

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17569 of 2015

and

W.M.P.No.2999 of 2016

R.Iyyammal

...Petitioner

Vs.

- 1.The Secretary,
The Ministry of Health & Welfare,
Fort St.George,
Chennai - 600 009.
- 2.The Directorate of Medical Education,
Ezilagam, Chennai - 600 005.
- 3.The Managing Director,
Over Seas Manpower Corporation,
18-A 1st, Cross St,
C.I.T.Colony,
Chennai - 600 004.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents herein to consider the case of the applicant and her representation dated 26.02.2015 to modify the dismissal order in to the one of compulsory retirement/VRS.

For Petitioner : Mr.R.Lawrence

For R1 and R2 : Mr.M.Bindran
Additional Government Pleader

For R3 : Dismissed vide order dated 15.09.2016

ORDER

The relief sought for in the present writ petition is to direct the respondents to consider the case of the petitioner based on her representation dated 26.02.2015, to modify the dismissal order in to the one of compulsory retirement/Voluntary Retirement Scheme.

2. The writ petitioner was appointed as Staff Nurse in the Department of Medical Education on 06.04.1975. The petitioner applied for Passport to Saudi Arabia for taking an appointment in Government Hospital at Saudi Arabia. The tenure of assignment in the year 1986 was for a period of two years. The petitioner submitted an application for 'No Objection' and based on the 'No Objection' granted by the Government, the petitioner went to Saudi Arabia and accepted the appointment in the Government Hospital at Saudi Arabia. The petitioner was relieved from service on 18.08.1986. The period of Extraordinary Leave granted was for a period of two years. Thereafter, no extension was granted by the competent authority. However, the petitioner continued in Saudi Arabia and the learned counsel for the petitioner made a submission that the petitioner sent several representations during the relevant point of time and those representations were not responded by the competent authorities.

3. The learned counsel for the petitioner made a submission that, when the petitioner returned back to India, she made an enquiry and found that she was dismissed from service. Thereafter, she approached the respondents and came to understand that disciplinary proceedings were initiated against her and she was dismissed from service. In this regard, the learned counsel for the petitioner reiterated that the petitioner had not received any notice from the respondents and therefore, the entire proceedings were issued behind the back of the writ petitioner and thus, the cases of the writ petitioner is to be considered and allow her to retire compulsorily or under Voluntary Retirement Scheme.

4. The counter affidavit filed on behalf of the Government / first respondent and the second respondent/The Directorate of Medical Education reveals that the petitioner Tmt.R.Iyyammal, formerly Staff Nurse, working at Institute of Obstetrics and Gynaecology in the Government Hospital for Women and Children, Chennai was deputed to take up employment in Saudi Arabia and granted Extra-ordinary Leave for two years from 19.08.1986 Fore Noon. Subsequently, she was relieved on 18.08.1986 A.N. as per the Directorate of Medical Education's Reference letter dated 12.08.1986. The deputation period expired on 18.08.1988 AN. On completion of her deputation, the petitioner did not rejoined duty and proceeded unauthorized absence from duty from 19.08.1988 without signing any leave application or intimation to the authorities.

5. Consequently, the disciplinary actions were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules and a charge memo was issued to the writ petitioner in proceedings dated 13.01.2001 by the Director and Superintendent, Institute of Obstetrics and Gynaecology and

Government Hospital for Women and Children, Chennai. The charge against the writ petitioner was that she remained unauthorizedly absent and continued services at Saudi Arabia beyond the permitted period of two years. Further, the charge states that the petitioner has not submitted any leave application or sought for any permission from the competent authorities. That apart, the third charge reveals that the petitioner has failed to furnish the local address in India and the address, in which, the petitioner was residing in Saudi Arabia. Therefore, the administration was not in a position to send communication and thereby, the petitioner caused inconvenience to the Department.

