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W.P.Nos.19970 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 01.03.2023

Orders delivered on 27.04.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.19970 of 2015

Mohamed Zubair

..Petitioner

Vs

1. The Secretary to Health & Family Welfare department,
Fort St.George,
Chennai - 9.
2. The Director of Public Health & Preventive Medicine,
Chennai - 6.
3. The Director of Medical & Rural Health Services,
Chennai - 6.
4. The Director of Medical Education,
Kilpauk,
Chennai - 10

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue
a Writ of Certiorarified Mandamus to call for the records relating to the



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proceedings of the 1st respondent dated 26.02.2013 issued against the petitioner in G.O.(D) No.174 Health & Family Welfare (D1) department and quash the same and consequently direct the 1 to 4 respondents to grant all withheld service and monetary benefit to the petitioner as if the punishment had not been imposed on the petitioner.

For Petitioner	: Mr.G.Sankaran Senior Counsel for Mr.N.Krishnakumar
For Respondents	: Mr.T.Arunkumar Additional Government Pleader

ORDER

This writ petition has been filed challenging the order of the 1st respondent dated 26.02.2013, imposing the punishment of stoppage of increment for 5 years with cumulative effect.

2. The brief facts of the case of the petitioner is as follows:

i) The petitioner is working as Assistant Professor in Orthopedics Department in Kanyakumari Medical College Hospital, Asaripallam at



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Nagercoil. While he was working as Assistant Surgeon in the primary Health Centre at Amarapoondi, he was served with a charge memo by the Deputy Director of Health Service Palani at Dindigul vide proceedings dated 17.09.1991 framing two charges stating that he has not routed his application for Post graduate course through proper channel and did not obtain permission or sanction from the competent authorities before joining P.G. course and the other for failure to intimate the fact of his joining the course, even after reporting at Madurai Medical College, Madurai and thus, shirking his responsibility as Medical Officer, GPHC in providing medical relief to the rural community of Amarapoondi.

ii) Pursuant to the charge memo dated 17.09.1991, the petitioner submitted his explanation on 25.09.1992 denying the charges. Not satisfied with the same, an enquiry officer was appointed, who conducted enquiry on 05.11.1992 and submitted adverse findings dated 05.03.1993, proving the two charges. Thereafter, show cause notice was served on 22.05.1995. When the enquiry report dated 05.03.1993 was in operation, the 2nd charge memo dated 04.03.2000 was issued framing the very same charges that (a)



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the petitioner has proceeded for P.G. course suppressing the fact of his employment in Tamil Nadu Medical Services and without getting proper relief and that he submitted the application directly for P.G. Course and not through proper channel; (b) that he applied for leave from 01.05.1991 and remained unauthorized absence from 11.06.1991 onwards, consequent upon the submission of his resignation and withdrawal later, thereby, disturbing the smooth functioning of PHC.

iii) An enquiry officer was appointed, who conducted enquiry on 11.10.2000 and submitted the non-proved minute dated 30.11.2000 in respect of both charges. After lapse of nearly 2 years, the 1st respondent issued *suo motu* notice dated 21.08.2002, by accepting the findings of the enquiry officer in respect of charge no.1 and unilaterally differing and deviating the findings of the enquiry officer in respect of charge No.2. After receipt of the *suo motu* show cause notice, the petitioner submitted further representation on 05.11.2002, denying the allegations in the notice. The 1st respondent, without considering the representation and without following the statutory procedures, passed the final order dated 26.02.2013 imposing



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the punishment of stoppage of increment for 5 years with cumulative effect.

