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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	17.08.2021
PRONOUNCED ON	07.01.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.42367 of 2016 &
W.P.Nos.12753, 10319 & 6995 of 2020
and
W.M.P.Nos.36265 to 36267 of 2016 &
W.M.P.Nos.8343, 8345, 12540, 12551,
15750 & 15762 of 2020
(Through Video Conferencing)

Dr.A.L..Meenakshi Sundaram

...petitioner
in all W.Ps.

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk, Chennai - 600 010. ...1st & 2nd respondents
in all W.Ps.
3. The Enquiry Officer & Mission Director,
National Health Mission - Tamil Nadu,
Chennai - 600 006. ...3rd respondent in
W.P.No.12753/20
4. Dr.R.Narayana Babu
The Director of Medical Education,
Kilpauk, Chennai - 600 010. ...3rd respondent in
W.P.No.10319/20

Prayer in W.P.No.42367 of 2016 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings issued by the second respondent in Na.Ka.No.86330/Ci.Ma.Pi.1/2/2016 dated 09.11.2016 and to quash the same and consequently direct the respondents to consider the petitioner for promotion to the post of Director of Medical Education based on 2016 panel with all consequential and other attendant benefits.

Prayer in W.P.No.12753 of 2020 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a



Writ of Certiorari, to call for the records relating to the impugned notice issued by the third respondent in Ref.No.MD/IR/1/NHM-TN/2020 dated 22.08.2020 and to quash the same.

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Prayer in W.P.No.10319 of 2020 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government Order issued by the first respondent in G.O. (D) No.603, Health and Family Welfare (A1) Department, dated 02.07.2020 and the subsequent impugned Government Order in G.O. (D) No.604, Health and Family Welfare (A1) Department dated 02.07.2020 and consequential impugned Government Letter issued by the first respondent in Letter No.10677/A1/2020-2 dated 02.07.2020 and to quash the same and consequently direct the first respondent to promote the petitioner to the post of Director of Medical Education based on seniority and merit, in the vacancy arose from 01.08.2019, with all consequential and other attendant benefits.

Prayer in W.P.No.6995 of 2020 :- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to consider the petitioner for promotion to the post of Director of Medical Education (DME) based on his seniority and meritorious service, in the vacancy in existence from 01.08.2019 by considering the representation of the petitioner dated 31.01.2020 with all consequential and other attendant benefits with in time fixed by this court.

For Petitioner : Mr.P.Wilson, Senior Counsel
for Mr.G.Sankaran in all W.Ps.

For R1 & R2
in W.P.Nos.42367/16, 6995/20,
& 10319/20 and R1 to R3
in W.P.No.12753/20 : Mr.L.S.M.Hasan Fizal
Government Advocate

For R3 in W.P.Nos.10319 &
6995 of 2020 : No appearance

C O M M O N O R D E R

By this common order, all these Writ Petitions are being disposed.

2. In W.P.No.42367 of 2016, the petitioner has challenged the impugned proceedings dated 09.11.2016, wherein, three charges were levelled against the petitioner for having allegedly demanded bribe from a Staff Nurse (Baskaran).



குற்றச் சாட்டு 1 : அரசு திருவாரூர் மருத்துவக்கல் லூரி மருத்துவமனை, திருவாரூரில் செவிலியராக பணிபுரிந்து வரும் மாற்று திறனாளி திரு.து.பாஸ்கரன் என்பவருக்கு வழங்கப்பட்ட மாற்று பணி ஆணையினை இரத்து செய்ய கையூட்டு கேட்டதாகவும், அவ்வாறு கையூட்டு தரவில்லையென்றால், அவரை மாற்று திறனாளி இல்லை என சான்றளிக்க வைத்து அவரை அரசு பணியிலிருந்து விடுவிக்க செய்து விடுவேன் என மிரட்டிய காரணத்தினால் மரு. A.L. மீனாட்சி சுந்தரம், முதல்வர், திருவாரூர் மருத்துவக்கல் லூரி, திருவாரூர் அவர்கள் தனது அதிகாரத்தினை தவறாக பயன்படுத்திய குற்றத்திற்காக அரசு பணியாளர் நன்னடத்தை விதியை மீறியவராகிறார்.

