



W.P.No.9626 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **04.01.2023**

Pronounced on : **12.01.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.9626 of 2022
and
W.M.P.No.9368 of 2022

Dr.R.Meera

... Petitioner

Vs.

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

2.The Director of Public Health and Preventive Medicine,
No.359, Anna Salai,
Teynampet,
Chennai - 600 006.

3.Dr.P.Vadivelan,
Inquiry Officer,
Additional Director of Public Health and Preventive Medicine,
Formerly Joint Director of Public Health and Preventive Medicine,
O/o.The Director of Public Health and Preventive Medicine,
No.359, Anna Salai,
Teynampet,
Chennai - 600 006.

... Respondents



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PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to final orders passed by the 1st respondent vide G.O.(D).No.1019 Health and Family Welfare (D1) Department dated 13.09.2021 and quash the same as illegal, unwarranted and not established in the eye of law.

For Petitioner : Mr.P.Wilson
Senior Advocate
for Mr.E.K.Kumaresan

For Respondents : Mr.D.Ravichander
Special Government Pleader
for R1 and R2

ORDER

This is a second round of litigation before this Court. Earlier, the petitioner had challenged the punishment order passed by the disciplinary authority before this Court. A Division Bench of this Court had quashed the impugned punishment order and remanded the matter back to the disciplinary authority once again for fresh consideration on merits and in accordance with law. Pursuant to the directions given by the Division Bench of this Court in the Writ Appeal, the disciplinary authority viz., the first



respondent has once again re-affirmed its earlier decision by passing the impugned order dated 13.09.2021. Aggrieved by the same, this Writ Petition has been filed.

2. In the disciplinary proceeding initiated by the second respondent against the petitioner, a charge memo was framed against the petitioner that while she was working as a Deputy Director of Health Services, Udhagamandalam during the year 2007, as a scheme implementing authority for the scheme Rogi Kalyan Samidhi (Patient Welfare Society), she had violated the guidelines for the use of the funds allotted to Primary Health Centres under the said scheme and caused purchase of unapproved items like T.V., DVD, UPS and VKT OP cards to the tune of Rs.10.35 lakhs by way of getting false quotations and directly dealt with suppliers in violation of guidelines and purchased the products, thereby committing criminal misconduct and misappropriation of Government money.

3. Based on the Inquiry Officer's report in the disciplinary proceedings, the first respondent has passed the impugned punishment on the petitioner of "Stoppage of increment for a period of three years with



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cumulative effect". It has also been made clear that the above punishment will have an effect on the pension of the petitioner (delinquent) and it will affect her pension. Aggrieved by the punishment order, the present Writ Petition has been filed.

4. Mr.P.Wilson, learned senior counsel appearing for the petitioner drew the attention of this Court to the following:

a) Order dated 21.08.2020 passed in W.A.No.2130 of 2019, under which the punishment order passed earlier by the disciplinary authority was quashed and remanded back to the disciplinary authority for fresh consideration on merits and in accordance with law;

b) The fresh Inquiry Report submitted by the third respondent / Inquiry Officer;

c) RTI reply received by the petitioner with regard to the utilization of the funds;

d) The impugned order passed by the first respondent dated 13.09.2021, imposing punishment of "Stoppage of increment for a period of three years with cumulative effect" on the petitioner.



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5. After relying upon the aforementioned documents / orders, learned senior counsel for the petitioner would submit as follows:

a) There has been selective initiation of disciplinary proceedings against the petitioner. As per the Government norms, the petitioner can only allot the funds to the Block Medical Officers in her capacity and she cannot issue the cheques directly on behalf of the Block Medical Officers and the Medical Officers of the Primary Health Centres. Further, it is the duty of the Medical Officers of the Primary Health Centres to obtain the quotations, make the stock entry and to issue cheques to the suppliers.

