



W.P(MD)No.4105 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation	25.08.2023
Date of Pronouncement	13.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.4105 of 2010

and

M.P(MD)No.1 of 2010

Dr.G.Gunaseelan

: Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-600 002.

3.Dr.Kamatchi

4.Dr.Malliga

: Respondents

Prayer:

Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent in G.O.(D)No. 1333, Health and Family Welfare Department (K1), dated 23.12.2009



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and quash the same and direct the respondents to allow the petitioner to retire from service with all monetary and service benefits with interest at 18% p.a.

For Petitioner : Mr.A.Thirumurthy

For Respondents : Mr.M.Lingadurai
Special Government Pleader for R1

Mr.I.Anandhakumar for R2

No Appearance for R3 and R4

ORDER

D.BHARATHA CHAKRAVARTHY, J.

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent in G.O. (D)No.1333, Health and Family Welfare Department (K1), dated 23.12.2009 and direct the respondents to allow the petitioner to retire from service with all monetary and service benefits with interest at 18% p.a.

2. The brief facts leading to the filing of this writ petition are that the petitioner was appointed as an Assistant Surgeon with effect from 30.08.1986. While so when the petitioner was deputed and working at the Government Hospital, Ottanchatram, on 27.07.1998 he tendered his



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resignation. By a letter dated 07.08.1998, the said resignation letter was not accepted and the petitioner was requested to send the necessary proposals in the prescribed format and consequently, the resignation proposal stood returned on 26.10.1998. The petitioner issued a reply dated 23.12.1998 that he has decided to approach the Court.

3. Thereafter, the petitioner neither approached the Court nor reported for duty. The authorities also went into deep slumber. Neither the petitioner was placed under suspension nor his salary was paid and the petitioner also did not care. It seems that after the tendering of resignation and his reply, he has gone ahead with his private practice.

4. Six years later, on 07.02.2004, a charge memorandum was issued containing three charges *interalia* that he was unauthorisedly absent for more than five years. Now the petitioner promptly submits his explanation denying the charges stating that only on account of victimisation, he could not attend duty. But he did not pray for joining duty or salary. An enquiry officer was appointed and he submitted a report holding that the charges were proved. A second show cause notice was thereafter, issued on 18.02.2008 to which the petitioner submitted his further explanation on 30.05.2005. Once again thereafter, no action whatsoever has been taken by both the parties until the date of



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superannuation of the petitioner approached on 30.06.2008. By G.O.Ms.No.621 dated 26.05.2008, the petitioner was placed under suspension and by G.O(D) No.772, dated 30.06.2008, he was not permitted to retire.

5. The petitioner filed W.P.(MD)No.11429, 11430 and 11431 of 2008 challenging the charge memorandum and both the Government orders placing him under suspension and not permitting him to retire. All these three writ petitions came to be dismissed by order dated 17.12.2008. As against which, the petitioner filed W.A.(MD)Nos.550 to 552 of 2009. Pending the writ appeals, on 23.12.2009, the petitioner was dismissed from service. Aggrieved by the order of dismissal from service, the present writ petition is filed.

6. Heard *Mr.A.Thirumurthy*, the learned counsel appearing on behalf of the petitioner and *Mr.M.Lingadurai*, the learned Special Government Pleader appearing on behalf of the first respondent and *Mr.I.Anandhakumar*, the learned counsel appearing on behalf of the second respondent.