குற்றச் சாட்டு 2 அரசு திருவாரூர் மருத்துவக்கல் லூரி மருத்துவமனை முதல்வர் மரு. A.L. மீனாட்சி சுந்தரம், திருவாரூர் மருத்துவக்கல் லூரி மருத்துவமனைக்காக வாங்கப்பட்ட கீழ்க்கண்ட மருத்துவ உபகரணங்கள் மற்றும் மருந்துகளை உரிய விதிகளை பின்பற்றாமல், ஒரு சில குறிப்பிட்ட நிறுவனங்களிடமிருந்து மட்டுமே அதிக விலை கொடுத்து வாங்கியுள்ளார்.

வாங்கப்பட்ட பொருட்களின் விபரம்	திருவாரூர் மருத்துவக்கல் லூரி மருத்துவமனைக்கு வாங்கப்பட்ட பொருட்களின் விபரம்
Syringe Infusion Pump 11.05.2015	Rs.65,300/- per unit (M/s.Lotus Medical Systems)
Volumetric Infusion	Rs.65,700/- per unit (M/s.Lotus Medical Systems)
Inj. Pipztaz	Rs.196.20 per Vial (M/s. Care India Pharma)
Inj. Meropenam	Rs.45,832.50 per 50 amps. Invoice No.514, dated 28.3.2015. (M/s. Care India Pharma)



அவரது இச்செய்கையினால், தெரிந்தே
அரசுக்கு அதிகப்படியாக பண இழப்பீட்டினை
ஏற்படுத்தியுள்ளார். எனவே, அன்னார் கடமை
தவறிய குற்றத்திற்கு ஆளாகியுள்ளார்.

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4. W.P.No.6995 of 2020 has been filed by the petitioner to consider the petitioner's name for promotion to the post of Director of Medical Education.

5. In W.P.No.10319 of 2020, the petitioner has challenged the promotion of the third respondent therein (Dr.Narayana Babu) as the Director of Medical Education (DME) and in W.P.No.12753 of 2020, the petitioner has challenged the impugned communication dated 22.08.2020, whereby, the respondents have ordered re-enquiry in the disciplinary proceedings initiated against the petitioner in respect of the impugned Charge Memo dated 09.11.2016.

6. Appearing on the behalf of the petitioner, the learned Senior Counsel for the petitioner submits that the Charge Memo dated 09.11.2016 impugned in W.P.No.42367 of 2016 itself was frivolous and that the complainant also withdrawn the complaint given against the petitioner and therefore the respondents ought not to have proceed further with the disciplinary proceedings against the petitioner.

7. The learned Senior Counsel for the petitioner further submits that the procedure adopted by the respondents in ordering fresh enquiry after an Inquiry Officer had given an enquiry report in 2019 is contrary to the well-settled principles of law. In this connection, the learned Senior Counsel referred to the following decisions:-

- i. Union of India Vs K.D.Pandey and another, (2002) 10 SCC 471.
- ii. Kanailal Bera Vs Union of India, 2007 (11) SCC 517
- iii. Vijay Shankar Pandey Vs Union of India, (2014) 10 SCC 589
- iv. K.R.Deb Vs Collector of Central Excise, 1971 (2) SCC 102
- v. D.Kannan Vs Central Bank of India, Bombay and others in W.P.No.13408 of 1998 dated 30.06.2008.
- vi. N.Ramasamy Vs The Chairman, Tamil Nadu Electricity Board, Chennai, 2014 SCC Online Mad 6005.
- vii. K.Ramachandran Vs The Secretary to Government Home (POL.V) Department, Chennai and another, 2015 SCC Online Mad 1522.

8. The learned Senior Counsel for the petitioner further submits that the finding of the Inquiry Officer was accepted by the disciplinary authority. However, the higher authority



namely, the first respondent in W.P.No.12753 of 2020 has arbitrarily ordered continuation of the disciplinary proceedings. He submits that Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has been amended. It does not contemplate the re-enquiry. He submits that once an Inquiry Officer has given a finding, based on such finding, the Disciplinary Authority has to either drop the proceedings or proceed with the disciplinary proceedings by giving an opportunity to the delinquent to explain as to why the punishment should not be imposed on the charges and why the findings of the Inquiry Officer exonerating or absolving the delinquent should not be differed.

9. It is submitted that the Disciplinary Authority can give reasons as to why the Disciplinary Authority was inclined to disagree with the reasons given by Enquiry Officer in the Enquiry Report and call upon a delinquent to show cause as to why the punishment should not be imposed for the charges. He submits that this Rule is well-entrenched in the service law jurisprudence and therefore it cannot be deviated. He further submits that Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules also does not contemplate the re-enquiry.

10. Rule 17(b), 17(c) and 17(d) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules reads as under:-

17 (a).....

(b) (i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges



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which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided:

* Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in these Rules.



