



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.12.2021

Pronounced on : 09.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

**W.P(MD) No.5146 of 2016
and
WMP(MD) .Nos.4601 and 4602 of 2016**

R. Sarabai

... Petitioner

..VS..

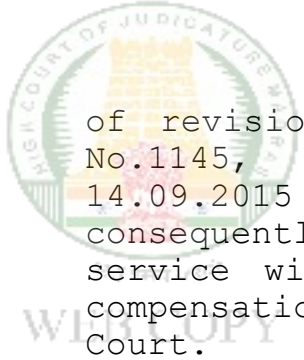
1. The State of Tamil Nadu,
rep. By its Secretary,
Public Health and Family
Welfare Department,
Fort St., Geroge,
Chennai - 600 009.

2. The Director of Public Health
and Preventive Medicine,
DPI Compound,
College Road,
Nungambakkam,
Chennai - 600 006.

3. The Deputy Director of
Health Services,
O/o. The Deputy Director
of Health Services,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records on the file of the 3rd respondent in connection with the impugned order of punishment passed by him in his proceedings in Na.Ka.No.11270/A2/2012 dated 11.06.2013 and consequential rejection of appeal by the 2nd respondent passed in his impugned proceedings in Na.Ka.No.69366/ONa/Iru3/13 dated 12.07.2014 as well as rejection



of revision by the 1st respondent in his proceedings in G.O(D). No.1145, Health and Family Welfare (D1) Department, dated 14.09.2015 (received on 13.01.2016) and quash the same and consequently, direct the respondents to reinstate the petitioner in service with all service and monetary benefits and pay adequate compensation within the time limit that may be stipulated by this Court.

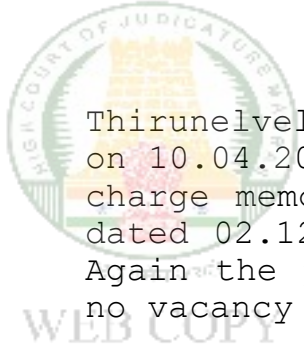
For Petitioner : Mr.K.Gurunathan

For respondents : Mr.D.Sasikumar
Additional Government Pleader

O R D E R

This Writ Petition has been filed to quash the impugned order of punishment dated 11.06.2013, consequential rejection of appeal dated 12.07.2014, rejection of revision in G.O(D).No.1145, Health and Family Welfare (D1) Department, dated 14.09.2015 and consequently seeking to reinstate with all service and monetary benefits and pay adequate compensation.

2. The brief facts of the case are that the petitioner was appointed as Village Health Nurse on 11.08.1986 at Vellichandai Primary Health Centre, Kanyakumari District. The petitioner alleges that the then Deputy Director of Health Service namely Dr. J. Prabhakaran with ulterior motive and bad intention summoned the petitioner to his office and made to wait the whole day and asked to report to his quarters by 6 pm, but the petitioner refused to report. Hence a charge memo dated 02.12.2002 was issued wherein it was alleged that the petitioner was not staying in the Health Centre, then insulting the patient and not attending the delivery. The petitioner submitted an explanation that the Health Centre is being run in rented building that too in a single room without toilet facilities and therefore she is not staying in the Health Centre. Since the petitioner has exposed that the Centre is not having toilet facilities, the petitioner was forced to withdraw the explanation and directed to submitted explanation stating her father is ill and in order to take care of him, she is not staying in Health Centre. The third respondent without dropping the charges, has issued a transfer order dated 09.12.2002 from Vellichandhai Primary Health Centre to Kothanallur. The Deputy Director himself was on the verge of transfer on 10.12.2002, one day prior to that the Deputy Director transferred the petitioner. Due to petitioner's illness the petitioner reported on 25.03.2003, but the place is not vacant since some other person vide proceedings dated 13.03.2003 was holding the post from 12.03.2003. When the same was reported to the 3rd respondent, the petitioner was transferred to Kadayam,