b) There is absolutely no evidence in the statement of witnesses that misappropriation had taken place. Admittedly, there is no loss to the Government and that is why, no order of recovery has been issued against any of the Officers. In the absence of any valid evidence that the petitioner had not committed any loss to Government or had flouted any Rules or Regulations, the Enquiry Officer ought not to have rendered a perverse finding that the charge is proved against the petitioner.

c) The reproduction of the earlier inquiry finding would only vindicate the fact that selectively disciplinary proceeding has been initiated against the petitioner;



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d) Mere hearsay evidence is not sufficient to prove the guilt of the petitioner though one of the witnesses may have pointed fingers at the petitioner without any iota of evidence. The said hearsay evidence ought not have been accepted by the inquiry officer as well as the disciplinary authority;

e) No major penalty proceeding which has the effect of deferment of employee's empanelment and promotion could be initiated in the absence of any evidence involving serious allegations involving moral turpitude such as bribery, corruption, accumulating disproportionate assets, causing loss to the Government with dishonest motive against the petitioner;

f) The findings of the inquiry officer is a reproduction of the earlier findings given by another inquiry officer and is perverse and is in violation of all settled principles of service jurisprudence. The disciplinary authority, without even considering the settled principles of service jurisprudence, has mechanically accepted the perverse findings of the inquiry officer and has imposed the impugned punishment.



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6. A Counter Affidavit has been filed by the respondents, denying the contentions of the petitioner. In their counter affidavit, they have stated as follows:

a) The petitioner, as a Deputy Director, has purchased items from the Patient Welfare Society's funds though the said funds are not meant to purchase those items;

b) During the inquiry, one of the witnesses viz., L.Veerappan, Assistant, had deposed that the work relating to obtaining the cheques / demand drafts, supplying the items, etc., were looked after by the then Deputy Director of Health Services, the petitioner herein. According to L.Veerappan, only on the instructions of the petitioner, cheques / demand drafts for the suppliers were obtained from the Medical Officers of Primary Health Centres and the same were given to the Deputy Director of Health Services, the petitioner herein;

c) The act of the petitioner in purchasing the items is in violation of NHM guidelines for the use of funds allotted to Primary Health Centres



under Rogi Kalyan Samiti Scheme. The purchase of the items to the tune of

Rs.10.35 lakhs by the petitioner by getting false quotations and directly

dealing with the suppliers is in violation of the aforementioned guidelines;

d) Only based on evidence available on record before the inquiry officer, the petitioner was found to be guilty in respect of the charge framed against her in the disciplinary proceeding. The disciplinary authority has also independently assessed the inquiry officer's report and only thereafter, has imposed the punishment on the petitioner;

e) The petitioner who is a District level officer and many of the Medical Officers are working under the administrative control of the petitioner and therefore, the petitioner cannot shirk her responsibility. Huge sum of Government funds are being distributed to all the Districts of the State to carryout various welfare measures to the poor people of the Villages and as a Deputy Director of Health Services, it is the responsibility of the petitioner to monitor the flow of funds and the genuineness of the expenditure incurred by the Medical Officers;



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f) The third respondent / Inquiry Officer has given his revised findings after a thorough verification of facts / documents and after giving due consideration to the deposition of witnesses. The third respondent / Inquiry Officer has drawn his revised inquiry report in obedience to the orders of this Court. The petitioner has failed to raise the issue of non receipt of questionnaire form before the inquiry officer and has chosen to discuss the same only now which is an afterthought. Further, though the inquiry officer posed leading questions to the witnesses and gathered their answers, as averred by the petitioner, the inquiry officer has also provided sufficient opportunity to the petitioner to cross examine the witnesses;

g) Only based on substantial material evidence, the inquiry report was submitted, in which the petitioner was found to be guilty of the charge framed against her. The cheques signed by the concerned Medical Officers which were intended for the suppliers should have been handed over by themselves to the suppliers of the products, but, instead they have handed over the cheques signed by them to the Superintendent, Officer of the Deputy Director of Health Services, Udthagamandalam who is under the



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administrative control of the petitioner. Therefore, it can be construed that without oral instructions from the petitioner, the cheques would not have been handed over to the superintendent who was working in her administrative control;

h) The delay in completion of the disciplinary proceedings has been caused only by the petitioner and it has been caused only due to the voluminous records and examination of a number of witnesses.