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*(Vide G.O.Ms.No.160, P&AR(N) Department, dated 20.9.2006 w.e.f.20.9.2006)

Provided also* that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits.

*(Vide G.O.Ms.No.160, P&AR(N) Department, dated 20.9.2006 w.e.f.20.9.2006)

Explanation .- The Government servant shall not take the assistance of any retired Government servant who has two pending disciplinary cases on hand, in which he has to give assistance.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in rule 8 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty: Provided further that in the case of a person appointed to a post in a temporary department



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by transfer from any other class or by recruitment by transfer from any other service, the State Government may, at any time before the appointment of such person as a full member to the said post, revert him to such other class or service, either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule.

(c)(i)(1) The requirements of sub-rule (b) shall not apply where it is proposed to impose on a member of a service any such penalty as is referred to in clause (i) of that sub-rule on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment); but he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed.

(2) The requirements of sub-rule (b) shall not apply where it is proposed to impose on a member of a service any of the penalties mentioned in rule 8 or 9, on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reasons impracticable to communicate with him.

(ii) The provisions of sub-rule (b) shall not apply where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow the procedure prescribed in that sub-rule.

(d)(i) All or any of the provisions of sub-rules (a) and (b) may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived where there is difficulty in observing exactly the requirements of the sub-rules and those requirements can be waived without injustice to the person charged.

(ii) If any question arises whether it is reasonably practicable to follow the procedure prescribed in sub-rule (b), the decision



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thereon of the authority empowered to dismiss or remove such person or reduce him in rank, as the case may be, shall be final.

(iii) The provisions of sub-rule (b) may be waived in cases where deficiency in the stores incharge of a member of a Subordinate Service in the Jail Department detected at the time of stock-taking is due to negligence or breach of orders on his part and the authority competent to write off the loss caused to the Government by such deficiency is of opinion that the loss does not exceed Rs.100 and that it should be recovered from the pay of such member. In such cases the member shall, before the recovery is ordered from him, be given a reasonable opportunity of showing cause why the loss should not be recovered from his pay.

(iv) The procedure prescribed in clause (b) shall be followed also in the case of persons appointed under rule 10 (a) (i) and (ii) or promoted under rule 39(a) (i) of the General Rules for the Tamil Nadu State and Subordinate Services and those paid from contingencies provided the termination of appointment is made as a measure of punishment."

11. The learned Senior Counsel further submits that in Vijay Shankar Pandey Vs Union of India, (2014) 10 SCC 589, the Hon'ble Supreme Court considered the specific provisions of the rules therein and concluded that under a few circumstance alone re-enquiry can be ordered. In this connection, a reference has made in Paragraph Nos. 26 & 30 from the aforesaid judgment reads as under:-

"26. The respondents recorded four reasons for ordering a fresh inquiry by a Board, under the IMPUGNED order.

The Inquiry Report dated 30th August, 2012 is cursory. The inquiry was conducted in violation of Rules 8(15), (16), (20) and (24) of the DISCIPLINE Rules.

The contents of Writ Petition (C) No. 37 of 2010 on the file of this Court constitutes a criticism of the Central Government, and therefore, is a clear violation of Rule 3(1), Rule 7, 8(1) and 17 of the CONDUCT Rules. That the Inquiry Officer failed to properly investigate the facts before submitting his report.



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30. Rule 8(20)[5] enables the Enquiring authority to hear both the presenting officer on behalf of the disciplinary authority and the delinquent officer, after recording of the evidence is complete. In addition, it enables the Enquiring Authority to permit written briefs by both the parties, in case they desire so."

12. The learned Senior Counsel for the petitioner submits that the impugned order in W.P.No.12753 of 2020 does not spells out any reason as to why the findings of fact exonerating the petitioner from the charges were to be descended. That apart, he submits that such a procedure is not contemplated even otherwise under the Rules, the only option to the respondents was to give adequate reasons as to why they are inclined to disagree with the report given by the Inquiry Officer. He further submitted that the only reason given in the impugned order stating that in order to rectify the enquiry report which has been decided to enquire the petitioner is not sufficient under the relevant rules.

