



W.P.(MD)No.15542 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :- 16.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.15542 of 2015

and

W.M.P(MD).Nos.1 and 2 of 2015

P.Bharathi Lakshmi

... Petitioner

Vs.

1.The Secretary to the Government,
Health and Family Welfare (K2) Department,
Secretariat,
Chennai.

2.The Director of Medical and Rural Health Services,
DMS Complex,
361, Annasalai,
Chennai-600 006.

3.The Joint Director of Health Services,
Tirunelveli,
at Tenkasi,
Tirunelveli District

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, by calling for the entire records pertaining to the charge memo issued by the second respondent vide his proceedings in Ref.No.94312/SCI/3/2007 dated 22.02.2008 as well as the consequential punishment awarded by the first respondent vide his proceedings in G.O.(D).No.719 Health and Family Welfare (k2) Department dated 09.06.2015 and quash the same and consequently direct the first respondent to reinstate the petitioner into service in the cadre of Assistant Surgeon to the first respondent's Department.

For Petitioner : Mr.R.Anand
For Respondents : M/s.Farjana Ghoushia
Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to quash the charge memo issued by the second respondent, vide his proceedings in Ref.No.94312/SCI/3/2007, dated 22.02.2008, as well as the consequential punishment awarded by the first respondent, vide his proceedings in G.O.(D).No.719, Health and Family Welfare (k2) Department, dated



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09.06.2015 and consequently direct the first respondent to reinstate the petitioner into service in the cadre of Assistant Surgeon to the first respondent's Department.

2. After completion of degree in M.B.B.S and D.G.O., the petitioner was appointed as an Assistant Surgeon on 30.12.1991 at Government Primary Health Centre, Tuchinatham, Ramanathapuram District, where he was directed to serve till 16.02.1992 and subsequently he was transferred to Kelavikulam Government Primary Health Centre, Virudhunagar District, wherein the petitioner served till 24.03.1994. Thereafter, he served in Government Rajaji Hospital, Madurai from 25.03.1994 till 29.03.1996. Then transferred to Government Primary Health Centre, Kallamanayakkanpatti, as Assistant Surgeon from 30.03.1996 till 11.09.1996 and again she was transferred to Government Hospital, Rajapalayam, Virudhunagar District.

3. In order to take care of her daughters and due to some health issues, the petitioner submitted her leave application on 22.05.2006 for a period of six months. The second respondent, through his communication dated 21.07.2006 has rejected her leave application and has directed the petitioner to report duty.



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Due to family circumstances especially her daughter's health condition, she was forced to be on leave continuously till 27.12.2006. On 28.12.2006, the petitioner had attended the duty till 30.12.2006. Unfortunately, she was not be able to attend the duty, for which again she applied leave on 31.12.2006 onwards and the second respondent had received her leave application and he has not either returned the same nor rejected the application, hence, she was under the impression that she was allowed to be on leave.

4. In the meantime, the second respondent, vide his proceedings in Ref.No. 94312/SCI/3/2007, dated 22.02.2008, had issued a charge memo by including 5 charges. The first charge is that inspite of specific direction to join the duty, the petitioner has not come forward to join the duty and the other charges in respect of the leave application, she was continued on leave by simply submitting a leave application, even then her leave application was rejected, the third charge is that the petitioner has not obeyed the directions of the superior and the other two charges are relating to the above said three charges.



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5. In reply to the charge memo, the petitioner submitted her explanation and third respondent was appointed as Enquiry Officer. Enquiry Officer without holding any enquiry, without examining the witnesses, straight away held the charges were proved. Based upon the enquiry report, the first respondent vide his proceedings in G.O.(D).No.719, Health and Family Welfare (k2) Department, dated 09.06.2015, has passed dismissal order against the petitioner under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. Aggrieved over the same, the present writ petition has been filed.

