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W.P.No. 20021 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. 20021 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



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a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st respondent dated 29.06.2011 issued against the petitioner in G.O.(D) No.757 Health & family Welfare (D1) Department and quash the same and consequently, direct 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 29.06.2011, imposing the punishment of stoppage of increment for 1 year with cumulative effect.

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

The petitioner was working as Assistant Professor in Orthopedics Department in Kanayakumari Medical College Hospital, Asaripallam,



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Nagercoil. While he was working as Tutor in O.P. Coimbatore Medical College Hospital in the year 2004, since the petitioner got the admission to study P.G. course called M.S. Orthopedic in Karnataka Institute of Medical Science, he approached the 4th respondent on 22.06.2004, seeking permission to study PG course and insisted to give permission at the earliest, since the date of joining had been fixed as 1.7.2004. Since the 4th respondent delayed to give permission, the petitioner applied for leave for one month from 1.7.2004 to 30.07.2004 on two spells. Since the leave was not granted and his request for permission was not rejected till 30.06.2004, the petitioner joined the course and completed in September, 2007.

ii) When the petitioner approached the 4th respondent for rejoining the post, the 4th respondent surrendered the petitioner to the 3rd respondent, where the petitioner was posted at Kayalpattinam Government Hospital and he joined there on 24.10.2007. Thereafter, he was transferred to Tiruthani Government Hospital, where he joined on 05.12.2007. On knowing the intention of the 4th respondent to initiate disciplinary proceedings against the petitioner for pursuing PG course, on 07.12.2007, he requested the 4th



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respondent to stop initiating disciplinary proceedings, but he was served with a charge memo dated 31.05.2005 on 27.12.2007 by the 4th respondent.

iii) Three charges were framed against the petitioner viz.,(a) unauthorized absence from duty with effect from 01.07.2004, (b) causing inconvenience to the day to day affairs of the college administration due to his absence. (c) violated Rule 20 of the Tamil Nadu Government Service Conduct Rules.

iv) The petitioner submitted his explanation on 04.01.2008, denying the charges. Not satisfied with the same, Enquiry Officer was appointed, who conducted enquiry on 07.07.2008 and submitted his report dated 01.08.2008, finding all the three charges as proved. On 28.08.2010, show cause notice was issued. The petitioner submitted further representation to the 1st respondent. But the 1st respondent passed the final order dated 29.06.2011 imposing punishment of stoppage of increment for a period of one year with cumulative effect. Aggrieved over the same, this writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned



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Additional Government Pleader appearing for the respondents.

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4. i) Learned senior counsel for the petitioner would submit that though the alleged enquiry is said to be conducted by the enquiry officer, no document was marked and no prosecution witness was examined during the enquiry on the side of the prosecution to prove the allegations levelled against the petitioner. The enquiry officer simply discussed the charges and explanation of the petitioner and has drawn the proved minutes. Hence, the punishment imposed based on the illegal enquiry report, cannot stand in the eye of law.

ii) Learned senior counsel would further submit that the 1st respondent did not consider the crucial and relevant aspect before imposing the punishment that the petitioner approached the 4th respondent well in advance on 22.06.2004 and he also met his subordinate namely Assistant Director in person and explained the importance of PG course and urgency for issuance of relieving order to join P.G. Course on 01.07.2004.

iii) Learned counsel would further submit that the 4th respondent sent various correspondences to the petitioner during his PG course and the



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petitioner was permitted to rejoin duty at Kayalpattinam in the month of October, 2007 after completion of PG course in September, 2007. Hence, the petitioner continued and completed the course with the knowledge and permission of the 4th respondent. The period of study is not unauthorized one.

iv) Learned counsel would further submit that the charges should have been framed for studying the PG course without proper permission alone but here the charges have been framed for unauthorized absence also. When the communications like issuing memos, submitting the replies to the memo were done between the petitioner and the 4th respondent regularly from the date of joining the course till the completion of the course, the question of unauthorized absence, does not arise. Hence, the framing of charge itself is not in consonance to the allegations levelled against the petitioner. Thus, the initiation of disciplinary proceedings itself is illegal.