13. Defending the impugned proceedings, the learned Government Advocate for the respondents has drawn attention to Paragraph 30 of the counter in W.P.No.12753 of 2020 which is reproduced below:-

"30. With reference to the averments made in ground (c) in paragraph 27 of the affidavit, it is submitted that Dr.AL.Meenakshi Sundaram has not submitted his defence statement. Dr.K.Senthil Raj, I.A.S., Project Director & MS TANSACS, Chennai has been appointed as Inquiry Officer. The inquiry was conducted in which the delinquent officer has attended. The Inquiry Officer has submitted his inquiry report to the Government. The following discrepancies were found in the inquiry report on Dr.AL.Meenakshi Sundaram, Dean, Government Thiruvavur Medical College Hospital, Thiruvavur:-

i. In the Hank Book on Disciplinary Procedures, under Chapter-IV - Oral inquiry in para 10, guidelines has been prescribed for preparing the inquiry report and specified the folders to



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accompany with the Inquiry Officer's Report. But, the Inquiry Officer's Report has not prepared based on the above said guidelines.

ii. On perusal, there is no record relating to the deposition given by the delinquent officer and others who have attended the inquiry.

iii. On perusal of the charge, it is found that there is vast difference in between the medicines, equipments purchased in Rajiv Gandhi Government General Hospital, Chennai and the same purchased at Government Thiruvarur Medical College, Thiruvarur. Hence, it may be examined how such vast difference were occurred in these institutions.

In order to rectify the inquiry report as further procedures mentioned in Hank Book on disciplinary procedures, Government have returned the inquiry report to the Inquiry Officer Dr.K.Senthil Raj, I.A.S., formerly Project Director & MS TANSACS, Chennai and Mission Director, National Health Mission through Director of Medical Education. Based on the above instruction the Inquiry Officer has sent the inquiry summon dated 22.08.2020 and 03.09.2020 to the delinquent officer Dr.AL.Meenakshi Sundaram to appear on 28.08.2020 and 21.09.2020 at the chamber of Mission Director, NHM, Chennai - 6."

14. The learned Government Advocate for the respondents further submits that the petitioner had not submitted any defence statement before the Inquiry Officer and the enquiry was conducted without following the procedural requirement and therefore in order to rectify the report as per the hand book of disciplinary procedure, the Government has returned the report of the Inquiry Officer vide order dated 22.05.2020 bearing Ref.No.Govt.Lr.No.31048/I-2/2017-9 H&FW (I2) Department.

15. The learned Government Advocate for the respondents has filed the relevant Government orders in W.P.No.10319 of 2020. The learned counsel for the respondents also refers to the following decisions:-

i. Union of India & Another Vs Kunisetty Ssatyanarayana, 2006 (9) Supreme 370.



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Proceedings, The Tribunal for Disciplinary Proceedings for Corruption Cases, Madurai and another, 2021 0 Supreme(Mad) 707.

iii.N.Ganesan and another Vs The District Collector, Sivagangai and others, 2021 0 Supreme (Mad) 710.

16. It is based on the above instructions, the Inquiry Officer has sent the enquiry summon to the petitioner on 22.08.2020 to appear before the Mission Director, NHM Tamil Nadu for enquiry on 28.08.2020 at 12.00 Noon. The learned counsel for the petitioner therefore submits that the impugned summon notice dated 22.08.2020 is liable to be quashed.

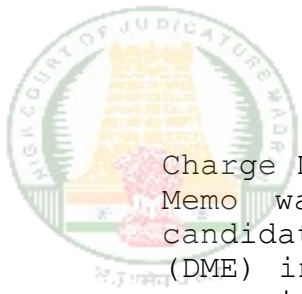
17.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate appearing for the official respondents.

18. Thus, the issues that arise for consideration in these Writ Petitions are whether the proceedings of the Inquiry Officer who had conducted inquiry in respect of the Charge Memo dated 09.11.2016 starting from 2017 and submitted a Report in 2019 can be recalled and whether the longevity of the disciplinary proceedings can be prolonged and thereby deny the right of the petitioner for being promoted / appointed as Director of Medical Education.

19.The petitioner was serving as Dean of Government Thiruvarur Medical College and Hospital, Thiruvarur. The petitioner was issued with Charge Memo dated 09.11.2016 by Director of Medical Education, Kilpauk, Chennai, the second respondent herein in connection with alleged demand of bribe from a Staff Nurse (Baskaran).

20.The petitioner as the Dean of the Government Thiruvarur Medical College and Hospital, Thiruvarur had initiated a Disciplinary Proceeding against a Staff Nurse (Baskaran) by issuing a Charge Memo dated 23.09.2015 bearing reference Na.Ka.No.5606/Ne.2/2015 and directed the said Staff Nurse (Baskaran) to appear before the Medical Board at Thiruvarur Government Medical College and Hospital, Thiruvarur, on 14.09.2015 vide order dated 04.09.2015 bearing reference Na.Ka.No.5606/Ne.2/2015 for testing as to whether the said Staff Nurse (Baskaran) was indeed a person with disability,.