7. Learned Special Government Pleader appearing for the respondents also drew the attention of this Court to a recent Judgment of the Honourable Supreme Court in the case of *State of Karnataka and Another Vs. Umesh* reported in **2022 (6) SCC 563** and would submit that the scope of judicial review for interfering with the findings of a disciplinary authority under Article 226 of the Constitution of India is very limited. In the aforesaid decision, it has been held that while exercising judicial review, the Court must restrict its view to determine whether:

- a) Rules of natural justice have been complied with;
- b) Findings of misconduct based on some evidence;



c) Statutory Rules governing conduct of disciplinary enquiry were followed;

d) Findings of disciplinary authority suffer from perversity; and

e) Penalty disproportionate to proved misconduct.

8. Learned Special Government Pleader appearing for the respondents would submit that none of the above parameters laid down by the Honourable Supreme Court has been satisfied by the petitioner and therefore, the question of judicial interference of the impugned order of the disciplinary authority will not arise.

Discussion:

9. The following are the undisputed facts:

a) The cheques / demand drafts for the purchase of items were issued by the respective Medical Officers and not by the petitioner who was working as a Deputy Director of Health Services at the relevant point of time;

b) No disciplinary proceeding has been initiated by the respondents against the Medical Officers concerned, who had signed the cheques for



purchasing the subject items from the respective suppliers;

c) The quotations for the purchase of items were received only in the name of the Medical Officers concerned and not in the name of the petitioner, who was the Deputy Director of Health Services at the relevant point of time;

d) There is no evidence placed on record to prove that only at the instance of the petitioner, quotations were received from the suppliers in the name of the respective Medical Officers;

e) Though L.Veerappan, Assistant and one of the witnesses in the disciplinary proceeding has deposed that the cheques / demand drafts payable to the respective suppliers were given to them only on the instructions of the petitioner, there is no supporting documentary evidence produced before the disciplinary authority;

f) Some of the Medical Officers have been examined as witnesses. In the disciplinary proceeding all have deposed that they have not received direct instructions from the petitioner who was the Deputy Director of Health Services, Udthagamandalam at the relevant point of time.



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10. This Court will now have to examine as to whether the contentions of the learned Senior counsel appearing for the petitioner that,

- a) There has been selective initiation of disciplinary proceeding against the petitioner;
 - b) Only on hearsay evidence, the charge framed against the petitioner has been found to be proved;
 - c) Perverse findings of inquiry officer based on no evidence;
 - d) Inquiry Officer cannot act as a prosecutor;
 - e) No major penalty proceeding which has the effect of deferment of employee's empanelment and promotion could be initiated in the absence of any evidence involving serious allegations involving moral turpitude such as bribery, corruption, accumulating disproportionate assets, causing loss to the Government with dishonest motive;
- deserves merit or not.

11. The disciplinary authority has once again re-affirmed its earlier decision which was quashed by the Division Bench of this Court in a Writ Appeal on account of non application of mind to the contentions raised by the petitioner in the disciplinary proceedings. However, as seen from the



fresh inquiry officer's report as well as the impugned order of the disciplinary authority, the inquiry officer as well as the disciplinary authority have not given reasons as to why the charge framed against the petitioner is found to be proved despite the undisputed facts which have been recorded by this Court in paragraph No.9 of this order (At the beginning of the discussion paragraph).

12. Based on hearsay evidence, despite the fact that cheques / demand drafts were issued by the respective Medical Officers and not by the petitioner as a Deputy Director of Health Services, the charge framed against the petitioner has been found to be proved and the disciplinary authority has also imposed punishment erroneously, accepting the findings of the inquiry officer without any independent assessment.

