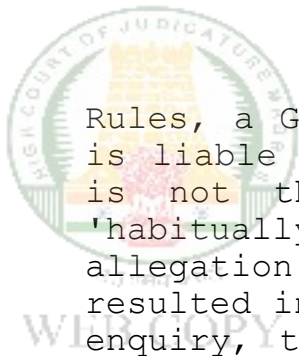
5. Per contra, the learned Special Government Pleader submitted that a criminal case in Crime No.116 of 2017 came to be registered against the petitioner for her conduct in not repaying the personal loan and therefore, the petitioner had taken the private loan with an acknowledgement that she would repay the loan amount and as such, the charge is maintainable. As per the Enquiry Officer's report, the charge also stands proved and therefore, the departmental enquiry should come to a logical conclusion.

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

7. Normally, this Court would not exercise its powers and interfere with the findings of the Enquiry Officer and it would be desirable that the petitioner should render her explanation to the notice issued by the Disciplinary Authority pursuant to the Enquiry Officer's report. However, the circumstances after the enquiry, has persuaded this Court to interfere with the same.

8. The learned counsel for the petitioner submitted that pending the writ petition, the criminal case in C.C.No.151 of 2018 on the file of the learned Judicial Magistrate - II, Madurai, which culminated from Crime No.116 of 2017, ended in an acquittal.

9. The learned Special Government Pleader did not dispute the same. The criminal case was in connection with the alleged loan defaulted by the petitioner and the charge and disciplinary proceedings against the petitioner, were also in connection with the departmental proceedings.



Rules, a Government servant who indulges in '*habitual indebtedness*' is liable to be proceeded against with the departmental action. It is not the charge against the petitioner that she had been '*habitually*' indulging in indebtedness but for the isolated allegation that the petitioner had defaulted a private loan, which resulted in a criminal action. During the course of the departmental enquiry, the petitioner had denied of having borrowed the loan at all. When that being so, it cannot be said that one isolated allegation of default of a private loan, can be referred to as '*habitual*' in nature.

11. When the very basis on which the charge has been laid is baseless and may not amount to misconduct under Rule 9, any further explanation to be given by the petitioner in reply to the impugned show cause notice of the Disciplinary Authority, would be a futile exercise.

12. I am unable to comprehend as to how the Disciplinary Authority can arrive at any logical conclusion to impose a punishment or penalty, based on the proved charges, when the misconduct under Rule 9 itself has not been made out. As such, it would be not appropriate to subject the petitioner to any further process of the Departmental enquiry.

13. For all the reasons stated above, the impugned charge memo in Ref.No.29317/SC2/1/2017 dated 24.07.2020 passed by the first respondent stands quashed. Consequently, the petitioner herein would be entitled to all the service benefits, including the consideration for her promotion, without reference to the departmental action against her.

14. With the above observations, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

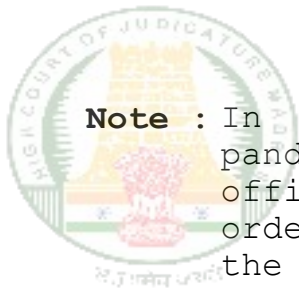
Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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**Note :** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

## WEB COPY

To:

- 1) The Director,  
Tamil Nadu Medical and  
Rural Health Services,  
Chennai 600 006
- 2) The Joint Director of Health Services,  
Sivagangai District, Sivagangai.
- 3) The Joint Director of Medical and Rural  
Health Services,  
Pudukottai, Pudukottai District.

+1 CC to M/s.V.SANTHAKUMARESAN, Advocate ( SR-7390[F] dated 25/02/2021 )

+1 CC to M/s.SPL GP ( SR-7909[F] dated 01/03/2021 )

Order made in  
**W.P. (MD) No.14545 of 2020**

Dated:  
**25.02.2021**

SMV(CO)  
KK(09.03.2021) 4P 6C