



W.P.No.4996 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4996 of 2023
&
WMP.Nos.5018 & 5021 of 2023

K.Palaiyan

... Petitioner

Vs.

1.The Secretary to Government,
Health & Family Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Director of Public Health &
Preventive Medicine,
Teynampet, Anna Salai,
Chennai-600 006.

3.The Enquiry Officer,
Director (Special Officer) (Primary Health Centre),
Directorate of Public Health & Preventive Medicine,
Chennai-600 009.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the order passed by the second respondent in Memo R.No. 56628/DA/2001/S1/01-47 dated 03.02.2002 and consequential order of the second respondent made in R.No. 56628/DA/S1/2001-3 dated 21.12.2022, quash the same.



WEB COPY



W.P.No.4996 of 2023

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.V.Stalin Abhimanyu, AGP

ORDER

Mr.V.Stalin Abhimanyu, learned Additional Government Pleader accepts notice for the Respondents. With the consent of the learned counsel appearing for the parties, the main Writ Petition is taken up for disposal, at the admission stage itself.

2. Based on the charges levelled under the charge memo dated 03.02.2002, an inquiry came to be conducted and the Inquiry Officer had also held the charge against the petitioner as 'proved' and called for further explanation of the petitioner. At this stage, the petitioner has challenged the charge memo dated 03.02.2002 in this Writ Petition.

3. The learned counsel for the petitioner predominantly raised the ground of inordinate delay of 17 years in concluding the inquiry proceedings and contended that in view of the same, the charge memo requires to be quashed. He further submitted that during the course of inquiry, petitioner's requisition for examining the doctor, who had issued the certificate, on which basis the charges have been levelled, was not considered by the Disciplinary Authority.



W.P.No.4996 of 2023

WEB COPY

4. Per contra, the learned Additional Government Pleader submitted that, inquiry proceedings itself was delayed owing to the petitioner's conduct. He also submitted that when an Inquiry Officer was appointed, the petitioner has challenged the same before this Court in W.P. Nos.16908 of 2018, etc., batch and in the order dated 09.09.2019, the petitioner had given an undertaking that he would participate in the inquiry, if he is given due opportunity to cross examine the witnesses. In this background, the delay in concluding the proceedings, will not affect the proceedings.

5. Insofar as the ground of delay raised by the petitioner is concerned, when Inquiry Officer was appointed on 19.01.2018 in connection with the charge memo dated 03.02.2002, the petitioner had challenged such appointment before this Court in W.P. Nos.16908 of 2018, etc., batch and the following order came to be passed on 09.09.2019:

"These Writ Petitions have been filed to quash the order dated 19.01.2018 passed by the 2nd respondent.

2.The learned counsel for the petitioners



W.P.No.4996 of 2023

fairly submitted that the appointment of the Enquiry Officer cannot be challenged by way of Writ Petitions. However, the Enquiry Officer may give permission to the petitioners to cross examine and to produce necessary documents to disprove the prosecution case.

3.The learned counsel appearing for the petitioners has made an endorsement that the petitioner may be permitted to withdraw the Writ Petitions with liberty to examine and cross examine the essential witnesses in the enquiry including the Competent Authority issued Certificate in their favour and the Medical Team.

4.Recording the endorsement made by the learned counsel appearing for the petitioners, these Writ Petitions are dismissed as withdrawn with liberty to examine and cross examine the essential witnesses in the enquiry including the Competent Authority issued Certificate in their favour and the medical team. No costs. Consequently, the connected Miscellaneous Petitions are closed."

6. The ground of delay was very much available to the petitioner, when the earlier Writ Petition was challenged and since the petitioner



W.P.No.4996 of 2023

had not stressed upon such ground but rather had expressed his desire to participate in the inquiry by himself, reconsideration of the ground of delay, would be hit by the principles of *constructive res-judicata*.

7. This apart, when the petitioner himself had accepted the disciplinary proceedings to go on and also made an endorsement to that effect, he is now precluded from raising such grounds of delay, in view of the stand taken by him when the final orders in the Writ Petitions came to be passed. Thus, the ground of delay and laches may not be available to the petitioner to canvass in the present Writ Petitions.

8. The second ground raised by the petitioner is that, no opportunity was given to him to examine / cross examine the doctor, who had issued the certificate, based on which the charges were levelled. However, on perusal of the records produced before this Court by the petitioner reveals that, no such request has been made to the Inquiry Officer. Hence, without making a request before the Inquiry Officer for examine / cross examine the doctor, the petitioner cannot raise such a ground before this Court. Thus, the second ground raised by the petitioner also does not deserve consideration.



W.P.No.4996 of 2023

WEB COPY

9. When the levelled charges were proceeded with by conduct of an inquiry and the petitioner had also participated in the inquiry voluntarily and when the Inquiry Officer had filed his report dated 21.12.2022, the grounds raised by the petitioner to interfere with the original charge memo at this belated stage of proceedings, does not deserve consideration. The Disciplinary Authority had also issued a notice based on the proven charges, calling upon the petitioner to render his further explanation. In case, the petitioner is aggrieved against the report of the Inquiry Officer, it is always open to him to raise all such grounds in his further explanation. As such, this Court will not be justified in interfering into the disciplinary proceedings at such a belated stage.

10. For all the foregoing reasons, I do not find any merits in the present Writ Petition and accordingly, the Writ Petition stands dismissed. In view of the dismissal of the present Writ Petition, the petitioner is granted liberty to submit his further explanation to the Inquiry Officer's report dated 21.12.2022, within a period of three weeks from the date of receipt of a copy of this order. Consequently,



W.P.No.4996 of 2023

connected Miscellaneous Petitions are closed. There shall be no order as to costs.

22.02.2023

Index : Yes / No
Internet : Yes / No
Order : Speaking / Non Speaking
Neutral Citation : Yes / No
DP

To

1. The Secretary to Government,
Health & Family Welfare Department,
Fort St. George,
Chennai-600 009.
2. The Director of Public Health &
Preventive Medicine,
Teynampet, Anna Salai,
Chennai-600 006.
3. The Enquiry Officer,
Director (Special Officer) (Primary Health Centre),
Directorate of Public Health & Preventive Medicine,
Chennai-600 009.



WEB COPY



W.P.No.4996 of 2023

M.S.RAMESH,J.

DP

W.P.No.4996 of 2023
&
WMP.Nos.5018 & 5021 of 2023

22.02.2023