Aggrieved over the same, this writ petition has been filed.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. i) Learned counsel for the petitioner would submit that the petitioner was appointed temporarily as Assistant Surgeon under Rule 10(a)(i) of the Tamil Nadu State and Subordinate Service Rules and joined duty on 13.04.1990 in Primary Health Centre, Odaipatti, Periakulam. Thereafter, he was transferred and posted to PHC, Amarpoondi by the proceedings of the 2nd respondent dated 14.09.1990. The petitioner applied for leave from 10.06.1991 for 55 days. During leave period, he applied for All India Entrance Examination for joining PG Diploma Course in Orthopedics. The petitioner got selected and joined in Madurai Medical College. In the application form, there is no separate clause that even a temporarily appointed government doctor should apply through the



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department. Further, the appointment order did not stipulate such a condition. The petitioner continued his leave on loss of pay and his leave was neither refused nor he was directed to report for duty. Based on some letter from one Ramasamy of Amarapoondi, the 3rd respondent wrote a letter dated 09.07.1991 to the Dean Madurai Medical College and obtained the petitioner's details of study of PG course. The Dean informed the same to 3rd respondent by letter dated 01.08.1991. The 3rd respondent, through letter dated 04.09.1991, directed the Dean of Madurai Medical College to insist the petitioner to tender resignation and the said letter was received in the office of the Dean on 30.09.1991 and served on the petitioner. Immediately on 01.10.1991, the petitioner submitted his resignation through the Deputy Director with a copy to the Dean, Joint Director and the 3d respondent/appointing authority. The petitioner did not receive any acceptance or reply for the same.

ii) Learned counsel for the petitioner would submit that instead of accepting the resignation, the Deputy Director issued charge memo dated 17.09.1991 under Rule 17(b) as if the petitioner has committed grave



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misconduct. Even before enquiry, the petitioner made representation dated 30.11.1991, explaining his family situation and regretted for resigning hastily and requested to re-appoint him in any Government Primary Health Centre and cancel his resignation. The petitioner sent a reminder representation dated 19.09.1991 for re-appointment. In the meantime, the petitioner completed his PG Diploma in Orthopedics on 30.04.1992 and registered on 07.09.1992 in the Tamil Nadu Medical Council. The petitioner submitted his explanation for the charge memo dated 17.09.1991 on 25.09.1992. The enquiry report dated 05.03.1993 was received by the petitioner on 22.12.1994 nearly after two years. The petitioner submitted reminders dated 15.10.1992, 25.10.1992 and 09.03.1995.

iii) Learned counsel for the petitioner would submit that pending finalization of the disciplinary proceedings, the petitioner was given posting order dated 11.07.1997 and in modification, he was posted to PHC E.Vadugapalayam on 03.03.1998 in the existing vacancy by the 2nd respondent. After joining duty, the petitioner made representation dated 19.07.1998 to the 2nd respondent to drop the disciplinary proceedings and



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to regularise his service. Thereafter, the petitioner was transferred and posted to Government Hospital Dharapuram, in proceedings dated 06.04.1999 of the 3rd respondent, which was communicated by the 2nd respondent on 10.05.1999.

iv) Learned counsel for the petitioner would further submit that the petitioner joined duty at Dharapuram Government Hospital on 13.05.1999. While he was working under the 3rd respondent, the 2nd respondent re-issued the same charge memo on 04.03.2000, which was served on the petitioner on 30.03.2000. The petitioner gave explanation dated 12.04.2000. The Enquiry Officer, vide his report dated 30.11.2000, found both the charges as not proved.

v) Learned counsel for the petitioner would further submit that the first charge is one and the same relating to the petitioner's PG Course in 1991-1992 session. The second charge is relating to his leave on loss of pay from 11.06.1991. It is submitted that the 2nd respondent assumed the petitioner's leave from 11.06.1991 to 01.03.1998 as unauthorized absence even without rejecting his leave application at any point of time. The first



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respondent deviated from the non-proved minute of the petitioner's leave on loss of pay during PG studies and assumed the period as unauthorized absence suppressing the petitioner's earlier representations dated 25.09.1992, 07.10.1992, 25.10.1992 and 09.02.1993. Before acceptance of his resignation, he withdrew the same, but he was not directed to join duty. He was without employment till he was given posting order on 11.07.1997 and in modification, he was posted to PHC E.Vadugapalayam on 03.03.1998. There is no evidence to consider his leave as unauthorized absence in the reissued charge memo dated 04.03.2000. The petitioner's service was regularised by proceedings dated 11.09.2012. The impugned order dated 26.02.2013 was passed imposing punishment of stoppage of increment for 5 years with cumulative effect with a delay of 22 years.

