



Writ Petition No.29007 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.29007 of 2019

and

W.M.P.No.28777 of 2019

Dr.R.Sudha

W/o.Dr.Ganapathy

... Petitioner

Vs.

1. The Secretary to Government
Health & Family Welfare Department
Government of Tamil Nadu
Secretariat, Chennai-600 009.
2. The Director of Medical and Rural Health Services
Chennai-600 006.
3. The Director of Public Health and Preventive Medicine
Chennai - 600 006.
4. The Superintendent of Central Prison
Salem - 7.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India



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praying to issue a Writ of Certiorari calling for the records of the 1st respondent herein culminating in G.O. (10 years) No.1050 Health & Family Welfare (K2) Department dated 24.06.2019 on the file of the 1st respondent herein and to quash the same.

For Petitioner : Mr.M.Santhanaraman
For Respondents : Dr.T.Seenivasan
Special Government Pleader

ORDER

This Writ Petition has been filed seeking to quash G.O. (10 years) No.1050 Health & Family Welfare (K2) Department dated 24.06.2019 on the file of the 1st respondent herein.

2. The case of the writ petitioner in a nutshell is as follows:

2.1. The petitioner is a M.B.B.S., D.C.H., Degree holder, who is working as Assistant Surgeon in the Employees State Insurance Hospital, Salem. During the year 2011, when the writ petitioner was working as Assistant Surgeon in the Salem Central Jail Hospital, she was issued with a charge memo dated 08.06.2011 bearing reference

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Na.Ka.No.18916/CK1/3/2011 on the file of the second respondent herein, wherein a single charge was levelled against the petitioner under Rule 17(b) of 'the Tamil Nadu Civil Servants Conduct and Appeal Rules' ['said Rules'] to the effect that while she was working as Assistant Surgeon in Salem Central Jail Hospital, on 03.09.2008, an under-trial prisoner namely, Subramani (56200), Son of Nallusamy, has attempted to commit suicide and when he was brought to the jail hospital for first aid, the petitioner was not available in the hospital which resulted in delay and the said prisoner died on the way to Government Hospital and as such the petitioner has violated Rule 20(1) of said Rules.

2.2. The petitioner has submitted her explanation to the said charge memo by stating that there were two Assistant Surgeons posted in the Central Jail Hospital viz., the petitioner herein and one Dr.C.Anandhi. Dr.C.Anandhi was provided with residential quarters in the Central Prison, Salem, where she was staying. The petitioner was not provided with the residential quarters in the jail premises and hence, she was staying outside



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the jail premises in a rented house at a distance of 1.75 kms from prison. 03.09.2008 was a Government holiday due to Vinayakar Chathurthi. When the petitioner received a phone call at 5.31 p.m. about the attempted suicide of one of the prisoners, she had reached the hospital at 5.38 p.m. and she was informed that the said prisoner was taken to Government hospital. The petitioner rushed to the Government hospital and the said prisoner was declared brought dead. It is stated that the Duty Doctors should be available 24 hours and it should be ensured that one Doctor should be available in the jail premises and the hours of duty during the day shall be so distributed between them. Thus, on 03.09.2008, Dr.Anandhi was available in the quarters which is in the jail premises.

2.3. An Enquiry officer was appointed by the second respondent herein vide order dated 20.04.2015 and the enquiry officer, after conducting a detailed enquiry, has submitted a report to the effect that the charge levelled against the petitioner has not been proved. Thereafter, the third respondent herein vide order dated 22.01.2016 passed the final order by



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accepting the enquiry report and dropped the charges against the petitioner.

Under such circumstances, the petitioner received a show cause notice dated 01.02.2019 from the first respondent herein together with G.O. (10 years) No.154 Health & Family Welfare (K2) Department dated 30.01.2019 wherein, it is stated that by invoking Rule 36 of said Rules, the first respondent has suo-motu reviewed the orders passed in the disciplinary proceedings and called upon the petitioner to submit her explanation within a period of 15 days as to why she should not be imposed the punishment of withholding the increment for the period of 2 years without cumulative effect. The petitioner submitted a reply dated 13.03.2019 to the said show cause notice by narrating the entire events explaining that there is no fault on her part. However, the first respondent herein by another order vide G.O. (10 years) No.1050 Health & Family Welfare (K2) Department dated 24.06.2019 has imposed the punishment of withholding the petitioner's increment for the period of 2 years without cumulative effect. According to the petitioner, the punishment imposed on her is totally unsustainable as the charge levelled against her has been dropped vide order dated 22.01.2016



and hence, the petitioner is before this Court.

