



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P. (MD) .Nos.9256, 9257 and 9258 of 2018
and**

**W.M.P. (MD) .Nos.8565, 8566, 8567 of 2018 and 2275, 2278 and 2279 of
2022**

W.P. (MD) .Nos.9256 of 2018

Dr.M.N.Karthi

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Public,
Fort St.George,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai - 600 009.
- 3.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
- 4.The Dean,
Madurai Medical College,
Madurai, Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned Charge Memo issued by the third respondent Director of Medical Education in Ref.No.61839/SCI/3/2017 dated 20.03.2018 (received on 23.03.2018), quash the same.



W.P. (MD) .No.9257 of 2018

Dr.V.Jeyakodish

.. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Secretary,
Department of Public,
Fort St.George,
Chennai - 600 009.
- 2.The State of Tamil Nadu,
Represented by its Secretary,
Department of Health and Family Welfare,
Fort St.George, Chennai - 600 009.
- 3.The Director of Medical Education,
Kilpauk,
Chennai - 600 010.
- 4.The Dean,
Madurai Medical College,
Madurai, Madurai District.

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W.P. (MD) .No.9258 of 2018

Dr.C.Saravanan Robinson

... Petitioner

Vs.

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



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

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

4.The Dean,
Madurai Medical College,
Madurai, Madurai District.

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned Charge Memo issued by the third respondent Director of Medical Education in Ref.No.61839/SCI/3/2017 dated 20.03.2018 (received on 23.03.2018), quash the same.

(In all Writ Petitions)

For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel,
For M/s.Issac Chambers.

For Respondents : Mr.P.Thilak Kumar,
Government Pleader,
Assisted by
Mr.N.Ramesh Arumugam,
Government Advocate (Civil Side).

COMMON ORDER

The writ petitioners have challenged the charge memo issued by the third respondent dated 20.03.2018.

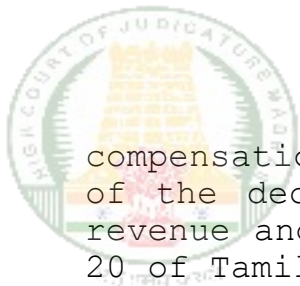
2. The petitioner namely, Dr.M.N.Karthi was serving as a Senior Assistant Professor in the Department of Orthopaedics. in Madurai Government Medical College. Initially, the petitioner was appointed as Assistant Surgeon on 26.02.2001 and served in the Primary Health Centre, Thirupuvanam up to 23.05.2001. Thereafter, he was posted as Assistant Surgeon in Chellampatti on 18.04.2003, later on, in Sivagangai Government Headquarters Hospital on 25.04.2003. The petitioner was assumed charge as Tutor of Pharmacology on 13.10.2003. Then promoted as Assistant Professor in Orthopaedic on 03.04.2004, then as Senior Assistant Professor on 03.06.2007.



3. The petitioner namely, Dr.V.Jeyakodish was serving as a Senior Assistant Professor in the Department of Plastic Surgery in Madurai Government Medical College. Initially, the petitioner was appointed as Tutor on 04.02.1998 in the Department of Anatomy in Madurai Medical College. Thereafter, he was posted as Assistant Surgeon at Primary Health Centre, Mandapam, Ramanathapuram District on 09.02.2000, then as Assistant Surgeon at Primary Health Centre, Sivakkam (Vallampadugai) on 01.04.2004. Thereafter, he was posted as Tutor in the Department of Radiology, Theni Medical College, Theni. Later on, he reported duty as Tutor in the Department of Plastic Surgery at the Kilpauk Medical College, Chennai and later assumed charge as Tutor in the Department of Physiology at the Madurai Medical College on 01.01.2010. Then, promoted as Assistant Professor in Plastic Surgery on 21.05.2011.