6. i) Per contra, learned counsel for the respondents would submit the petitioner did not submit his resignation in the prescribed proforma and the same has been called for by the 2nd respondent. In the meantime, the petitioner, in his representation dated 30.11.1991 withdrew his resignation



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and requested for reposting. After that, the disciplinary action processed and the inquiry officer held both the charges proved against the petitioner. The same was communicated to the petitioner, calling for his further representation and the petitioner did not submit his further representation till 19.07.1998. The delay is caused by the petitioner and not by the respondent.

ii) Learned counsel would further submit that the 2nd respondent issued a charge memo dated 04.03.2000 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in supersession of the earlier charge memo. Hence, the earlier charge memo has become infructuous and is not in operation as stated by the petitioner. In the said charge memo, two specific charges were framed against the petitioner which includes his unauthorised absence period from duty 11.06.1991 to 18.03.1998.

iii) Learned counsel would further submit that the enquiry officer, after conducting inquiry held both the charges against the petitioner as not proved. The first respondent examined the case with connected records and held that charge No.1 was not proved but charge No.2 as proved. The



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deviated findings of the 1st respondent on the inquiry officers' report was communicated to the petitioner calling for further representation by proceedings dated 21.08.2002. The petitioner submitted his further representation on 5.11.2002. After examining the further representation, the 1st respondent imposed the punishment of stoppage of increment for 5 years with cumulative effect.

iv) Learned Additional Government Pleader would further submit that in the previous charge memo, the unauthorised absence of the petitioner from duty was not framed against the petitioner. The two enquiries conducted as stated by the petitioner were not for the same set of charges but with reference to the charges framed against him in two different charge memos dated 17.09.1991 and 04.03.2000. There is no illegality in the conduct of enquiry. After reposting, the petitioner was transferred to other Medical Institutions under the control of other Directors and the petitioner was on unauthorised absence from duty from 01.07.2004 to 23.10.2007. Hence, certain particulars etc. connected with the disciplinary case as called for by the 1st respondent had to be obtained from the other offices which



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took sometime.

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v) Learned Additional Government Pleader would further submit that when the petitioner was absented from duty with the intention to join the Post Graduate course, without permission of the competent authority and when the charge memo was issued to him, he did not submit his defence statement, instead he submitted his resignation and later, withdrew the same. Subsequently, he did not submit his further explanation on the enquiry officer's report till 19.07.1998, though it was sent to him through registered post dated 6.2.1995. When he was reposted to Government Primary Health Centre Manickampalayam of the erstwhile Raraji District, now Namakkal District vide order dated 11.7.1997, he did not rejoin duty. Subsequently, he rejoined duty at the Primary Health Centre, E.Vadugapalayam, Tiruppur Health Unit District only on 19.03.1998 after getting reposting vide another order dated 3.3.1998. Later due to administrative reasons, in supersession of the previous charge memo another charge memo dated 4.3.2000 was issued to him. His further explanation dated 5.11.2002 was considered before finalising the disciplinary case against him which has also been



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mentioned in the impugned order. Hence, the question of non-consideration of further representation of the petitioner does not arise. The delay on the part of the respondents in the disciplinary case is due to administrative reasons only.

7. This Court, considered the submissions made on either side and perused the materials available on record.

8. On the admitted facts and circumstances of the case, the only point that is to be decided in this case is about the validity of the disciplinary proceedings and the consequential order of the 1st respondent imposing punishment, on the ground that there was delay in initiating the disciplinary proceedings against the petitioner.

9. In the present case, two enquiries have been conducted for the same charges. No notice was given to the delinquent employee/petitioner before disciplinary authority recorded his final conclusion differing with the



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findings of the enquiry officer. The disciplinary authority can direct the same inquiry officer to conduct further inquiries in respect of the matter, but it cannot direct a fresh enquiry to be considered by some other officer. Though the occurrence had taken place in the year 1991, the 1st enquiry ended on 05.03.1993 with adverse findings and show cause notice was issued in the year 1995 with a delay of 2 years from the date of submission of enquiry report. This apart, with a further delay of 2 years on the identical allegations, the 2nd charge memo was issued only on 04.03.2000. Then, after two years delay, the suo motu notice dated 21.08.2002 was issued from the date of submitting the 2nd enquiry report. Though the petitioner submitted his explanation on 05.11.2002, the final order of punishment was imposed on 26.02.2013, after a lapse of 11 years delay.