3. The learned counsel for the petitioner made the following submissions:

3.1. The charge memo dated 08.06.2011 was issued under Rule 17(B) of said Rules alleging that on 03.09.2008, when the said prisoner attempted to commit suicide, the petitioner being the Assistant Surgeon of Salem Central Prison was not present in the prison hospital resulting in the death of the said prisoner while taking the said prisoner to the Government Mohan Kumaramangalam Medical College Hospital. The Joint Director of Medical Services, Namakkal was appointed as Enquiry Officer, who has conducted the enquiry and submitted a report stating that the charge has not been proved. The Enquiry Officer has specifically found that the Tamil Nadu Prison Manual Volume II Chapter 8 under Rule 99 describes hours of duty of the Assistant Surgeons employed in the prisons which reads as follows:

'Rule 99. Hours of duty : (1) in prisons where there are more Assistant Surgeons than one - (a) the hours of duty during the day shall be so distributed between them by the medical



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officer that one or the other is always present in the prison.'

3.2. The Enquiry Officer has specifically found that as per the procedure for distribution of duty in Salem Prison both the doctors will be present in the forenoon and one of them will be present in the afternoon on alternative days and during Sundays and Government Holidays they will work on call duty. The Enquiry Officer has given a factual finding that based on the Post-Mortem Report, the said prisoner would have died about 1 hour or prior to 5 or 5.30 p.m. on 03.09.2008 and that the said prisoner had not come for collecting evening meal and when the co-prisoners went to check, he was found hanging in the cell. In the Inquest conducted on 12.01.2009 by the Revenue Divisional Officer, the Additional Superintendent of Prison Mr.K.Anandhan has given a statement that at about 3.30 p.m., the said prisoner attempted to commit suicide, however, before the Enquiry Officer, he has given a statement that he got information about the attempt to commit suicide at 5.30 p.m. and thereafter, the intimation was given to the petitioner, who was on call duty and even before the petitioner could arrive, the said prisoner was shifted to Government



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Medical College Hospital, where he was declared brought dead.

3.3. The date of occurrence i.e., 03.09.2008 being a Government Holiday on account of Vinayagar Chathurthi, the petitioner after attending outpatients in the forenoon remained on call duty. The petitioner was not provided with quarters in the prison quarters. The other doctor namely, Dr.Anandhi was provided with quarters and she was not informed about the incident. The Disciplinary Authority namely, the Director of Public Health and Preventive Medicine accepted the findings of the Enquiry Officer to the effect that the charge levelled against the petitioner was held to be not proved and dropped the disciplinary proceedings initiated against the petitioner.

3.4. The first respondent herein has issued a show cause notice dated 01.02.2019 by invoking Rule 36 of said Rules wherein it is stated that the first respondent has decided that the charge against the petitioner was held proved and also proposed that the punishment of withholding the increment



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to the petitioner for the period of 2 years without cumulative effect. The show cause notice on the face of it shows that the first respondent even without waiting for the reply of the petitioner as to whether the charge levelled against the petitioner is held to be proved or not, has taken decision itself by preconceived notion that the charge is held proved. Therefore, even before issuing the show cause notice, the first respondent predetermined to arrive at the decision that the charge levelled against the petitioner is proved.

3.5. Rule 36(2)(c) of said Rules reads as follows:

'36. REVISION

(1) Notwithstanding anything contained in these rules -

(i) to (iv)

(2) No proceeding for revision shall be commenced -

(a)

(b)

(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.'

3.6. Rule 36(2)(c) of said Rules stipulates that the proceedings



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pertaining to revision shall be dealt in the same manner as if it were an appeal. Thus, being guided by the procedure contemplated for hearing the appeal, the Revisional Authority is expected to conduct the revision proceedings with open mind by re-appreciating the facts and either to confirm or modify the findings of the Original Authority. However, in this case, as stated above, the first respondent even in the show cause notice itself has determined that the charge against the petitioner was held "proved" without even waiting for the reply of the petitioner and has proposed punishment, thereby substituted his own opinion / decision in the place of the Original Authority and confirmed the same in the impugned order dated 24.06.2019, which is in complete violation of the established procedure of law.