13. The undisputed facts recorded by this Court will clearly reveal that selectively, the petitioner has been charged. The concerned Medical Officers who have issued the cheques / demand drafts in favour of the suppliers have not been prosecuted but instead they have been only roped in as witnesses to support the case of the disciplinary authority. The evidence available on record will clearly reveal that there is no direct evidence



against the petitioner. No documentary evidence has been produced by the disciplinary authority to substantiate their claim that the petitioner as a Deputy Director of Health Services, Udhagamandalam was directly or indirectly involved in the purchase of the items from the suppliers.

14. Apart from the Medical Officers concerned, who had issued the cheques / demand drafts, the Superintendent in the office of the Deputy Director of Health Services, Udhagamandalam, who is said to have received the cheques from the Medical Officers has also not been prosecuted. The only person to be prosecuted in the disciplinary proceeding is the petitioner who was the Deputy Director of Health Services, Udhagamandalam at the relevant point of time. Only if all the concerned persons involved in the purchase of items, which according to the disciplinary authority is in violation of the guidelines are prosecuted, truth can be unearthed. There cannot be any selective prosecution at the whims and fancies of the disciplinary authority.



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15. Based on the evidence available on record, the preponderance of probabilities also does not lead to the conclusion that the petitioner can be found guilty of the charge framed against her in the disciplinary proceeding.

16. The petitioner claims that she has an unblemished track record and she has also achieved several distinctions in her service. Admittedly, excepting for the present disciplinary proceeding, no other disciplinary proceeding is pending against the petitioner.

17. The fresh inquiry report, which is the basis of the impugned punishment order imposed by the disciplinary authority, has more or less reproduced the earlier inquiry report which was quashed by orders of the Division Bench of this Court. There has been no independent finding given by the inquiry officer and also there is no material / evidence for the inquiry officer to hold that the petitioner is found guilty of the charge framed against her in the disciplinary proceeding. The disciplinary authority has also by his perverse finding by total non application of mind to the evidence available on record, mechanically accepted the findings of the inquiry officer and has erroneously imposed the punishment on the petitioner.



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18. There is absolutely no evidence based on the materials available on record that misappropriation had taken place due to the misconduct of the petitioner. Admittedly, there is no loss to the Government and that is why no order of recovery has been issued against any of the officers including the petitioner for the alleged misappropriation. In the absence of evidence against the petitioner, the inquiry officer ought not to have rendered a perverse finding based on hearsay evidence that the charge is proved against the petitioner and the disciplinary authority has also erroneously accepted the findings of the inquiry officer and has imposed the punishment on the petitioner.

19. The impugned order suffers from the following:

a) Selective initiation of disciplinary proceeding against the petitioner;

b) Based on mere suspicion without any evidence, the petitioner has been punished. There is no preponderance of probability against the petitioner for proving her guilt;



c) On hearsay evidence contrary to the direct evidence of the concerned persons (Medical Officers), punishment order has been passed against the petitioner;

d) Perverse findings have been rendered by the inquiry officer based on no evidence;

e) Inquiry Officer has acted like a prosecutor and without any evidence, adverse report has been submitted against the petitioner.

20. Therefore, no major penalty proceeding which has the effect of deferment of employee's empanelment and promotion could be initiated in the absence of any evidence involving serious allegations involving moral turpitude such as bribery, corruption, accumulating disproportionate assets, causing loss to the Government with dishonest motive.

21. For the foregoing reasons, the impugned order of the first respondent in G.O.(D).No.1019 Health and Family Welfare (D1) Department dated 13.09.2021 has to be quashed and the Writ Petition will have to be allowed.



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22. Accordingly, the impugned order dated 13.09.2021 passed by the first respondent is hereby quashed and the Writ Petition is allowed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

12.01.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case : Yes / No
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To

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat,
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Chennai - 600 009.

2.The Director of Public Health and Preventive Medicine,
No.359, Anna Salai,
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ABDUL QUDDHOSE. J.,

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**Pre-delivery Order in
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