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W.P.(MD)No.5685 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.5685 of 2019

and

W.M.P.(MD)No.4487 of 2019

M.Radha

... Petitioner

VS.

1.The Director of Public Health and
Preventive Medicine,
Anna Salai, DMS Complex,
Teynampet, Chennai-600 006.

2.The Deputy Director of Health Services,
Palani Road, Dindigul-624 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order R.No.4140/A2/16, dated 26.04.2017, issued by the 2nd respondent/The Deputy Director of Health Services, Dindigul and consequently, the Appeal order R.No.056025/DA/S3/17, dated 10.10.2018, issued by the 1st



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respondent/the Director of Public Health and Preventive Medicine, Chennai and to quash the same as against law, inappropriate, excessive, against conscious and arbitrary.

For Petitioner : Mr.C.Masilamani

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order R.No.4140/A2/16, dated 26.04.2017, issued by the 2nd respondent and consequently, the Appeal order R.No.056025/DA/S3/17, dated 10.10.2018, issued by the 1st respondent as against law, inappropriate, excessive, against conscious and arbitrary.

2. The petitioner was appointed as Village Health Nurse and was serving for 28 years without punishment and has unblemished record. A charge memo, dated 26.04.2017, was issued and ended in imposing punishment of stoppage of increment for 2 years with cumulative effect. The petitioner preferred an appeal



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and the same punishment was confirmed. Since the said punishment is affecting the pensionary benefits, the petitioner is before this Court.

3. The contention of the petitioner is that the petitioner's husband is a retired military man and has served about 20 years to the nation. Out of his own earning, he had purchased some properties “jointly” in his name along with the petitioner's name. The petitioner has not sought prior permission to purchase the said properties and hence the charges were framed against the petitioner which are as follows:

“Charge 1:

Tmt. M.Radha, Village Health Nurse being a Government Servant has failed to give intimation to the competent authority for the purchase of Plots in her name and jointly with her husband Thiru A.Nagarajan as follows:

- 1. Plot to the extent of 866 % Sq.ft. on 4.8.05 worth Rs.2,14,553/-*
- 2. Plot to the extent of 1813 Sq.ft on 6.11.09 for Rs.37,057 and Rs.3020 and Rs.515/-*



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3. Plot to the extent of 1749 Sq.ft. for the worth of Rs.1,13,948/- on 19.10.12.

4. Plot purchased on 6.11.09 and sold out on 14.2.11 for Rs.37,000/- Thereby Tmt. M.Radha, Village Health Nurse has violated rule 7(1) (a) of Tamil Nadu Government Servant Conduct Rules.

Charge.2:

Tmt. M.Radha, Village Health Nurse being a Government Servant has failed to obtain Prior permission from the competent authority for construction of houses in her name and jointly in the name of her husband Thiru A.Nagarajan as follows:

(i) Constructed a house about 710 Sq.ft. during year 2005 and 1st floor at about 690 Sq.ft during year 2007 with evaluate cost worked out as Rs. 4,78,695/- by P.W.D. officials.

(ii) Constructed a house at about 1,228 Sq.ft. during year 2013 and was evaluated by P.W.D. officials as Rs.7,90,168/- Thereby Tmt. M. Radha, Village Health Nurse has violated rule 7(1)

(b) (1) of Tamil Nadu Government Servant Conduct Rules.



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Charge .3:

Tmt. M.Radha, Village Health Nurse being a Government Servant has failed to give intimation to the appointing authority for the purchase of Scooty Pep. TN57 S 4907 in her name for Rs.36,589/- on 10.12.09 and thereby Tmt. M.Radha, Village Health Nurse has violated rule 7(2) of Tamil Nadu Government Servant Conduct Rules.”

4. The petitioner participated in the enquiry and in the enquiry report it has been held that the charges are proved. The contention of the petitioner is that the disciplinary authority has accepted the report as it is and has not independently considered the submission of the petitioner. Also, there is no independent discussion or application of mind while passing the impugned order by the disciplinary authority. Hence, aggrieved over the order, the petitioner had preferred appeal and the contention of the petitioner is that the appellate authority has simply accepted the disciplinary authority's finding and has not independently considered the submission of the petitioner. On perusing the order of the appellate authority order it is seen that the appellate authority has held that “the disciplinary



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authority has stated that the enquiry report has clearly stated that the charges are proved and the petitioner has not submitted any new valid points to defend the case”. Therefore, this Court is of the considered opinion that the appellate authority has not independently considered the case of the petitioner and there is non-application of mind.

5. The plea of the petitioner is that the entire properties were purchased by her husband out of his own earning after his retirement. The authorities have not discussed the submissions of the petitioner. If the spouse has independent source of income, then the purchase of properties cannot be doubted. Even the allegation against the petitioner is that the petitioner has not informed or not obtained prior permission before purchasing the property and it is not the allegation of disproportionate of assets.

6. The learned Counsel appearing for the petitioner further referred to the Central Vigilance Commission’s Circular dated 26.02.2001, where it has been



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stated if there is any technical lapse then minor punishment should be imposed. Specific direction is given under Clause 4 Sub-Clause 2, if there is no intimation for purchasing the property and if it is not involved or related to assets, disproportionate known sources of income, it would be coming under the technical lapse alone. If such technical lapses are alleged, censure or warning shall be imposed. The relevant portion is extracted hereunder:

“2. If not related to assets, disproportionate known sources of income, failure to intimate should be treated as a technical lapse. Such lapses should ordinarily attract only a censure / administrative warning;”

The learned Additional Government Pleader appearing for the respondents vehemently opposed stating that the said CVC Circular was issued by the Central Government and the same cannot be applied to the present case since the petitioner is working in the State Government. However, the said plea of the respondents is rejected, since the reasoning stated in the CVC circular is logical and acceptable one. In the present case the charge itself is that the petitioner has not obtained prior permission and there is no allegation of disproportionate of



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assets. Even the respondents have imposed a punishment of stoppage of increment with cumulative effect. Since the punishment is affecting the petitioner's pensionary benefits, this Court is inclined to interfere with the impugned order. Therefore, the punishment of stoppage of increment is modified as censure. The respondents are directed to confer all the monetary and service benefits to the petitioner. The said exercise shall be completed within a period of 8 weeks from the date of receipt of a copy of this order.

7. With the above said observations, the writ petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes

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To

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S.SRIMATHY, J

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