3.7. The learned counsel for the petitioner relied on a judgment of Hon'ble Supreme Court in ***Chaturvedi*** case [***B.C.Chaturvedi Vs. Union of India and others*** reported in (1995) 6 SCC 749] and submitted that the Hon'ble Supreme Court has held that the High Court / Tribunal while



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exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. Relevant portion of **Chaturvedi** case is paragraph No.18 which reads as follows:

'18. The High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court / Tribunal, it would appropriately mould the relief, either directing the Disciplinary / Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.'

3.8. However, in this case, the first respondent being the Revisional Authority has apparently substituted his own conclusion based on the same set of facts on which the charge against the petitioner was held not proved by the Disciplinary Authority, which is impermissible. The first respondent has erred in not appreciating the facts which were discussed by the Enquiry Officer to the effect that there is no fault on the petitioner herein since she



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has reached the Prison Dispensary within the shortest time on receiving the phone call and the Post-Mortem Report reveals that the time of death of the said prisoner is around 4.40 p.m. on 03.09.2008 or prior to that, but the petitioner herein received phone call only at 5.31 p.m. and she has reached the jail at 5.38 p.m. and as such there is no misconduct on the part of the petitioner herein. Dr.Ananthi has sent a letter dated 04.09.2008 to the second respondent herein by complaining that the fourth respondent is insisting to sign a document contrary to the facts pertaining to the custodial death in the jail, which reveals that the impugned order has been passed only to make the petitioner as scapegoat in order to shield the jail authorities. In view of the disciplinary proceedings initiated against the petitioner in the year 2008, till date, she has not been promoted while all her juniors were promoted above her and hence, she is made to suffer mental agony for the past 15 years without any fault on her part and and hence, prays to allow this writ petition.

4. Per contra, the learned Special Government Pleader appearing for



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the respondents, by filing counter affidavit made the following submissions:

4.1. The petitioner, while working as Assistant Surgeon at Central Prison Dispensary, Salem, on 03.09.2008, the said prisoner attempted suicide by hanging and when he was brought to the Prison Dispensary for first aid treatment, the petitioner was not in duty there, then the said prisoner was brought to the Government Mohan Kumaramangalam Medical College Hospital for treatment, where he was declared as brought dead. Since the death has happened under police custody, an enquiry was conducted by the Sub-Divisional Magistrate and Revenue Divisional Officer, Salem under Police Standing Order (PSO) No.151 and the Enquiry Officer revealed that when the said prisoner was brought to the Central Prison Dispensary for the first aid treatment, the petitioner, who is the duty doctor, was not available to treat the patient and the first aid treatment was given by Male Nursing Assistant and Pharmacist, who were present in the Dispensary. Later, they referred the said prisoner to the Government Mohan Kumaramangalam Medical Collge Hospital for further treatment, where he was declared as brought dead. Consequently, vide G.O.(Ms.) No.233, Public (Law and



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Order-A) Department dated 09.03.2011, the Government has ordered to initiate the departmental disciplinary action against the petitioner herein. Therefore, disciplinary action was initiated under Rule 17(b) of said Rules as against the petitioner for her negligence of duty on 03.09.2008. The charge memo was issued vide order dated 08.06.2011 bearing reference No.18916/SC1/3/2011 by the Director of Medical and Rural Health Services, Chennai, the second respondent herein. The charge memo was received by the petitioner on 26.07.2011 and she has submitted her defence statement on 21.11.2011. As the next stage of disciplinary action, the Joint Director of Health Services, Namakkal was appointed as Enquiry Officer and the Enquiry Officer conducted the enquiry on 26.05.2015 and submitted his Enquiry report holding the charge framed against the petitioner as 'Not Proved' and the Director of Public Health and Preventive Medicine, the third respondent herein being the Appointing Authority, issued final orders dropping further action on the disciplinary proceedings initiated against the petitioner vide order dated 22.01.2016 bearing reference No.10083/PHC3/A4/2015-2 and the same was received by the petitioner on



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03.03.2016.