6. A counter affidavit has been filed by the first respondent, wherein it is stated that the petitioner has submitted her leave application for a period of six months from 22.05.2006 and the leave application was rejected by the second respondent on 21.07.2006 and the same was intimated to the petitioner, through telegram, in which, she was also instructed to rejoin the duty immediately. But, the petitioner did not rejoin the duty and submitted her leave application dated 05.10.2006, extending the leave up to May 2007 and thereafter, she was directed to rejoin the duty on or before on 28.12.2006 vide memo dated 30.11.2006 and



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the petitioner rejoined duty on 28.12.2006 and she worked only for three days. Again on 31.12.2006, she applied leave application for a period of six months, which was refused and the petitioner was directed to rejoin the duty, vide memo dated 08.02.2007, but she did not rejoin the duty as instructed by the second respondent. Another memo dated 13.08.2008, has been issued by the second respondent directing the petitioner to rejoin the duty on or before 31.08.2007 and she rejoined duty and again she was unauthorizedly absent from duty. Hence, a disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was initiated against the petitioner. Thereafter, charge memo dated 22.02.2008 was issued by the second respondent and the petitioner submitted her statement on 13.05.2008, wherein it is stated that she was unable to look after the family and her service simultaneously and due to the family circumstances, she had compelled to apply leave and she was not able to join duty and therefore, she extended her leave. There was no intention to her to join duty and has willfully absented and but requested to drop the disciplinary action against her.



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7. The petitioner's explanation was not accepted and Enquiry Officer was appointed on 10.12.2008, the petitioner herein attended the enquiry and the petitioner expressed her unwillingness to continue her service and submitted her resignation letter dated 10.12.2008 to the enquiry officer. Thereafter, the enquiry Officer submitted his report dated 30.01.2009, holding charges are proved. The said report was communicated to the petitioner on 02.09.2010, for obtaining further representation on the findings of the enquiry report, but she did not submit her further representation. Hence, the first respondent herein, after consulting from TNPSC imposed the punishment of dismissal in service for the proven charges of unauthorized absence from duty from 31.12.2006 to till date vide G.O. (D).No.719, Health and Family Welfare (K2) Department dated 09.06.2015 and hence the respondents prayed to dismiss the writ petition.

8. Heard Mr.R.Anand, learned counsel for the petitioner and M/s.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents and perused the materials available on record.



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9. The contention of the petitioner is that sufficient opportunity was not granted to defend her case, the witnesses were not called for examination and she was also not examined the witnesses and the enquiry was not conducted as per procedure. But the respondents refuted the allegation and that during the course of enquiry, the petitioner submitted her resignation and she had expressed her unwillingness to continue in service. The said resignation was accepted and that was taken as the reason for her absence and she is intended to quit the job. Hence enquiry was closed as the charges were held proved. The respondents further submitted that after completion of the enquiry, the copy of the report was issued to the petitioner and called her to submit her explanation for the enquiry report, but the petitioner has not submitted any explanation. Hence, the respondents further proceeded with the enquiry proceedings by obtaining opinion from TNPSC, passed the dismissal order on 09.06.2015 through the impugned G.O.

10. The Learned Counsel further submitted that due to the petitioner's family circumstances, especially in order to take care of her daughters, she was not having any support to take of her daughters, she was not able to attend her



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duties. This Court is of the considered opinion that this cannot be the reason for not attending the duty. The petitioner ought to have sought out the issue and arrived at some solution. The petitioner by taking up the job, but not attending to the job has blocked some other eligible person's opportunity to serve in the medical field.

11. On perusal of records, it shows that the petitioner was appointed as an Assistant Surgeon on 30.12.1991. The petitioner had submitted her first leave application on 22.05.2006 and thereafter, from 28.12.2006 to 31.12.2006 she attended the duty, this was not denied by the respondents. Because of her family circumstances, the petitioner could not continue her service. At the time of filing this writ petition, the petitioner was aged about 51 years and now the petitioner is aged about 58 years. At this juncture the Learned Counsel appearing for the petitioner submitted that the petitioner is suffering from Cancer and she is undergoing treatment and due to her ill-health the petitioner could not continue her service.



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12. The petitioner had rendered more than 15 years of service and is suffering from cancer. Considering the facts and the circumstances of this case, this Court is inclined to interfere the punishment of dismissal from service alone. Hence this Court is modifying the punishment as compulsory retirement. The respondents are directed to implement this order within a period of six weeks from the date of receipt of a copy of this order and the respondents are directed to pay all the terminal and other service benefits to the petitioner within a period of six weeks from the date of receipt of copy of this order. With this modification the writ petition is disposed of. No costs. Connected miscellaneous petition is closed.

16.09.2022

Index : Yes / No
Internet : Yes

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