5. i) Per contra, learned Additional Government Pleader appearing for the respondents would submit that the petitioner, though in his letter dated 22.06.2004 requested permission to join Post Graduate course in Ortho at



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Karnataka Institute of Medical Sciences, Hubli and to relieve him from Coimbatore Medical College Hospital Coimbatore, he went on Medical Leave from 01.07.2004 to 15.07.2004 and then extended it for another 15 days upto to 30.07.2004. On expiry of the above period, he did not rejoin duty and stayed away unauthorisedly from duty. Hence, disciplinary action has been taken for his unauthorised absence. The petitioner himself agreed during the inquiry that while he was on medical leave, he received the allotment order from Karnataka Institute of Medical Sciences, Hubli and did not rejoin duty. Hence, the inquiry officer held the charges as proved. In the meanwhile, the petitioner, on completion of his Post Graduate Course requested for posting. He was released from Director of Medical Education side to Director of Medical & Rural Health services side for considering postings at Government Head Quarters Hospital, Dharmapuri. Pending initiation of disciplinary action, the petitioner was transferred and posted to Government Hospital, Kayalpattinam, Tirunelveli District in the existing vacancy. He joined duty on 24.10.2007.

ii) Learned Additional Government Pleader would submit that the



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petitioner, after completion of four years of issuing punishment in G.O.(D) No.757 Health and Family Welfare Department dated 29.06.2011 has now filed the writ petition requesting to quash the above Government Order and consequently, direct the respondents to grant all withheld service and monetary benefits to him, even though he was given enough chance to submit his appeal but he failed to do so. Hence, he would pray to dismiss the writ petition.

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

7. It is to be noted that the petitioner has joined the Course after duly informing the 4th respondent well in advance and the petitioner was sending replies to the memos served on him during his study of P.G. Course. After completion of PG course, the petitioner had written a letter dated 04.01.2007 to the 4th respondent for posting order and he was given posting vide order dated 25.09.2007 and he also joined duty.

8. Further, absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always



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mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case, the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful and in the absence of such finding, the absence will not amount to misconduct.

9. In the present case, the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is willful.

10. The petitioner applied for permission to join three years PG Course in Orthopedics in Karnataka Hubli College on 22.06.2004 and 30.06.2004. The continued correspondence and postings would reveal that his absence is for a valid reason to undergo PG Degree and the same is not denied. His leave from 01.07.2007 to 30.07.2007 is not refused. The petitioner submitted explanation dated 09.05.2005 for the first recall letter



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dated 04.05.2005 and there was no negative reply. There is also no evidence or record relied on or produced in the enquiry proceedings that inconvenience has been caused to the College administration. There is no dearth of teaching staff of tutor disclosed, on the other hand, the Dean informed that somebody was posted in his place. The petitioner was directed to report to duty by the Dean vide communication dated 22.04.2005. There is no misconduct or dereliction of duty and there is also no violation of Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973. Hence, the impugned G.O. is liable to be quashed.

11. Further, there is also inordinate delay on the part of the respondents in issuing the charge memos and concluding the same to its logical end. The occurrence had taken place in the year 2004. The charge memo dated 31.05.2005 was served on the petitioner only on 27.12.2007. Ultimately, the impugned order dated 29.06.2011 was passed imposing punishment of stoppage of increment for 1 year with cumulative effect with a delay of 7 years (2004-2011). Thus, on the ground of inordinate delay also, the impugned order suffers from infirmity and the same is liable to be



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quashed.

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12. In the result, the Writ Petition is allowed. The impugned G.O. dated 29.06.2011 is hereby quashed and 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

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J.NISHA BANU, J.

vsi

Pre-delivery order made in
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