



W.P.No.7423 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2022

PRONOUNCED ON : 16.12.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.No.7423 of 2013

Perianayaki

... Petitioner

/vs./

1.The State of Tamil Nadu

represented by its Principal Secretary to Government,
Health and Family Welfare (K2) Department,
Fort St.George,
Secretariat,
Chennai 600 009.

2.The Director of Medical and Rural

Health Services,
Chennai 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order of the first respondent issued in G.O.(3D) No.34, Health and Family Welfare



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Department, dated 21.07.1993 and the consequential order in G.O.(D) No.797, Health and Family Welfare(K2) Department, dated 10.08.2012 and quash the same and to direct the respondents to pay the terminal benefits arising out of the services rendered by the husband of the petitioner, Dr.S.Periyasamy in Health and Family Welfare Department and due to him such as arrears of pay, retrial benefits and to grant family pension applicable to his widow, the petitioner herein, with arrears and all other benefits accrued as consequential and incidental thereof.

For Petitioner : Mr.R.Muthukannu

For Respondents : Mr.AM.Ayyadurai
Government Advocate

ORDER

The instant Writ Petition has been filed challenging the order of the first respondent in confirming the order of removal of the petitioner's husband from service.

2. Mr.R.Muthukannu, learned counsel for the petitioner would submit that the husband of the petitioner was appointed as an Assistant Surgeon in the year 1967 and after unblemished record of service was promoted as a Civil Surgeon in the year 1992. In the interregnum, a charge memo dated 30.09.1986 under Rule



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17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued for an incident alleged to have been taken place, while he was working at Government Hospital, Periyakulam in the year 1983.

3. He would further submit that the allegation was that the petitioner's husband along with one sanitary worker had manipulated various records, as if one accused involved in a murder case was admitted by them in the hospital, so as to create an alibi at the time of murder, the accused was admitted in the hospital as in-patient. An Enquiry Officer was appointed and he had submitted a report that the charge against the petitioner's husband was proved, based upon which he was called upon to submit an explanation and that not having been satisfied with the explanation, an order of removal from service was passed. The said order of removal from service was challenged by the husband of the petitioner before the Tamil Nadu Administrative Tribunal. On abolition of which, the same was transferred to this Court in W.P.(MD) No.15966 of 2006. This Court, by order dated 10.04.2007, recording the objection in the counter affidavit that there was an appellate remedy available to the petitioner therein, had given liberty to file a statutory revision before the first respondent therein. The husband of the petitioner



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had submitted a revision petition before the first respondent and the first respondent, by the impugned order dated 10.08.2012, had rejected the revision petition by relying upon the recommendations of the Tamil Nadu Public Service Commission without independently assigning any reasons.

4. The learned counsel for the petitioner would mainly contend that the case of the petitioner's husband was not considered in the proper perspective. Even the revision petition was rejected mainly on the recommendations of the Tamil Nadu Public Service Commission, the Government had not applied its mind independently. That apart, he would further contend that the relevant records were not placed before the Tamil Nadu Public Service Commission, when the recommendations were sought for. He would draw the attention of this Court to the impugned order, wherein the recommendations of the Tamil Nadu Public Service Commission have been recorded.

5. He would further submit that it is an admitted case that the relevant documents were not produced before the Commission. The reason assigned by the Tamil Nadu Public Service Commission is that even if there are any records in



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observing the procedures as the petitioner's husband had died, it would only result in automatically dropping of the disciplinary action. He would therefore vehemently contend that it is an admitted case that the entire records were not placed before the Tamil Nadu Public Service Commission for its recommendation nor were considered by the Government in either passing the original order or the order in the revision petition, which is impugned before this Court.

6. He would further contend that various materials were not furnished to the petitioner's husband to defend his case and in support of the same, he had relied upon the judgments of the Hon'ble Apex Court in the case of ***Union of India and others Vs. S.K.Kapoor*** reported in ***(2011) 4 Supreme Court Cases 589*** and the case of ***S.N.Narula and Union of India and others*** reported in ***(2011) 4 Supreme Court Cases 591***. Therefore, he prayed this Court to interfere with the award of punishment and therefore to set aside the same.