4. The petitioner namely, Dr.C.Saravanan Robinson was serving as Associate Professor in the Department of Vascular Surgery in Madurai Government Medical College. Initially, the petitioner was appointed as Tutor in the Department of Physiology at Tirunelveli Medical College on 09.02.1998. Later, he was posted in the Department of Physiology at Tuticorin on 22.06.1999. Thereafter, he was posted as Assistant Surgeon at Primary Health Centre at Pitchivilai on 16.03.2000. Then as Assistant Surgeon at Primary Health Centre, Udayarpalayam on 01.04.2004. Thereafter, he was posted as Tutor in the Department of Anatomy at Tuticorin Medical College on 19.07.2004, then in the Department of Ophthalmology at Tirunelveli Medical College on 25.10.2004 and in Department of Surgery at Tirunelveli Medical College on 17.12.2004. Later on, he reported duty as Tutor in the Department of Community Medicine at Theni Medical College on 13.08.2008 and later assumed charge as Senior Resident in the Department of Vascular Surgery at Madurai Medical College on 14.08.2009 and then promoted as Assistant Professor in Vascular Surgery on 19.01.2017.

5. On 23.03.2018, a charge memo was issued to the petitioners by the third respondent proposing to hold an enquiry under Rule 17-B of the Tamil Nadu Civil Services (Discipline and Appeal) Rules along with seven (7) Medical Officers under Rule 9(A). The charges against the petitioners are while they were working in their respective cadre, have not provided proper treatment to the patient Thiru. Saravanakumar, a remanded prisoner of Madurai Central Prison who was admitted as in-patient on 22.02.2012. Subsequently, the remanded prisoner died on 24.02.2012. By the above act, the petitioners have committed dereliction in their duties. Consequently, based on the show cause notice issued by the National Human Rights Commission, the Government in G.O.Ms.No.12, Public (L&O-E) Department dated 10.01.2017 have issued orders providing



compensation of Rs.5,00,000/- (Rupees Five Lakhs only) to the family of the deceased prisoner which led to the loss of the Government revenue and earned bad name to the Government and has violated Rule 20 of Tamil Nadu Government Servant Conduct Rules, 1973.

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6. The contention of the petitioners is that the petitioners did not provide proper treatment to the remanded prisoner is wholly false and baseless. On 22.02.2012 at about 3.00 p.m., the said remanded prisoner was admitted as in-patient in Ward No.99 (Trauma Ward) at Government Rajaji Hospital, Madurai by two police men attached to the Thilagar Thidal Police Station with complaints of swollen left lower limb with Laceration and Cellulites at knee joint and with history of fever. As the above case fell within the Department of Surgery, the duty Assistant Surgeon cum Assistant Professor from that Department namely Dr. P. Sundereswari admitted the remanded prisoner. After thorough examination, she requested the duty Assistant Orthopedic Surgeon, Plastic Surgeon, Vascular Surgeon, General Physician and Nephrologists to see the patient and give their respective opinions. The petitioner namely Dr.M.N.Karthi, was duty Assistant Orthopedic Surgeon and the petitioner namely, Dr.V.Jeyakodish was Duty Assistant Plastic Surgeon and the petitioner namely, Dr.C.Saravanan Robinson was Duty Vascular Surgeon on that date, i.e., on 22.02.2012. The petitioners attended the patient, recorded and noted the history and findings. The petitioners perused the X-ray of the left lower limb of remanded prisoner and on examination, the petitioner namely Dr.M.N.Karthi found that he had swelling, tenderness, warmth, laceration and slough in his left lower limb. But there were no bone injuries in the patient. Therefore, the petitioner opined that active Orthopedic intervention was not necessary and suggested for review of the patient if necessary. Likewise, the other petitioner namely, Dr.V.Jeyakodish found that raw area was present on the anterior aspect of left knee with slough and fasciotomy wound. Hence he suggested for debridement (removal of necrotic tissue), regular dressing and suggested for review of the patient if necessary. Similarly, the petitioner namely, Dr.C.Saravanan Robinson found that all peripheral pulses were normal and there was no vascular injury. Hence he opined that there was adequate vascularity and he also suggested for review of the patient if necessary. Thereafter, the petitioners were not called upon to review the patient. Later on 25.02.2012, the petitioners came to know that the remanded prisoner died on 24.02.2012 at about 3.30 A.M due to septic shock with Cellulites.

