



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2022**

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD) No. 5163 of 2019

and

W.M.P. (MD) No. 4149 of 2019

WEB COPY

S.Saraswati

... Petitioner

/vs./

1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of Public,
Fort St.George, Chennai - 600 009.

2.The State of Tamil Nadu,
Rep. By its Secretary,
Department of Health & Family Welfare,
Fort St.George, Chennai - 600 009.

3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

4.The Dean,
Madras Medical College cum Rajiv Gandhi
Government General Hospital,
Chennai, Chennai - 600 003.

... Respondents

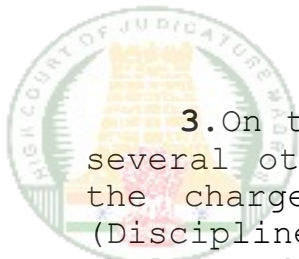
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to the impugned Charge Memo issued by the 3d respondent Director of Medical Education in Ref.No.61839/SCI/3/2017 dated 20.03.2018 (received on 22.03.2018), Quash the same.

For Petitioner	:	Mr.Isaac Mohanlal Senior Counsel for M/s.Isaac Chambers
For Respondents	:	Mr.A.Kannan Additional Government Pleader

ORDER

The petitioner herein has challenged the charge memo dated 20.03.2018, whereby the respondents had contemplated disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

2.The substance of the allegations against the petitioner herein is that she had not provided proper treatment to a patient, who was a remand prisoner and who had died.



3. On the same set of charges relating to dereliction of duties, several other Doctors from various Departments were proceeded with the charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. When three of the Doctors had challenged the charge memo before this Court, this Court, in the case of **Dr.M.N.Karthi vs. The State of Tamil Nadu, Represented by its Secretary, Department of Public and others** in WP(MD)Nos.9256 to 9258 of 2018 dated 15.03.2022, had quashed the charge memo predominantly on vagueness and that the charge will not constitute a misconduct. The relevant portion of the order reads as follows:

"16. The allegation against the petitioners are that they have not given "proper treatment". As rightly pointed out by the learned Senior Counsel for the petitioners it is a vague term. The petitioners have submitted an explanation that they had examined the patient and had submitted their opinion that there is no injury in bone, vascular. The Learned Senior Counsel relied on the judgment reported in 2002 3 SCC 443 in the case of State of U.P and others VS Ramesh Chandra Mangalik, the relevant portion of the paragraph no.13 is extracted hereunder:

"13. Learned counsel for the respondent has submitted that even if the charges as levelled against the respondent are taken to be proved, yet no case of misconduct would be made out, so as to make the respondent liable for any punishment. In this connection he has referred to a decision of this Court reported in Union of India v. J. Ahmed where the Court was considering the provisions of the All-India Services (Death-cum-Retirement Benefits) Rules, 1958. The case related to the disciplinary proceedings against an officer who was likely to retire and was to be retained during pendency of the disciplinary proceedings, under suspension. In that connection while considering the question as to what amounts to misconduct, it was observed that an act or omission or lack of efficiency or failure to attain highest standard of administrative ability may not by itself amount to or constitute misconduct. Error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct. There was an outbreak of disturbances in the district of Nowgong, Assam where the officer was holding the post of Deputy Commissioner. The charge in that case seemed to have been that the officer showed complete lack of leadership while disturbances broke out and



disclosed complete inaptitude or lack of foresight and lack of firmness to take quick and firm decision. We feel that it will be difficult to draw any analogy from the facts of the case relied upon by the learned counsel for the respondent. It also has however been observed that negligence in duty may amount to misconduct in certain cases where consequences may be directly attributed to the negligence of the delinquent resulting in heavy losses".

17. The Learned Government Pleader submitted that one of the delinquent filed a writ petition and the same was dismissed. Another delinquent had filed a petition and the same is pending. If this petition is allowed then the same would affect the proceedings of the other delinquents. But if there is no prima facie case against the delinquent, moreover the charge is absolutely vague, then the same shall be interfered. Infact the charge memo was issued to save the skin of the respondents from the wrath of the National Human Rights Commission. Therefore, this Court is of the considered view that the charge as stated in the charge memo is not a misconduct and this Court is inclined to quash the impugned charge memo as far as the petitioners are concerned. The impugned charge memo is quashed."

4. It is not in dispute that the charges levelled against the petitioner in the aforesaid cases as well as the petitioner herein are one and the same. While that being so, the petitioner herein need not be proceeded with on the same set of charges, whereby this Court had already quashed the charge memo against the co-delinquents. On this short ground, the petitioner is entitled to succeed. Accordingly, the impugned charge memo dated 20.03.2018 is quashed and this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar (CS)

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To:

1.The Secretary,
State of Tamil Nadu,
Department of Public,
Fort St.George, Chennai - 600 009.

2.The Secretary,
State of Tamil Nadu,
Department of Health & Family Welfare,
Fort St.George, Chennai - 600 009.

3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.

4.The Dean,
Madras Medical College cum Rajiv Gandhi
Government General Hospital,
Chennai, Chennai - 600 003.

+1 CC to M/s.SPL.GP (SR-27459[F] dated 22/06/2022)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-27843[F] dated 23/06/2022)

W.P. (MD)No.5163 of 2019
21.06.2022

SRK(CO)
KB(29.06.2022) 4P 7C