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4.2. However, the Government - first respondent examined the aforesaid disciplinary case, carefully and independently with all connected records and arrived at a decision that the charge framed against the petitioner held as 'Proved' and taken suo-motu revision by invoking Rule 36 of said Rules and also arrived at a provisional decision to impose a punishment of "stoppage of increment for a period of two years without cumulative effect" on the petitioner herein for the proven charge vide G.O.(10 years) No.154 Health and Family Welfare (K2) Department, dated 30.01.2019 and issued a show cause notice to the petitioner asking for her explanation on the provisional decision of the Government vide letter No.21912/K2/2018-4 Health and Family Welfare Department dated 30.01.2019. The petitioner received the show cause notice and submitted her representation on 13.03.2019. After the examination, the first respondent imposed the punishment of "stoppage of increment for a period of two years without cumulative effect" on the petitioner herein vide order



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dated 24.06.2019 bearing reference G.O.(10 years) No.1050, Health and Family Welfare (K2) Department dated 24.06.2019. The following charge was framed against the petitioner for her negligence of duty on 03.09.2008 which reads as follows:

'Charge:-

That Dr.R.Sudha, Assistant Surgeon, Central Prison Dispensary, Salem on 03.09.2008 the remand prisoner Mr.Subramani (56200), S/o.Nallusamy, while attempted suicide by hanging and when he had brought to the Prison Dispensary for first aid treatment Dr.R.Sudha was not available on duty time which resulted delay in treatment, the prisoner expired on the way to Government Mohan Kumaramangalam Medical College Hospital, Salem, for further treatment.

The above act of Dr.R.Sudhar, Assistant Surgeon, shows lack of negligence in duty which is violation of Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973.'

4.3. The first respondent has arrived at a decision that the charge framed against the petitioner held as "Proved" and taken suo-motu revision



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by invoking Rule 36 of said Rules and also arrived at a provisional decision to impose a punishment of "stoppage of increment for a period of two years without cumulative effect" for the following reasons:

(i) On a perusal of the attendance register copy received from the Salem Central Prison Superintendent, the petitioner has signed on 03.09.2008 in the Register. As per the copy of the in-out register maintained in the prison, it is observed that the petitioner entered at 10.55 hours and exited at 12.10 hours, then entered at 18.02 hours and exited at 18.40 hours, again entered at 22.10 hours and exited night at 02.20 hours;

(ii) Salem Central Prison Additional Superintendent Thiru.G.Anandan, in his deposition stated that the said prisoner has committed suicide around 3.30 p.m. evening and immediately, brought to the prison hospital and the petitioner has also been informed. Prison Pharmacist R.Sudhesi Kumaran, in his deposition, stated that since the said prisoner was in serious condition, he had been told to inform the



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petitioner immediately. Even though the petitioner signed the attendance register, she was not in duty and she herself told in her defence statement that she received a call at 5.31 p.m. on 03.09.2008 from the Central Prison to attend an emergency case, within 7 minutes i.e., at 5.38 p.m. she has reached the Central Prison, where she was told that the patient was already shifted to Government Mohan Kumaramangalam Medical College Hospital. If the said prisoner was not shifted to the Government Mohan Kumaramangalam Medical College Hospital, she could have provided the first aid in time and saved the said prisoner;

(iii) The Revenue Divisional Officer, Salem, in his report dated 31.03.2010 stated that the said prisoner while attempted to commit suicide on 03.09.2008, he was saved by the prison constables and immediately brought to prison hospital for treatment. Since no doctor was available to give treatment, Male Nursing Assistant Thiru.Palanichamy and Pharmacist



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Thiru.R.Sudesikumaran gave first aid and then as per the advice of the Additional Jail Superintendent, the said prisoner was brought to Government Mohan Kumaramangalam Medical College Hospital, where he was declared as dead by the Doctors on examination. He further added that one among the two duty Doctors, if had presented on that time, the said prisoner could have been saved and thus, the charge against the petitioner held as "Proved" since the petitioner has derelicted her duty and violated Rule 20(1) of said Rules.

4.4. Hence, the order imposing the punishment of "stoppage of increment for a period of two years without cumulative effect" on the petitioner is sustainable and the punishment imposed on her is no excessive when compared to the delinquency committed by her. The suo-motu revision taken by the first respondent herein after 3 years, who is vested with the discretionary powers prescribed under Rule 36 of the said Rules which reads as follows:



' 36. REVISION

(1) Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or

(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or

(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order;

may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such



further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as they or it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v), (vi), (vii) and (viii) of Rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub rule (b) of Rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub rule (b) of Rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary:

Provided further that no power of revision shall be exercised by the head of the department, unless-

*(i) the authority which made the order in appeal, or
(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.*

(2) No proceeding for revision shall be commenced -

(a) Where no appeal has been preferred, before the expiry



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of the period of limitation for an appeal, or

(b) Where an appeal has been preferred, before the disposal of such appeal.

(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.'