10. It is seen that the Enquiry Officer, vide his report dated 30.11.2000, found both the charges as not proved. Further, before acceptance of his resignation, the petitioner withdrew the same, but he was not directed to join duty. On a perusal of the materials placed, there is no



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evidence to consider the leave as unauthorized absence in the reissued charge memo dated 04.03.2000 and it is pertinent to note that the petitioner's service was also regularised by proceedings dated 11.09.2012. Therefore, there is inordinate delay on the part of the respondents in issuing the charge memos and concluding the same to its logical end. Ultimately, the impugned order dated 26.02.2013 was passed imposing punishment of stoppage of increment for 5 years with cumulative effect with a delay of 22 years (1991-2013).

11. It is relevant to point out that inspite of the fact that the petitioner raised specific point of delay in the disciplinary proceedings, the respondents in the counter affidavit have chosen to explain the delay on administrative reasons, which is not acceptable. There is absolutely nothing to explain the inordinate delay.

12. At this juncture, it would be appropriate to refer to the case of *A.Abdula Vs. State of Tamil Nadu Rep.by its Secretary to Government*,



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Home Department and another reported in 2005(5) CTC 380, wherein the Division Bench of this Court, following the principle laid down by the Honble Apex Court in *P.V.Mahadevan Vs. Tamil Nadu Housing Board* reported in 2005(4) CTC 403 that the inordinate delay in initiating the departmental proceeding will cause more prejudice to the delinquent than the punishment itself, has quashed the charge memo in that case. The Honble Division Bench while quoting the judgement of the Honble Apex Court as held as follows:

"14. In recent judgment in the case of [P.V.Mahadevan v. Md. T.N.Housing Board](#), 2005 (4) CTC 403 : 2005 SCC (L&S) 861, the Supreme Court after finding that there is inordinate delay of 10 years in initiating the departmental enquiry against the appellant P.V.Mahadevan, in the absence of explanation from his employer Tamil Nadu Housing Board, concluded that allowing the Housing Board to proceed with the departmental proceedings at this distance of time would be very prejudicial to the appellant and consequently quashed the charge memo issued against him. While arriving such a conclusion, Their Lordships made a



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reference to State of U.P. vs. N.Radhakrishnan 1998 (4) SCC 154. After considering the factual details and rival contentions, the Supreme Court has concluded that: (para 11)

"11. Under the circumstances, we are of the opinion that following the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for



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initiating the disciplinary proceedings, the appellant should not be made to suffer."

13. Following the aforesaid judgment, this Court has no hesitation to hold that the entire proceedings including the charge memos and the subsequent order of punishment are to be set aside on the ground of unexplained and inordinate delay alone.

14. Further more, as could be seen from the available materials, despite permission being sought for by the petitioner for joining the PG course, no sanction was accorded nor any rejection order was passed and further, after completion of the PG course, the petitioner was also given posting order. Therefore, coupled with the delay on the part of the respondents in initiating disciplinary proceedings, the petitioner has to succeed in this writ petition.

15. For all the foregoing reasons, the Writ Petition is allowed. The



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impugned order dated 26.02.2013 made in G.O.(D).No.174 Health & Family welfare (D1) Department, is hereby set aside. The respondents are directed to grant all withheld service and monetary benefits to the petitioner. The said exercise shall be done by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

27.04.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

To

1. The Secretary to Health & Family Welfare department,
Fort St.George, Chennai - 9.
2. The Director of Public Health & Preventive Medicine,
Chennai - 6.
3. The Director of Medical & Rural Health Services,
Chennai - 6.
4. The Director of Medical Education,
Kilpauk, Chennai - 10

J.NISHA BANU, J.



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Pre-delivery order made in
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