Thirunelveli District vide proceedings dated 31.03.2003 and relieved on 10.04.2003. In the meantime, for the same set of charges, again a charge memo was issued on 27.06.2003, when the earlier charge memo dated 02.12.2002 was not closed after the petitioner's explanation. Again the petitioner was transferred to Kothanallur where there is no vacancy

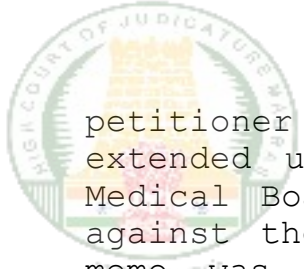
3. Thereafter, an enquiry notice dated 30.08.2003 was issued to appear on 05.08.2003, which was received on 02.09.2003, thereby with vindictive motive tried to conduct futile enquiry. The petitioner submitted explanation on 05.09.2003. The petitioner challenged the transfer in O.A. No. 1529 / 2003, the respondents have submitted that the transfer was due to complaints, and the respondents have also admitted that there was no disciplinary proceedings pending against the petitioner. The petition was dismissed on 06.08.2003, but directed the respondents to accommodate the petitioner in Kanyakumari District. After the lapse of 3 years the petitioner was posted at Thadikarankonam, Kanyakumari District. But again the transferred to Rajagambeeram, Sivagangai District within 7 months 15.04.2007. The petitioner challenged the same in W.P. (MD) No. 3024 / 2007, obtained interim order, but the writ petition was dismissed on 28.06.2007, aggrieved over writ appeal was filed in W.A. (MD) No. 532 / 2007 and the same was dismissed on 11.10.2007 with liberty to make representation. On representation dated 23.11.2007 to post at Thadikarankonam itself, but the petitioner was transferred to Kali, Nagapatinam. When the petitioner reported to duty at Kali, the place was not vacant and someone was holding the post. Hence the petitioner reported to relieving place, but the respondents did not allow the petitioner to join. Again the petitioner filed W.P. (MD) No. 3778 / 2008. Due to her illness the petitioner proceeded on medical leave thereafter.

4. Again a fresh charge memo dated 25.06.2011 was issued for the same charges which was issued earlier. The petitioner alleges that she was not given a chance to appear before Medical Board. An Enquiry Officer was appointed, the 1st charge was held as not proved, but the 2nd charge was held to be proved, but the enquiry report was not furnished. However the appointing authority differed from the enquiry officer and notice was issued on 29.04.2013 and the petitioner submitted an explanation on 13.05.2013, then punishment of removal from service was imposed vide order dated 11.06.2013. Then the petitioner filed writ petition in W.P. (MD) No. 10015 / 2014, this Court vide order dated 24.06.2014 directed the authorities to consider and pass order within 12 weeks. Thereafter the appeal was dismissed on 12.07.2014 and the revision petition was dismissed on 14.09.2015 vide G.O. (D) No. 1145 Health and Family Welfare (D1) Department dated 14.09.2015. In the meantime for the earlier charge memo the petitioner was imposed with punishment of stoppage of 2 increments without cumulative effect. In this writ petition the petitioner has challenged the punishment order of



removal from service, then the consequently appellate order and then the revision order and prayed for reinstatement with service benefits and monetary benefits and to pay adequate compensation.