4.5. Inasmuch as the penalty imposed on the petitioner herein i.e., withholding of increment for two years without cumulative effect specified in clause (iii) of Rule 8 of the said Rules is not a major penalty as specified in the first proviso to Rule 36 of said Rules aforesaid, it is not necessary to consult the Tamil Nadu Public Service Commission in this case. It is submitted that Dr.Anandhi, in her deposition during enquiry, stated that she was not forced by the jail authorities to sign the documents related to the death of the said prisoner and hence, the contention of the petitioner that the fourth respondent is insisting to sign a document contrary to the facts pertaining to the custodial death in the jail is not correct. The first respondent has passed the order dated 24.06.2019 after giving a reasonable opportunity to the petitioner against the penalty imposed on her and hence, there was no preconceived notion in the act of the first respondent and the



orders passed by the first respondent are not liable to be set aside.

5. On going through the order dated 24.06.2019 passed by the first respondent, it is seen that the authority has taken suo-motu revision by invoking Rule 36 of said Rules on the ground that the petitioner was not in the Prison Dispensary, when the said prisoner, who has attempted to commit suicide, was brought to the Prison Dispensary for first aid, which resulted in delay and the said prisoner died on the way to Government Hospital and if the petitioner was available at that time, she could have provided the first aid in time and saved the said prisoner and as such the petitioner has violated the Rule 20(1) of the said Rules. It is to be further seen that proceedings dated 30.01.2019 bearing reference G.O.(10 years) No.154 Health and Family Welfare (K2) Department has been issued as to why the punishment of "stoppage of increment for a period of two years without cumulative effect" should be imposed on the petitioner together with show cause notice dated 30.01.2019 calling upon the petitioner to give her explanation. Thereafter, the petitioner received the show cause notice and



submitted her representation on 13.03.2019.

6. The petitioner, in her defence statement, stated that on 03.09.2008, she received a call from Prison Dispensary to attend an emergency case at 5.31 p.m., immediately, she reached the Prison Dispensary at 5.38 p.m. to attend the emergency. The petitioner, further stated, that the speed in which the Additional Superintendent has shifted the said prisoner to Government Mohan Kumaramangalam Medical College Hospital will only establish that the Additional Superintendent did not want the prison Doctors to examine the said prisoner and certify his death in his custody. The petitioner, in her explanation, stated that 03.09.2008, was a Government holiday due to Vinayakar Chathurthi and when the petitioner received a phone call at 5.31 p.m. about the attempted suicide of one of the prisoners, she had reached the hospital at 5.38 p.m. and she was informed that the said prisoner was taken to Government hospital, the petitioner rushed to the Government hospital and the said prisoner was declared brought dead. The petitioner further stated that on Sundays and Government Holidays, only



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call duty is available to her and since 03.09.2008 was a Government Holiday due to Vinayagar Chathurthi, she was at her home, when she received a call at 5.31 p.m. to attend the emergency case, she reached the Prison Dispensary at 5.38 p.m. itself. It is further stated that the Prison Dispensary is only serving as Pharmacy and so far no emergency case has been attended, if any emergency case is available, then she will refer the same to the Salem Government Hospital.

7. The first respondent in the counter filed has *inter alia* stated that since the punishment of withholding the increment for the period of 2 years is not a major penalty, it is not necessary to consult TNPSC in this case. However, Regulation 18(1) of the Tamil Nadu Public Service Commission Regulation, 1955 contemplates that it shall not be necessary for the commission to be consulted on any disciplinary matter affecting a person serving in connection with the affairs of the State except where the State Government on admitting an appeal, review or revision proposed to pass an order on such appeal, review or revision. Though the consultation of the



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TNPSC was held to be not mandatory, the casual way in which the first respondent filed the counter stating that the consultation of TNPSC is not necessary as they are not issuing any major penalty is contrary to TNPSC Regulation and obviously the Revisional Authority has taken up suo-motu revision with preconceived notion to somehow punish the petitioner.

8. The Enquiry Officer has stated in his report that on a perusal of Post-Mortem Report, it is seen that the said prisoner died on 03.09.2008 prior to 1.00 p.m. or before that, but the Jail authorities brought the said prisoner for treatment only at 5.30 p.m. and the petitioner has received call at 5.31 p.m. and hence, the charge against the petitioner was not proved.