21. Challenging the same, the said Staff Nurse (Baskaran) had filed W.P.Nos.28897 & 30892 of 2015. However, the said Staff Nurse (Baskaran) later withdrew the said Writ Petitions and thus both the Writ Petitions were dismissed as withdrawn on 26.09.2016.



Charge Memo dated 09.11.2016. At the time when the said Charge Memo was issued, the petitioner was one of the probable candidates to be promoted as Director of Medical Education (DME) in terms of Special Rules for Tamil Nadu Medical Service governing to the post of Director of Medical Education (DME) as amended by G.O.Ms.No.124, Health and Family Welfare (A1) Department, dated 10.06.2003 as one Dr.S.Geetha Lakshmi who was the Director of Medical Education (DME) had assumed the charge as the Vice Chancellor of Tamil Nadu Dr.MGR Medical University on 28.12.2015. At that point of time, the names of the following persons including the petitioner were in the panel for promotion to the post of Director of Medical Education (DME):-

- i. Dr.R.Vimala
- ii. Dr.S.Revathy
- iii. Dr.A.L.Meenakshi Sundaram (the petitioner)
- iv. Dr.Edwin Joe

23. Dr.R.Vimala was appointed as the Director of Medical Education (DME). Dr.S.Revathy challenged the appointment of Dr.R.Vimala before the Madurai Bench of this Court in W.P. (MD) No.6790 of 2016 which was dismissed on 01.09.2016. Challenging the said order, the said Dr.S.Revathy filed an appeal before the Division Bench of the Madurai Bench of this Court in W.A. (MD) No.1304 of 2016 which was disposed by an order dated 09.11.2016 with a direction to the first respondent to draw a fresh panel for appointment of Director of Medical Education (DME) and consider the shortlisted candidates in accordance with the Sub-clause (a) to Clause 4 in Part II of Section 21 of the Tamil Nadu Medical Service as a vacancy arose due to the retirement of the said Dr.R.Vimala on 31.10.2016.

24. Since the petitioner had already been issued with the Charge Memo dated 09.11.2016, the name of the petitioner was not considered for promotion. It appears that at that point of time, an Enquiry Report was submitted by one Dr.K.Ramasubramanian, Head of Department, General Surgery Department, Madras Medical College, Chennai. The petitioner thus filed W.P.No.42367 of 2016 to quash the impugned Charge Memo dated 09.11.2016 and to consider the petitioner for promotion to the post of Director of Medical Education (DME).

25. Meanwhile, Dr.Edwin Joe was appointed as Director of Medical Education (DME) vide G.O.Ms.No.950, Health and Family Welfare (A1) Department, dated 25.04.2017. Dr.S.Revathy again filed a Writ Petition in W.P. (MD) No.10257 of 2017 and challenged the appointment of the said Dr.Edwin Joe as Director of Medical Education (DME) vide G.O.Ms.No.950, Health and Family Welfare (A1) Department, dated 25.04.2017. The said Writ Petition was allowed by an order dated 20.09.2017.



Tamil Nadu and Dr.Edwin Joe filed Writ Appeal in W.A. (MD) Nos.1300 & 1301 of 2017 respectively before the Division Bench of the Madurai Bench of this Court. The Division Bench of the Madurai Bench of this Court, by its order dated 12.12.2017, set aside the order dated 20.09.2017 in W.P. (MD) No.10257 of 2017 with a direction to the first respondent to re-consider the case of the Dr.S.Revathy and Dr.Edwin Joe afresh in a free and fair manner.

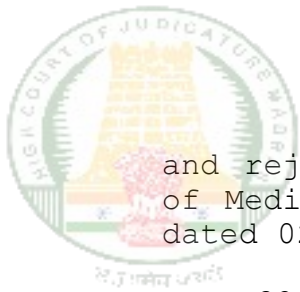
27. The Government once again appointed Dr.Edwin Joe as Director of Medical Education vide G.O.Ms.No.173, Health and Family Welfare (A1) Department, dated 01.02.2018. Against the said appointment, both Dr.S.Revathy and the petitioner filed W.P. (MD) No.2907 of 2018 & W.P. (MD) No.4044 of 2018 respectively which were dismissed on 28.02.2019 by the Division Bench of the Madurai Bench of this Court. Against the said order, SLP is said to be pending before the Hon'ble Supreme Court.