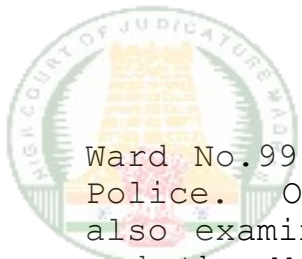
7. The contention of the petitioners is that, there was neither any negligence nor any deficiency in the service on the side of the petitioners and other medical officers attached with the fourth respondent hospital. There was no unlawful, careless, grossly



negligent treatment and deficiency in service whatsoever that was alleged that the petitioners have not given any proper treatment. The charges are very vague. The annexure of documents listed in the charge memo neither were annexed with the charge memo nor supplied to the petitioners separately. The charges simply alleged that there was no proper treatment.

8. The impugned charge memo was issued at the instance of the first respondent / State Government in G.O (D). No. 359 Public (L&O-E) Department dated 06.04.2015 and G.O.(D).No.12 Public (L&O-E) Department dated 10.01.2017 and the Government Letter dated 03.03.2017. However, the said copies are not furnished to the petitioners. The National Human Rights Commission, New Delhi seems to have found fault only with the Police Officers on the charges of Human Rights violation who were in charge of the remanded prisoner and the present charge was issued without application of mind, since the allegations are only vexatious and will not serve any purpose. Moreover, the charge memo would remain as an indelible black mark on the petitioners honesty and diligent service and would affect their professional life. Because of the agony, the petitioners have filed this Writ Petition to quash the said charge memo.

9. The respondents have filed a counter stating that the present Writ Petitions are premature and totally misconceived and the same is liable to be dismissed. As per the report under Section 176 (1A) of CRPC, the office of the learned Judicial Magistrate No. II, Madurai dated 13.04.2013, the accused was arrested by C4 Thilagar Thidal Police Station pursuant to the Crime No.267 of the 2012 under Section 420 and 506-II of IPC on the basis of the complaint of Mr. Mayee, son of Veemaraaj and brought for remand on 16.02.2012 and kept at Police Station till 17.02.2012. On the date of remand itself, the accused was beaten by the Police in both the legs and remanded to the Judicial custody. That on the basis of the report of the Medical Officers of Jail Hospital, he was admitted at Government Rajaji Hospital on 22.02.2012 at 13.50 p.m. and subsequently died on 24.02.2012 at 3.30 a.m. early morning. On the basis of the complaint, the Superintendent of Police registered a case in Crime No.6 of 2012 and on receipt of the same, the learned Judicial Magistrate No.3 directed to conduct post-mortem. The Doctor has opined that the deceased would appear to have died on "Occlusion of feeding vessel of heart left coronary artery". As per the statement of Kalarani, wife of the deceased, the deceased was taken away by the Police on 16.02.2012 and 17.02.2012. That on searching her house, a sum of Rs.2,90,000/- was taken away by the Police along with her father-in-law. As per the demand of the Inspector of Police, she paid Rs.3,00,000/- got herself, father-in-law and children spared. When she visited the Hospital, she came to know that her husband was admitted at Government Hospital at Trauma



Ward No.99 and he died and his death was due to the attack by the Police. One Arumugam, one Pitchai Pandi and one Thiagarajan were also examined as witnesses by the learned Judicial Magistrate-II and the Magistrate has given a report stating that on a careful perusal of the post-mortem certificate, there were five injuries during the time of ante-mortem. All the five injuries were noted in the post-mortem certificate, left leg and left knee. It is perused that there is no proper medical treatment was given by the Duty Doctor, Madurai Government Rajaji Hospital. In the death summary dated 25.02.2012, it was mentioned that the cause of death as "septicemic shock", since the Medical report states that there was improper medical treatment. The respondents initiated departmental proceedings. The petitioners submitted their representations stating that the documents were not served on them. On receipt of the said representations, the third respondent herein has sent all those documents to the fourth respondent and on 02.05.2018, the same documents were supplied to the petitioner who has duly received the same. One Dr.Jeyaraj retired, is formally working as Causality Medical Officer has filed W.P.(MD).No.19791 of 2019 and the same was dismissed directing the respondents to conduct enquiry and the petitioner was directed to participate in the enquiry and another Writ Petition was filed by one Dr. Saraswathy in W.P.(MD).No.5163 of 2019. Thereafter, the Government issued letter dated 09.02.2019 directing the respondents to file vacate stay petition in order to complete the enquiry proceedings.