9. Thiru.R.Sudesikumaran, Pharmacist, in his statement, has stated that on 03.09.2008, when the said prisoner brought to the Prison Dispensary, he is not in a movable position, his eyes were closed and he is not in a position to breathe. However, first aid treatment was given by Male Nursing Assistant and Thiru.R.Sudesikumaran, Pharmacist, who were



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present in the Dispensary. Later, they referred the said prisoner to the Government Mohan Kumaramangalam Medical College Hospital for further treatment, where he was declared as brought dead. On a perusal of Post-Mortem Report, it is seen that the said prisoner died prior to 24 or 30 hours of the autopsy which was conducted at 4.40 p.m. on 04.09.2008, but the petitioner received the call to attend the emergency case only at 5.30 p.m.

10. The co-prisoner, Mr.Shanmugam, in his statement, stated that at 5.15 p.m. only the said prisoner was trying to commit suicide by hanging and during 5.30 p.m. some of the co-prisoners have taken the said prisoner to the Prison Dispensary.

11. Mr.Murugesan, Grade-I Police, who is on duty on 03.09.2008, in his statement on 12.01.2009 stated that on the date of incident, during 5.00 p.m. the said prisoner did not come to receive his evening food and



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when enquired about him, some of the co-prisoners went in search of the said prisoner and found that the said prisoner was trying to commit suicide and all of them took the said prisoner to the Prison Dispensary within 10 minutes.

12. Mr.Anandan, Additional Superintendent of Police, on 12.01.2009 given a statement before RDO, wherein he has stated that on 03.09.2008 around 15.30 hours, he received the information about the incident. On the enquiry conducted on 15.05.2015, Mr.Anandan, in his statement, stated that around 15.30 hours he received the information about the incident through Walkie-Talkie. He further stated that he did not notice the time when he reached the Prison Dispensary. If at all the information about the said prisoner committed suicide was known to Mr.Anandan at 15.30 hours itself, immediately, he would have taken steps to send the said prisoner to the Prison Dispensary for taking first aid at 15.30 hours but the petitioner received the information only at 5.31 p.m.



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13. On 26.05.2015, Dr.Anandhi, has submitted that, on the date of incident, she was not on the call duty, she finished her work and went out of station. The aforementioned incident has been informed to her by Mr.Anandan, Additional Superintendent. Moreover, the Post-Mortem Report reveals that the said prisoner died due to breathing problem on account of hanging and the said prisoner died 24 hours to 32 hours prior to the autopsy which was conducted on 04.09.2008 at 4.40 p.m. The Enquiry Officer concluded the enquiry by stating that the said prisoner was taken to the Prison Dispensary around 5.00 p.m. to 5.30 p.m but as per the Post-Mortem Report, the said prisoner have died prior to that time and hence, in the absence of any proof to show that the said prisoner was alive at 5.30 p.m., the petitioner is not responsible for the death of the said prisoner. Hence, the charge levelled against the petitioner has not been proved.

14. There is no cogent evidence to prove that because of the negligence on the part of the petitioner was the only cause for the said prisoner's death and she was responsible for the death of the said prisoner



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by not giving First Aid. As per the Post-Mortem Report, it is clear that the said prisoner died before 24 to 32 hours of the autopsy which was conducted at 4.40 p.m. on 04.09.2008, but the information about the incident has been brought to the petitioner only at 5.31 p.m. as she was on call duty being a holiday and that she has reached the Prison Dispensary at 5.38 p.m., meanwhile the said prisoner was taken to the hospital, where, he was declared as brought dead. There is no document before this Court to show the call details about the phone call made to the petitioner and hence, as per the Post-Mortem Report and the statement of the Pharmacist, that the said prisoner was lying unconscious and without any breathing, the Superintendent cannot blame that because of the petitioner has not given first aid in time, the said prisoner died. This Court is of the view that the petitioner cannot be found fault for the mistake committed by the Jail authorities for not informing the same at 15.30 hours when the Jail authorities alleged to have received the information that the said prisoner was trying to hang himself and that the petitioner is found to be unaware of it earlier and returned to the spot immediately as it is a call duty and her



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case has to be considered positively in the absence of any material available to punish her. Further, in the absence of any opportunity given to the petitioner to defend herself by conducting the Review, as per the procedures established under law, this Court is of the view that the present writ petition is liable to be allowed.

15. Accordingly, this Writ Petition is allowed. The order dated 24.06.2019 bearing reference G.O. (10 Years) No.1050 Health and Family Welfare (K2) Department passed by the first respondent is hereby quashed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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V.BHAVANI SUBBAROYAN., J

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1. The Secretary to Government
Health & Family Welfare Department
Government of Tamil Nadu
Secretariat, Chennai-600 009.
2. The Director of Medical and Rural Health Services
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