6. Three charges were framed against the writ petitioner. The charge memo was served on the delinquent officer under Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in the presence of Village Administrative Officer, Pudhupatti, Alankulam (taluk) has affixed his seal and duly signed dated 17.05.2001. Then, sufficient opportunities were given to the petitioner to submit her defence statement on the charges. But, she failed to submit her defence statement. Consequently, disciplinary action was stepped up to the next stage and an Enquiry Officer was appointed. Dr. Vanachatchi, Civil Surgeon, Institute of Obstetrics and Gynaecology and Government Hospital for Women and Children, Chennai, was appointed as an Enquiry Officer to conduct an enquiry on the charges framed against the writ petitioner. Inquiry Summons were sent several times to the residential address of the writ petitioner and directed her to attend the Inquiry on various dates i.e., on 15.11.2001, 04.12.2001, 27.12.2001, 17.07.2002 and 29.08.2002. But, all the Inquiry Summons were returned by the postal authorities and quoted on the envelope that "No Such Person". Finally, the Inquiry Summon was served on the petitioner under Rule 18(c) of Tamil Nadu Civil Services (Discipline and Appeal) Rules at her last known address through the Dean, Tirunelveli Medical College, Tirunelveli. The petitioner has failed to appear before the Inquiry Officer for inquiry. Therefore, the Inquiry Officer has conducted an Ex-parte inquiry and submitted Ex-parte inquiry report against the writ petitioner. In the Ex-parte inquiry report, the inquiry officer has concluded that the charges held as "Proved". Based on the enquiry report, the disciplinary authority considered the facts and circumstances as well as the findings of the enquiry officer in her report and imposed the punishment of dismissal from service in proceedings dated 07.05.2007. The final order was served to the writ petitioner again under Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in the presence of Village Administrative Officer, Pudhupatti, Alankulam (taluk) on 11.06.2007. In proof of service, Thiru. Ramakrishnan, Motor Cycle Messenger submitted a letter dated 12.06.2007.

7. This Court is of the considered opinion that the petitioner obtained NOC from the Government to serve at Government Hospital at Saudi Arabia for a period of two years. The period of two years expired on 18.08.1988. On expiry of the period of two years, the petitioner ought to have returned back and joined duty in the Department of Medical Education or in alternate, she should have obtained further permission to continue her services at Saudi Arabia. However, in the present case, she had not even submitted a leave application or obtained prior permission from the competent authorities to continue her services at Saudi Arabia. Thus, the respondents waited for about three years and thereafter, issued a charge memo in proceedings dated 13.01.2001 itself. The third charge reveals that the writ petitioner had failed to give her local address in India and further, failed to furnish her address in Saudi Arabia and therefore, the Department was not in a position to send the communications to the writ petitioner and they have served the charge notice and other proceedings in the last known address of the writ petitioner. The respondents have followed the procedures as contemplated under Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for the purpose of serving the notice in the last known address of the writ petitioner. The procedures were followed and in spite of that, the petitioner has not responded. Thus, the Enquiry Officer conducted an enquiry and adjourned the enquiry proceedings for five occasions.

8. Perusal of the facts and circumstances as narrated in the counter affidavit filed by the first respondent, this Court is of the considered opinion that the procedures as contemplated under the Discipline and Appeal Rules were followed scrupulously and the notice was served in compliance with Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Consequently, the writ petitioner was imposed with the punishment of dismissal from service in proceedings dated 07.05.2007. Even the said order of dismissal has not been challenged by the writ petitioner. Contrarily, the present writ petition was filed after a lapse of eight years from the order of dismissal and the relief sought for is to permit the writ petitioner to go on compulsory retirement or under the Voluntary Retirement Scheme. Even in the present writ petition, the petitioner has not challenged the order of termination as the writ petition was filed after a lapse of about 8 years from the date of passing of the dismissal order.

9. In any angle, the case of the writ petitioner cannot be considered. The petitioner was a chronic absentee and remained absent without any leave application or permission. Though the period of two years granted by the Government was expired in the

year 1988, she had not furnished the correct address during the relevant point of time and in spite of that, the authorities have followed the procedures as contemplated under Rule 18(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and concluded the enquiry proceedings.

10. This being the factum established, this Court do not find any infirmity in respect of the order of dismissal passed by the respondents and further, the writ petitioner has not challenged the order of dismissal during the relevant point of time and filed the present writ petition after a lapse of eight years from the date of order of dismissal with a prayer to permit her to go on Voluntary Retirement Scheme and the High Court cannot modify the punishment or issue direction to the authorities to allow the writ petitioner to go on Voluntary Retirement Scheme. The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the particulars, through which, a decision is to be taken by the competent authorities in consonance with the Statutes and Rules, but not the decision itself.

11. In the present case, the procedures as contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules were scrupulously followed by the competent authorities and thus, there is no infirmity and therefore, the petitioner has failed to establish any acceptable ground for the purpose of considering the relief and accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

kak/jeni

To

- 1.The Secretary,
The Ministry of Health & Welfare,
Fort St.George,
Chennai - 600 009.
- 2.The Directorate of Medical Education,
Ezilagam, Chennai - 600 005.

W.P.No.17569 of 2015

SVI(CO)
RVM(11/07/2022)