28. Meanwhile, the said Dr.Edwin Joe has also retired from service on 31.07.2019 and therefore, the post of Director of Medical Education (DME) once again became vacant. Therefore, the petitioner has filed another one of this batch of Writ Petitions, i.e. W.P.No.6995 of 2020, to direct the respondents to consider the representation of the petitioner dated 31.01.2020 for promotion to the post of the Director of Medical Education (DME) in the vacancy in existence from 01.08.2019 due to the retirement of said Dr.Edwin Joe on 31.07.2019.

29. During the pendency of this Writ Petition, the vacant post was filled up by Dr.R.Narayana Babu, the third respondent in W.P.No.10319 of 2020 vide G.O. (D) No.603, Health and Family Welfare (A1) Department, dated 02.07.2020 and G.O. (D) No.604, Health and Family Welfare (A1) Department, dated 02.07.2020.

30. The first respondent had also issued Letter No.10677/A1/2020-2, dated 02.07.2020 to the petitioner, whereby, the petitioner has been informed that the case of the petitioner for being promoted to the post of Director of Medical Education (DME) cannot be considered as the Charge Memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was pending initiated against the petitioner vide Director of Medical Education Letter Ref.No.86330/SC1/2/2016, dated 09.11.2016 (wrongly typed as 09.11.2019 in the said order).

31. The petitioner has filed another one of this batch of Writ Petitions, i.e. W.P.No.10319 of 2020 against the appointment of Dr.R.Narayana Babu, the third respondent in this Writ Petition vide G.O. (D) No.603, Health and Family Welfare (A1) Department, dated 02.07.2020 and G.O. (D) No.604, Health and Family Welfare (A1) Department, dated 02.07.2020



and rejection of the promotion of the petitioner as Director of Medication Education (DME) vide Letter No.10677/A1/2020-2, dated 02.07.2020 of the first respondent.

32. Meanwhile, Dr.K.Senthilraj, Inquiry Officer and Mission Director, NHM-TN, Chennai -6, the third respondent in W.P.No.12753 of 2020, has issued impugned notice dated 22.08.2020 bearing reference No.MD/IR/1/NHM-TN/2020 in respect to the very same Charge Memo dated 09.11.2016, whereby, the petitioner has been called for appearing before Dr.K.Senthilraj the third respondent in W.P.No.12753 of 2020 on 28.08.2020 at 12.00 Noon to inquire the petitioner for the purpose of rectifying the mistake in Inquiry Report. This was at the stage when the aforesaid Report was to be signed by the Health Ministry.

33. The said Notice dated 22.08.2020 has been challenged by the petitioner in another Writ Petition in W.P.No.12753 of 2020. Relevant portion of the said impugned Notice dated 22.08.2020 is reproduced below:-

In order to rectify the Inquiry officer's report, it has been decided to Inquire Dr.A.L.Meenakshi Sundaram formerly Dean, Government Tiruvarur Officer, Govt. Medical College Hospital, Perambalur on 28.8.2020 @12.00 Noon at the Chamber of the Mission Director, NHM Tamil Nadu, DMS Annex Building, Chennai - 6.

Therefore, you, Dr.A.L.Meenakshi Sundaram formerly Dean, Government Tiruvarur Officer, Govt. Medical College Hospital, Perambalur is requested to attend the Inquiry at the said place date and time mentioned above without fail, with the records available with you.

34. In the course of proceedings, since the commencement of disciplinary proceedings, at least 2 others were appointed as Director of Medical Education (DME) and retired on 31.10.2016 and 31.07.2019 respectively. The third incumbent Dr.R.Narayana Babu has also been appointed as the Director of Medical Education (DME). Thus, the prospect of the petitioner and Dr.S.Revathy was overlooked. The petitioner's prospect to be promoted / appointed as the Director of Medical Education (DME) was overlooked due to the pendency of the Disciplinary Proceedings against him. This Court is not concerned with the case of Dr.S.Revathy and therefore, no further observations are made on this aspect.

35. W.P.No.6995 of 2020 filed by the petitioner for a Writ of Mandamus to direct the respondents to consider the representation of the petitioner dated 31.01.2020 for promotion to the post of the Director of Medical Education



(DME) in the vacancy in existence from 01.08.2019 due to the retirement of said Dr.Edwin Joe on 31.07.2019 has become infructuous in view of the subsequent development and in view of the appointment of Dr.R.Narayana Babu, the third respondent in W.P.No.10319 of 2020 as the Director of Medical Education (DME) vide G.O. (D) No.603, Health and Family Welfare (A1) Department, dated 02.07.2020 and G.O. (D) No.604, Health and Family Welfare (A1) Department, dated 02.07.2020.