5. The respondents have filed a detailed counter wherein it has been that the petitioner was ill-treating the patients and has received several complaints from patients viz., R.Jothi, S.Lakshmi, R. Leela, S.Kalaiselvi, A. Stella, A.Kalavathy, etc., Therefore, an ordinary explanation memo was issued dated 02.12.2002 and it does not mean to initiate disciplinary action against the petitioner. The allegation that Primary Health Centre was not having toilet facility etc., the respondents refuted the said allegations stating the petitioner ought to have engaged another rented building in the area allotted to her, if the Government Health Sub Centre building is under repair which was not done by the petitioner and has stayed away from her headquarters and thereby, she has not rendered medical service in the village where she was assigned to work. The Petitioner was transferred to Kothanallur but the petitioner without joining the duty submitted an explanation and went on medical leave from 10.12.2002 for 15 days and she has also requested to cancel the transfer order and she continued the medical leave till 25.03.2003. When the petitioner was referred to medical board and obtained its fitness certificate, thereafter, she was permitted to join duty in Kothanallur. On 25.03.2003, the Writ Petitioner did not join duty in Primary Health Centre, Kothanallur as per the report of the Senior Civil Surgeon, Kothanallur. The petitioner was temporarily diverted to the said post and she was transferred. Since the petitioner objected to the same, she was transferred to Primary Health Centre, Kadayam, but, she did not join at Kadayam instead of applied medical leave from 11.04.2003 for 45 days and had joined on 26.05.2003 and again referred to Medical Board. Therefore, the show cause notice was issued for four charges vide charge memo, dated 27.06.2003 and an Enquiry Officer was appointed on 29.08.2003. The petitioner did not attend the enquiry on 5.09.2003 and subsequently on 11.09.2003 and 15.09.2003 the enquiry was fixed and the petitioner failed to attend. Hence, based on records the 1st charge was held not proved and the 2nd charge was held to be proved. The petitioner was transferred from Vellichandi (Nagercoil) to Kadayam based on the complaint from the public. The petitioner challenged the same in the Tribunal and the same was dismissed. Subsequently, modification order was issued allowing the petitioner to join Thandikarakonam on 28.08.2006 and again the petitioner unauthorizedly absented herself from 28.08.2006, again the same complaints were received from Tmt.S.Vasantha and Tmt.C. Viji. Therefore, the petitioner was transferred to Rajagambeeram, Sivagangai District. She challenged the transfer order in WP(MD).No.3024 of 2007 before this Court and the same was dismissed. Against which the petitioner preferred an appeal in W.A.(MD)No.532 of 2007 and the same was dismissed. Thereafter, the petitioner was posted in Kalinagapattinam and she was relieved on 21.09.2007 from Thadikarankonam. Here again the



petitioner applied medical leave from 20.09.2007 to 19.10.2007 and extended upto 06.05.2008. Again the petitioner was referred to Medical Board she did not appear. Hence, two charges were framed against the petitioner on 25.03.2007. Thereafter, revised charge memo was issued on 02.08.2011. Thereafter, the petitioner was directed to appear before the Medical Board on the following dates 10.12.2007, 14.01.2008, 28.01.2008, 11.02.2008 and 24.03.2008 but did not appear at all and she did not appear for the enquiry proceedings as well. Thereafter, enquiry was concluded based on available records and the enquiry report, dated 25.04.2013 was communicated to the petitioner along with deviation report by the third respondent on 29.04.2013 and the same was served on 30.08.2013. Therefore, the allegation she received through Right to Information Act is false. Thereafter, the petitioner absented herself from 07.05.2008 until the punishment of dismissal, dated 11.06.2013. The petitioner preferred an appeal and the same was dismissed.

6. The petitioner submitted her reply affidavit to the counter and has denied the allegation of complaints from the village. If there are complaints then the respondents ought to have served the copy of the complaints to the petitioner and sought explanation. The respondents have not produced any copy of the complaints before this Court and which would prove the allegation is false. The petitioner also averred that on the other hand the petitioner was appreciated and a joint representation was given by the villagers to cancel the transfer order issued to the petitioner. The petitioner denied the allegation that the charge memo dated 27.06.2003 was served on her and the charge memo is challenged on jurisdiction since the petitioner was transferred and relieved from the 3rd respondent jurisdiction on 10.04.2003. As far as the allegation the petitioner has not appeared for enquiry is concerned, the petitioner has stated that the notice dated 30.08.2003 summoning the petitioner to appear on 05.08.2003 which would indicate that the notice is against the principles of natural justice. The respondents delayed in accommodating the petitioner inspite of the order of the Tribunal. Even for the complaints by the said Vasantha and Viji the respondents have not served the copy of the complaint and no enquiry was conducted, but the respondents on such allegations have transferred the petitioner to Sivagangai. Then the allegation that the petitioner has not joined the transferred place Kali is stoutly refused stating that the place was not vacant since some person was serving in the said place. The jurisdiction of charge memo dated 02.08.2011 was challenged since the petitioner was in Nagapattinam as per transfer order, but the Kanyakumari officer has issued the charge memo.