7. Countering his arguments, Mr.AM.Ayyadurai, learned Government Advocate for the respondents would submit that the husband of the petitioner had



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committed a grave misconduct by manipulating the records in an attempt to shield a murder accused. The imputation of charge is that he had manipulated the inpatient register to create an alibi that at the time of the occurrence of the murder, the accused was in the hospital. The said accused has been convicted by life imprisonment by the trial Court, which itself would substantiate that the charges have been held to be proved. He would further submit that the revision petition filed by the petitioner's husband would get automatically abated and therefore, the original order of removal from service would stand good and therefore, he prayed to sustain the order passed by the first respondent.

8. I have considered the rival submissions made by the learned counsel appearing on either side.

9.A careful perusal of the order impugned in this writ petition would explicitly reveal that the Government had simply followed the recommendations made by the Tamil Nadu Public Service Commission. The report extracted in the impugned order would show that the Commission would want to stick on to its



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earlier decision notwithstanding the fact that the Government had not produced all the materials required by the Commission. This itself clearly shows that while passing the original order of punishment or passing the order in the revision, all the relevant materials were not considered either by the Government or by the Tamil Nadu Public Service Commission. For better appreciation, the relevant paragraphs in the impugned order dated 10.08.2012 are extracted hereunder:-

“..... now Commission cannot go back on our earlier recommendations on the score that certain records which are essentially required to process the case have not been forwarded to the Commission by the Government after a lapse of 19 years.

Further, in the instant case Dr.S.Periyasamy is no more and he died at the age of 69 years on 09.11.2007 and even if there are any records in observing the procedures, the only result is that the disciplinary action will automatically get dropped as disciplinary action cannot be continued against a Government Servant who dies either in service or after.

Hence, the Commission informs the Government that the Commission wants to stick on its decision already committed to the Government on 12.05.1989 and on 16.04.1992 notwithstanding the



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fact that Government have not produced all the materials required by the Commission as the Commission gave its views earlier after thoroughly examining all the records made available by the Government.”

10. As stated supra, it is crystal clear that all the records pertaining to the issue were not placed before the Commission. The observation of the Tamil Nadu Public Service Commission to stick on to its old decision, in spite of it having knowledge that all the records were not produced before it, is nothing but an altar ego. The authorities are duty bound to rectify their mistakes. If it is brought to their knowledge that an order has been passed without considering the relevant materials. In this case, admittedly the relevant materials were not before the Authorities while they passed the original order. Sticking on to the same decision, in a revision is against all canons of law.

11. However, considering the fact that the Enquiry Officer had given a categorical finding on the charges framed against the petitioner's husband to the effect that all the charges were proved and the defence of the petitioner's husband



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was that it was a manipulation by the sanitary worker, does not auger well.

Considering the fact that the disciplinary authority had not considered various documents/records before arriving at a conclusion to pass orders of removal from service, in my view, it is not valid. Considering the fact that the petitioner's husband is no more and that the order under revision has been passed after the death of the petitioner's husband, I am inclined to modify the order of punishment from the one of removal from service to that of compulsory retirement.

12. In view of the aforesaid conclusion, the order of punishment of removal from service is modified to the order of compulsory retirement and the petitioner is entitled to the terminal benefits of her husband, Dr.S.Periyasamy. The respondents are directed to pay all the terminal benefits to the petitioner arising out of the service of her husband, Dr.S.Periyasamy, within a period of three months from the date of receipt of a copy of this order.

13. With the above directions, the Writ Petition is disposed of. However, there shall be no order as to costs.



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Speaking : Yes / No
Non Speaking: Yes / No

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To

1.The Principal Secretary to Government,
Health and Family Welfare (K2) Department,
Fort St.George,
Secretariat,
Chennai 600 009.

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

K.KUMARESH BABU, J.

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**Pre-delivery order made in
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