



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2021

WEB COPY

CORAM:
THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**
W.P.(MD)No.9936 of 2014

M.Eronimus Pushparaj

... Petitioner

Vs.

1.The State of Tamil Nadu, rep. by its
Secretary to Government
Health and Family Welfare (K1) Department
Fort, St, George
Madras -600 009.

2. The Director of Medical and Rural Health Services,
Madras -600 006.

3. The District Medical Officer,
Periyar District at Erode.

... Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus or any other appropriate writ or order in the nature of writ calling for the records relating to the proceedings of the first respondent in G.O.(D)No.1314, dated 02.12.2013 confirming the order passed by the second respondent in Ref. No.79759/SC11/1/2008 dated 06.01.2009 and quash the same and direct the respondents to settle the consequential benefits.

For Petitioner	: Mr.V.Jeyapragash
For Respondents	: Mr.R.Ragavendran
	Government Advocate(Civil Side)

O R D E R

The present writ petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the first respondent in G.O.(D)No.1314, dated 02.12.2013 confirming the order passed by the second respondent in Ref. No.79759/SC11/1/2008 dated 06.01.2009.

2. Initially, the petitioner was appointed as Pharmacist in the Medical Department viz., Government ESI Dispensary, Chennai, on 01.12.1968. Then, he was transferred to Kanyakumari District and then again to Erode and then Sathyamangalam in Periyar District. While serving in Sathyamangalam, the petitioner had applied for



leave on medical ground from 04.10.1979 and then, he extended the leave in peace-meal.

3. The petitioner had claimed that he was physically and mentally not fit and therefore, he had absented himself from reporting to duty. However, the petitioner was referred to the Medical Board and the petitioner was declared as "Fit" by the Medical Officer. In spite of the Fitness Certificate, the petitioner did not report to duty. Hence, the third respondent issued charge memo dated 04.08.1981 under Rule 17(a) of Tamil Nadu Civil Services(Classification, Control and Appeal)Rules, 1955. Thereafter the third respondent substituted charge under Rule 17(b) instead of 17(a) of the Rules.

4. Pending charge memo, the petitioner submitted resignation on 23.05.1983, but before the third respondent accepted the resignation, the petitioner withdrew the resignation on 23.09.1987.

5.The claim of the petitioner that the respondents without issuing any notice, conducted an ex-parte enquiry and by order, dated 05.11.1989 imposed punishment of removal from service.

6. Aggrieved over the same, the petitioner filed an appeal to the second respondent and the second respondent by order, dated 12.08.1992 dismissed the appeal. Aggrieved over the same, the petitioner filed O.A.No.1548 of 1996 and later, transferred and renumbered as W.P.No.18822 of 2006. This Court, by order, dated 12.09.2008 set aside the order of the second respondent and remitted the matter to the Disciplinary Authority with certain directions. Based on the directions, the petitioner submitted the representation to the second respondent and the second respondent by order, dated 06.01.2009 again confirmed the punishment. Then, the petitioner preferred an appeal before the first respondent and the first respondent by order, dated 02.12.2013 dismissed the appeal.

7. In the meantime, the petitioner attained superannuation in March 2014. Challenging the punishment, the petitioner has filed this writ petition.

8. The first respondent has filed the detailed counter refusing all allegations and has stated that proper opportunity was given to the petitioner by issuing notice but the petitioner returned the same with the postal endorsement "refused". Therefore, the respondents have conducted an ex-parte enquiry and passed the punishment of removal from service. Initially, the petitioner applied for leave from 04.10.1979, but thereafter, extended the same without any proper application. The respondents have stated that because of the long absence, the petitioner was imposed with the punishment of removal from service.



9. Heard the learned counsels appearing on either side.

10. On perusal of the affidavit and the counter, it is seen that the petitioner has availed leave from 04.10.1979 by submitting an application and thereafter, the petitioner has not submitted any application at all, but extended the leave. In fact, the third respondent referred the petitioner to the Medical Board and the petitioner has appeared before the Board and the Board has issued a certificate to the effect that the petitioner is fit to join duty. In spite of such opportunity, the petitioner has not joined the duty. The petitioner has stated that he had applied for leave on loss of pay but has not produced any such documents to prove the same. It is also seen the petitioner has evaded the disciplinary proceedings by not accepting the notice. Therefore, this Court is of the view that the petitioner has shown utmost disrespect to any notice or enquiry. Therefore, the respondents have no other option than to conduct an ex-parte enquiry and has imposed the punishment of removal from service. The petitioner has not canvassed any reasonable ground to set aside the punishment order.

11. This writ petition is devoid of merit and accordingly, the writ petition stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mga/csm

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.

To

1.The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare (K1) Department
Fort, St. George
Madras -600 009.

2. The Director of Medical and Rural Health Services,
Madras -600 006.



3. The District Medical Officer,
Periyar District at Erode.

+1 CC to M/s.C.GODWIN, Advocate (SR-33895[F] dated 10/11/2021)

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+1 CC to M/s.SPL.GP (SR-33914[F] dated 10/11/2021)

W.P. (MD) No. 9936 of 2014
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TKS (CO)
KB (24.11.2021) 4P 6C