7. Heard the learned counsel appearing on either side and perused the materials available on records.



8. The petitioner stated that she has served 26 years in the Department, but the respondents are refuting it and has stated that for more than 10 years she has absented for herself from duty as per records. It is seen that the petitioner has put in at least 16 years of service without any remarks. The petitioner stated that in the year 2002 the Deputy Director of Health Services, with an ulterior motive and bad intention summoned the petitioner and made her wait for the whole day and thereafter, he asked her to report his quarters by 6.00 pm. The petitioner refused to report by 6 pm at quarters, which has culminated in issuing charge memo. This allegation was not refuted or answered by the respondents.

9. The problem started from 2002 and she was issued with memo in the year 2003 and the disciplinary proceeding was initiated which, ended in the punishment of stoppage of increment for two years without cumulative effect. However, the petitioner alleges there was no proper enquiry and there is violation of principles of natural justice, since she did not receive any enquiry notice at all. The said allegation was denied stating that several notices were issued but the petitioner did not attend the enquiry. The petitioner was transferred from Vellore to Kothanallur in the year 2002 and thereafter, transferred to Kadayam in the year 2003 and without any posting order she was out of service for three years and again posted in Thandikarankonam in the year 2006. Then, from Kanyakumari District to Sivagangai District in the year 2007 in the same year from Thandikarankonam to Kali, Nagapattinam District. All these transfers were issued in short span of time and made the petitioner to lose her temperament. The respondent states based on the complaints received from the general public the petitioner was transferred. The respondents have not taken immediate action against the complaints but issued transfer order that too, to far of places which will amount to punitive transfer. The petitioner not obeyed the orders of the higher authorities and the petitioner has not explained why she had not appeared before the medical board.

10. On perusing the entire papers it is seen the petitioner has not attended the duties from ***2008** to 2013 because of various transfers in short span. The petitioner has absented citing medical reasons. This Court is of the view that for the long absence, the petitioner deserves the punishment and the prayer to reinstatement cannot be considered at all. Moreover, the question of reinstatement does not arise at this stage, since the petitioner has attained superannuation in the month of May 2018. The petitioner has put in service where there were no complaints or any disciplinary proceedings from the year 1986 to 2002. The respondents allegation that complaints were received against the petitioner from the villagers cannot be accepted, since no complaints was put against the petitioner and called for any explanations, but the respondents have transferred the petitioner, which will amount to punitive



transfer. Therefore to meet the ends of justice, this court is of the opinion that the punishment of removal from service can be modified as compulsory retirement.

11. Therefore, this Writ Petition is disposed of by modifying the punishment as compulsory retirement and the respondents are directed to grant consequential benefits after modifying the punishment as compulsory retirement within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, all Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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//2022

Sub Assistant Registrar(CS-)

**(*) (amended as per order of this Court
dated 17.12.2021 made in W.P.(MD)No.
5146 of 2016)**

trp
To

1. The Secretary, Public Health and
Family Welfare Department,
Fort St., Geroge, Chennai - 600 009.
2. The Director of Public Health
and Preventive Medicine,
DPI Compound, College Road,
Nungambakkam, Chennai - 600 006.
3. The Deputy Director of Health Services,
O/o. The Deputy Director of Health Services,
Nagercoil, Kanyakumari District.

+1 CC to M/s.SPL GP (SR-38135[F] dated 10/12/2021)

+1 CC to M/s.K.GURUNATHAN, Advocate (SR-38169[F] dated 10/12/2021)

W.P(MD) No.5146 of 2016 and
WMP(MD).Nos.4601 and 4602 of 2016
09.12.2021

SP/01/02/2022/7P/6C