36.The appointment of the said Dr.R.Narayana Babu has also been challenged by the petitioner in W.P.No.10319 of 2020. Since the Disciplinary Proceeding is still pending against the petitioner, W.P.No.10319 of 2020 is misconceived and is therefore liable to be dismissed. For the same reason, W.P.No.42367 of 2016 is also liable to be dismissed.

37.As far as the challenge to the impugned Notice dated 22.08.2020 in W.P.No.12753 of 2020 is concerned, it is noticed that the Disciplinary Proceedings have not been conducted in a fair manner although no fault can be assumed in the initiation of the Disciplinary Proceedings against the petitioner.

38.Paragraph No.10 of the Chapter IV to Part IV of the Hand Book on Disciplinary Procedure reads as under:-

10.Report of the Inquiry Officer:

An oral inquiry is held to ascertain the truth or otherwise of the allegations and is intended to serve the basis on which the disciplinary authority has to take a decision as to whether or not the imposition of any penalty on the Government Servant is called for. The findings of the Inquiry Officer should be based on evidence adduced during the oral inquiry. The assessment of documentary evidence does not present much difficulty. The oral evidence has however to be taken and weighed together, including, not only what was said and who said it, but also when and in what circumstances it was said and also whether what was said and done by all concerned was consistent with the normal probabilities of human behaviour. The Inquiry Officer who actually records the oral evidence has also the opportunity to watch the demeanour of a witness and has to form a judgment as to his credibility. Taking into consideration all circumstances and facts, the Inquiry Officer, as a rational and prudent man, has to draw inferences and to record his reasoned conclusion as to whether the charges are proved or not. The Inquiry Officer should take particular care, while giving his



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findings on the charges to see that no part of the evidence which the accused Government Servant was not given as opportunity to refute, examine or rebut, has been relied on against him. No material from personal knowledge of the Inquiry Officer bearing on the facts of the case, which has not appeared either in the charge memo or the statement of allegations or in the evidence adduced at the enquiry and against which the accused Government servant had an opportunity to defend himself should be imported into the case. The Tamil Nadu Civil Services (Discipline and Appeal) Rules also provides for a "personal hearing" to be given to the accused officer if he desires it in addition to the oral Inquiry. Whether or not the person charged desired or had an oral Inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence if any and a statement of the findings and the grounds thereof.

39. The report of the Inquiry Officer should contain the following as per the Hand Book on Disciplinary Procedure:-

The report of the inquiry officer will contain the following:-

I. (i) An introductory paragraph in which reference will be made about the appointment of the Inquiry Officer and dates on which and the places where the inquiry was held:

(ii) charges that were framed

(iii) charges which were admitted or dropped or not pressed, if any;

(iv) charges that were actually enquired into

(v) brief statement of fact and documents which has been admitted;

(vi) brief statement of the case of the disciplinary authority in respect of the charges inquired into;



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(vii) brief statement of the defence

(viii) points for determination

(ix) assessment of the evidence in respect of each point set out for determination and the finding thereon; and

(x) finding on each article of charge.

II A folder containing—

- (a) list of exhibits produced in proof of the articles of charge,
- (b) list of exhibits produced by the Government servant in his defence;
- (c) list of witnesses examined in proof of the charges; and
- (d) list of defence witnesses.

III A folder containing depositions of witnesses arranged in order in which they were examined.

IV. A folder containing written statement of defence, if any, and written briefs filed by both sides, applications, if any, made in the course of the inquiry with orders thereon and orders passed on any request or representation made orally.

Once the Inquiry Officer has signed his report he becomes functus officio and cannot make any change in his report and he will forward to the Disciplinary Authority his report together with the record of the inquiry including the exhibits and spare copies of the report.

40. In the Handbook on Disciplinary Procedure, a method has been prescribed for preparing the Inquiry Report by the Inquiry Officer. It is stated that the Inquiry Report has not been prepared based on the above guidelines. However, the copy of the Inquiry Report which is allegedly faulty has not been filed by the respondents before this Court. It is also not clear how the above guidelines have been violated. The fact that the Inquiry Report is sought to be revised shows that Inquiry Officer is not from basis and has been asked to give a revised report which is not contemplated under the Rules. The impugned Communication dated 22.08.2020 bearing reference No.MD/IR/1/NHM-TN/2020 cannot be countenanced.