10. Heard Mr.Isaac Mohanlal, learned Senior Counsel for the petitioner and Mr.P.Thilak Kumar, Government Pleader, Assisted by Mr.N.Ramesh Arumugam, Government Advocate (Civil Side) for the respondents.

11. This Court at the time of admission has granted interim stay vide order dated 19.06.2018. The contention of the petitioners is that the charge memo is belated, since for the delinquency happened in 24.02.2012 the charge memo was issued on 23.03.2018. This Court is of the considered opinion that the charge memo is belated one and the same is liable to be quashed.

12. The contention of the petitioners is that the charges are very vague. The petitioner is working as Orthopedic Surgeon has categorically given a certificate that there was no injury in the bone and the petitioner working as Vascular Surgeon stated that there was no vascular injury and the petitioner working as Assistant Plastic Surgeon suggested for debridement (removal of necrotic tissue).

13. It is stated that the prisoner died due to "Septic Shock with Cellulites". It is seen that Cellulitis is a type of



infection that affects the skin and the tissue underneath. The medical description is as under:

"The bacteria, most commonly Group A Streptococcal bacteria, enter the skin through an opening, such as cut, scrape, burn, or surgical incision, or even a bug bite or sting. Cellulitis can cause sepsis in some people. Often incorrectly called blood poisoning, sepsis is the body's often deadly response to infection. Sepsis and septic shock can result from an infection anywhere in the body, such as pneumonia, influenza and urinary tract infections"

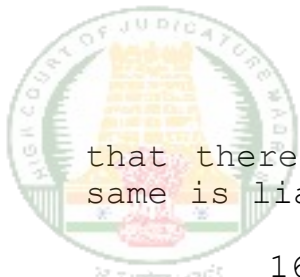
The septicemic shock means there was a wound in the leg for several days which has led to septic of the wound which would clearly indicate that it has not happened on 22.02.2012. The remanded prisoner was admitted in the Hospital on 22.02.2012 and died on 24.02.2012. The contention of the petitioners is that since it is a wound which was in existence for several days, the deceased died within 36 hours after admission to the hospital and the same cannot be attributed as negligence on the part of the petitioners.

14. In the post mortem report it is stated the cause of death as "occlusion of feeding vessel of heart left coronary artery" and the medical description is as under:

"Coronary artery disease **is** the narrowing or blockage of the coronary arteries caused by atherosclerosis. Atherosclerosis is the build-up of fatty deposits and inflammatory cells (called plaque) on the inner walls of the arteries that restricts blood flow to the heart. Without adequate blood flow, the heart becomes starved of oxygen and vital nutrients it needs to work properly"

The cause of death "occlusion of feeding vessel of heart left coronary artery" means there was a block in the vessel which has caused death. From the above description it can be safely state that the deceased had chronic aliment and had not approached the doctors in time to cure the same. Therefore the petitioners cannot be blamed.

15. The Learned Senior Counsel submitted that misconduct means misconduct arising from ill motive and acts of negligence, error of judgments or innocent mistake do not constitute such misconduct. Moreover a single act of omission or error would not constitute misconduct and relied on the judgment rendered in (1979) 2 Supreme Court Cases 286 in Union of India Vs J. Ahmed. Therefore following the said judgment this Court is of the considered opinion



that there is no misconduct as alleged in the charge memo and the same is liable to be quashed.

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.

18. For the reasons stated above, the Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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



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

4.The Dean,
Madurai Medical College,
Madurai, Madurai District.

+1 CC to M/s.SPL GP (SR-12507[F],SR-12508[F]SR-12509[F] dated
16/03/2022)

+3 CC to M/s.ISAAC CHAMBERS, Advocate(SR-12551[F] dated
16/03/2022)

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MGJ(08.04.2022) 11P 9C