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W.P.No.33994 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No. 33994 of 2018

Dr.M.Kalasree

....

Petitioner

Vs

The Principal Secretary to Government
of Tamil Nadu,
Health and Family Welfare (K2) Department,
Fort St.George,
Chennai – 600 009.

....

Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, prays to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings in G.O.(D) No.811 (Health and Family Welfare (K2) Department dated 11.05.2018 and quash the same and consequently direct the respondent to reinstate the petitioner back into service with all attendant and monetary benefits.

For Petitioner : Mr.V.Vijay Shankar

For Respondent : Mr.M.S.Premkumar
Government Advocate

ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to quash the impugned G.O.(D) No.811 dated



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11.05.2018 and consequently to direct the respondent to reinstate the petitioner with all monetary benefits.

2. The brief case of the petitioner is that she was appointed as an Assistant Surgeon and she joined duty at Government Hospital, Gingee Taluk, Villupuram District, on 27.02.1998. The petitioner was transferred to Kattumannarkoil in November 2006 and she applied for leave and took up the case with the higher authorities as she was of the opinion that the said order of transfer was passed on influence. The authorities accepted her reasoning and cancelled the transfer order and she joined duty in Gingee Hospital. The petitioner did her post graduate viz., M.D. in Anesthesia at Chengalpattu Government Hospital and College between 16.04.2008 to 23.05.2011. Subsequently, she worked as Assistant Professor from 24.05.2011 to 07.06.2018 in the Department of Anesthesiology at Chengalpattu Government Medical College Hospital.

3. In the meantime, there was an anonymous complaint against the petitioner as if she has received money from a patient and also citing



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other irregularities. An enquiry was ordered by the Joint Director of Health Services, Villupuram. However, according to the petitioner, the fate of the said enquiry had not been known inspite of passage of several years. The petitioner applied under RTI Act and came to know that the enquiry had been conducted on 20.01.2006 and upon enquires made with the Village Health Nurses and the staff nurses of the Hospital, the charges against the petitioner were found to be false. Subsequently, the petitioner was served with a charge memo dated 27.06.2008, containing three charges. The petitioner sought for certain documents from the authorities to defend the case.

4. However, according to the petitioner, the documents were not furnished on the ground that they were lost. All the charges were held to be proved against the petitioner and the respondent as disciplinary authority, forwarded the report to the Tamil Nadu Public Service Commission for advice and it appears that based on the advice of the Tamil Nadu Public Service Commission, a punishment of dismissal from service was imposed by the impugned order. The petitioner challenges the impugned order on two grounds viz., (i) non-



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furnishing of the alleged advice report of the Tamil Nadu Public Service Commission and (ii) non- furnishing of the statement of the nurses, who were alleged to have been examined at the time of enquiry. Further, the contention of the petitioner is that it is a case of “no evidence”. Therefore, the charges could not have been held proved. Unfortunately the impugned order is, in effect, non-speaking, even though it appears to be elaborate. It is also further contended by the petitioner that for the earlier charges, the Joint Director enquired into the matter and exonerated the petitioner and the very same witnesses, who deposed at the said enquiry, have also been cited as witnesses in the impugned proceedings as well. However the petitioner has not been furnished with copies of their statements and she came to know about the earlier exoneration from all the charges only after she obtained the relevant records after applying under RTI Act.

5. The learned counsel for the respondent filed a counter stating that the enquiry was conducted in a fair and proper manner and there is no violation of principles of natural justice as alleged by the petitioner. Therefore, the respondent sought for dismissal of the writ petition.



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6. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

7. It is an admitted fact that pursuant to the complaint made to the Chief Minister's Cell on 25.08.2005, the fact finding enquiry was conducted by the Joint Director of Health Services, Villupuram on 20.01.2006. The Joint Director of Health Service, Villupuram, has submitted his report and concluded that there is no evidence to prove the allegations against the petitioner. It is also not denied that in the present departmental proceedings as well, the same witnesses, who were examined in the earlier enquiry, have given evidence. However, before fixing the liability on the petitioner and imposing punishment, the petitioner should have been given copies of the statement of witnesses which have not been furnished to her. The counter also does not deny this specific allegation made affidavit in support of this writ petition in this regard.



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8. It is seen from the impugned order that the views of the Tamil Nadu Public Service Commission have been sought for, before the final decision was taken and it is stated that the Tamil Nadu Public Service Commission has also recommended imposing punishment of dismissal from services. However, the said report of the Tamil Public Service Commission has not been furnished to the writ petitioner before the final order came to be passed. Moreover, this Court also finds that the impugned order dated 11.05.2018 appears to be a non-speaking order. The order merely extracts the charges, the findings of the commissioner of the disciplinary proceeding and further representation of the delinquent officer to each of the charges and finally in one concluding paragraph, it is stated as follows :

“The Government have examined the case carefully and independently with connected records and along with the views of the Tamil Nadu Public Service Commission and decided to confirm the provisional decision to impose a punishment of “Dismissal from service” on Dr.M.Kalasree. The Government accordingly, do and hereby order that the punishment of “Dismissal from service” be imposed on Dr.M.Kalasree, Civil Assistant Surgeon, Government Hospital, Gingee, Villupuram District, for the proven charges”.



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9. The first respondent has not applied his mind independently in order to arrive at the decision. Even the recommendation of the Tamil Nadu Public Service Commission is behind back of the writ petitioner and especially when such view of the Tamil Nadu Public Service Commission is seriously prejudicing the rights of the petitioner, the first respondent ought to have put the petitioner on notice about the view of the Tamil Nadu Public Service Commission and heard the petitioner on that point before passing final orders. In any event, this Court is of the view that the impugned order that has been passed in a mechanical manner and merely extracting the trajectory of the case until that point of time would not be sufficient to hold that the order has been passed regularly, following the principles of natural justice.

10. In the preceding paragraph in the impugned order, Paragraph 4 at Page 8, the letter said to have been given by the Tamil Nadu Public Service Commission has been extracted. It clearly indicates that the views expressed by the Tamil Nadu Public Service Commission are against the petitioner's interest. Therefore, it was incumbent on the part of the first respondent to have served the copy of the said letter/report on



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the petitioner and afforded an opportunity to explain and meet the said views of Tamil Nadu Public Service Commission.

11. For all the above reasons, the petitioner is entitled to succeed and accordingly the writ petition is partly allowed, setting aside the order of removal from service. Therefore, it is open to the respondent to conduct a fresh enquiry after affording copies of all the relevant documents including the views of the Tamil Nadu Public Service Commission and hold a proper enquiry in a manner known to law and decide the same on merits. However, the petitioner's entitlement to back wages and other monetary benefits will be subject to the outcome of the decision taken after holding a due enquiry. However, in view of the impugned order being set aside, the petitioner shall be re-instated in service and thereafter, an enquiry may be held in accordance with law.

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Index: Yes/ No

Internet : Yes/No



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1. The Chief Educational Officer,
Thiruvallur,
Thiruvallur District.
2. The District Educational Officer,
Thiruvallur,
Thiruvallur District.
3. The Correspondent,
Don Bosco Higher Secondary School,
Pannur,
Thiruvallur Taluk and District.



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P.B.BALAJI, J.,

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