41. Further, there is no requirement under the Tamil Nadu
<https://hcservices.ecourts.gov.in/hcservices/>



Civil Services (Discipline and Appeal) Rules for recording the oral statement of a delinquent in Disciplinary Proceedings. Whether there was a vast difference in between the medicines, equipments purchased in Rajiv Gandhi Government General Hospital, Chennai and the same purchased at Government Thiruvavur Medical College, Thiruvavur, is for the Disciplinary Proceedings to consider based on the report of the Inquiry Officer.

42. A reading of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules also makes it clear that a report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty and such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof.

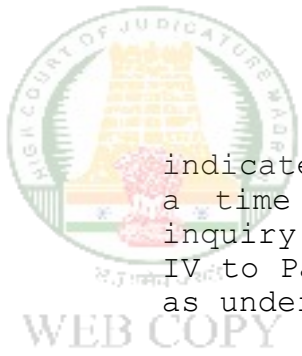
43. It further states that whenever an inquiring authority, after having heard and recorded whole or any part of the evidence in an inquiry ceases to exercise jurisdiction and is succeeded by another authority, such authority so succeeding may act on the evidence so recorded by the predecessor.

44. The first proviso to Rule 17(b)(i) of the Rules further states that if the succeeding inquiring authority is of the opinion that in the interest of justice, further examination of any of the witnesses whose evidence/statement has already been recorded is necessary, the authority may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

45. Thus, a new Inquiry Officer appointed is competent to record further statement / evidence from any witnesses whose statement / evidence was earlier recorded. Such an Inquiry Officer can recall, examine and re-examine or cross-examine any witness whose statement had already been recorded by the predecessor Inquiry Officer appointed earlier. However, such power to recall, examine and re-examine or cross-examine will apply only to witnesses and not to the delinquent who has been issued with a Charge Memo. Merely because the evidence of a delinquent was not recorded by the Inquiry Officer cannot mean Disciplinary Proceedings can be prolonged further.

46. The facts indicate that the Disciplinary Proceedings were initiated by the Disciplinary Authority on 09.11.2016 against the petitioner just at about the time when the petitioner was eligible for next promotion / appointment to the post of Director of Medical Education (DME).

47. Paragraph No.11 of the Chapter IV to Part IV of the Hand Book on Disciplinary Procedure which has been relied by the respondents in the impugned Notice dated 22.08.2020



indicates that the Inquiry Proceedings are to be completed in a time bound manner. Time stipulated for completing the inquiry is sixty working days. Paragraph No.11 of the Chapter IV to Part IV of the Hand Book on Disciplinary Procedure reads as under:-

11.The time limit prescribed for Inquiry Officer to complete the inquiry:

The Inquiry officer should complete the inquiry and send the report within sixty working days. If he was not able to complete the inquiry within the stipulated time of sixty working days, he should send a report to the disciplinary authority indicating the valid reasons therefor and seek extension of time.

48.This is a considerable delay for completing the Disciplinary Proceedings. The petitioner has been fighting for his rights from the very beginning. Therefore, further delay cannot be condoned. The impugned Communication dated 22.08.2020 bearing reference No.MD/IR/1/NHM-TN/2020 asking the petitioner to come for fresh inquiry cannot be countenanced. The impugned Communication dated 22.08.2020 therefore stands quashed.

49.The Disciplinary Authority is therefore directed to complete the Disciplinary Proceedings based on the available records including the Inquiry Report of the Dr.K.Senthilraj the third respondent in W.P.No.12753 of 2020, within a period of three (3) months from the date of receipt of a copy of this order.

50. In the result,

i. W.P.No.42367 of 2016 filed against the impugned Charge Memo dated 09.11.2016 is dismissed.

ii.W.P.No.6995 of 2020 filed for a direction to consider the representation of the petitioner dated 31.01.2020 for promotion to the post of Director of Medical Education (DME) is dismissed as infructuous considering the subsequent development.

iii.W.P.No.10319 of 2020 filed against the appointment of the Dr.R.Narayana Babu, the third respondent in the said Writ Petition is also dismissed on account of the pendency of Disciplinary Proceedings.

iv.W.P.No.12753 of 2020 filed against the impugned Notice dated 22.08.2020 is allowed



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with the above directions.

v. No cost.

vi. Consequently, connected Miscellaneous
Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To

1. The Principal Secretary to Government of Tamilnadu
Health & Family Welfare Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Enquiry Officer & Mission Director,
National Health Mission - Tamil Nadu,
Chennai - 600 006.

+4cc to M/s.G.Sankaran, Advocate, S.R.No.1806

W.P.No.42367 of 2016 and etc.

KSM(CO)
RGA(24/01/2022)