7. *Mr.A.Thirumurthy*, the learned counsel appearing on behalf of the petitioner would attack the impugned order of dismissal on the



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ground that firstly there is an unexplained and inordinate delay of four years in serving the enquiry report and asking for the further explanation of the petitioner. According to the learned counsel, unexplained and inordinate delay in conducting the disciplinary proceedings by itself is a ground to set aside the order of punishment. In this regard, he would rely upon the Judgment of the Hon'ble Division Bench of this Court in ***Union of India rep. by the Secretary to Government of Pondichery, (Revenue Department), Pondichery and another Vs. Central Administrative Tribunal, Madras Bench and another***¹ more specifically relying upon Paragraph No.4 of the said judgment which reads as follows:

“4. Having regard to the above undisputed facts we asked a question to ourselves as to whether, in such stated circumstances, should the enquiry be allowed to continue assuming the orders in challenge are liable to be set aside when for all the delay the employee cannot be found fault with at all. The Supreme Court in the judgment in State of Punjab and Ors. v. Chaman Lal Goyal, held that even the delay in serving the charge sheet would vitiate the charges and the Court should, on the facts available in each case, adopt a balancing process i.e. weighing the factors for and against and then take a decision on the totality of circumstances. It also held that the Court cannot infer that the employer had dropped the idea of proceeding against the delinquent from the mere inaction on the part of the Government. In another decision in State of Madhya Pradesh v. Bani Singh and Anr. 1990 (supp)

¹ 2005 (2) CTC 169



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S.C.C. 738, the Hon'ble Supreme Court had come down heavily when there is latches on the part of the employer in conducting departmental enquiry. Finding that on the facts of that case, there was no satisfactory explanation for the inordinate delay, the Supreme Court went on to hold that it would be unfair to order the departmental enquiry to proceed with even at that late stage. These two judgments, in our considered opinion, squarely applies to the case on hand. Except challenging the charge memo dated 7.3.2002 by filing O. A. No. 1689 of 1993, which was dismissed on 7.10.1994, there is nothing on record to show that the employee was at fault at any stage of the departmental enquiry. Even assuming for a minute that till 7.10.1994 the proceedings based on the charge memo dated 17.3.1992 could not be followed up because of the filing of the O. A. itself as referred to above, yet there is nothing on record to show that as to what prevented the Government from pursuing the charge memo referred to earlier atleast after 7.10.1994 in a diligent manner. The enquiring authority's report referred to earlier contains so many facts which stare at the Government from which the only conclusion that could be legally arrived at is that the Government is at fault. According to the charge memo the alleged misconduct was during the year 1984-85 and twenty long years have since gone by from that and yet no progress whatsoever made by the Government till the Tribunal passed orders challenged in these writ petitions. In other words, there is total inaction on the part of the Government from 7.10.1994, the date on which O. A. No. 1689 of 1993 was dismissed by the Tribunal, till 26.2.2000 when the Government issued the second charge memo. Again, we find there is total inaction on the part of the Government from 26.2.2000 till the employee again went before the Tribunal in the year 2002. The



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delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Government to continue with the enquiry any further. Therefore, on that ground stated by us, the orders in challenge are sustained and the writ petitions are dismissed. Consequently, connected miscellaneous petitions are dismissed. No costs.”

8. The learned counsel further contended that during the entire period of enquiry and after his suspension as on date of the superannuation, absolutely no amount whatsoever was paid by way of subsistence allowance. Therefore, if the disciplinary enquiry is conducted without paying subsistence allowance, then the same puts the delinquent employee to disadvantage as he would be unable to defend himself properly, driving him to suspension syndrome and therefore, on the sole ground, the impugned order of punishment is liable to be set aside. For the said proposition, the learned counsel relied upon the Judgment of Hon'ble Supreme Court of India in **CAPT. M.Paul Anthony Vs. Bharat Gold Mines Limited and another**².

9. The learned counsel further submitted that the petitioner also requested the enquiry officer to permit him to summon the respondents

² (1999) 3 SCC 679



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3 and 4 herein so as to cross examine them as he had alleged only on account of their unreasonable attitude and torture, he left service. The said request was turned down by the inquiry authority. When the delinquent official was not permitted to lead evidence, which would be in his favour, the same would vitiate the entire enquiry proceedings. For the said proposition, the learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Union of India and Others Vs. Prakash Kumar Tandon***³ more specifically in paragraph No.17 of the said judgment which reads as follows:

“17. The principles of natural justice demand that an application for summoning a witness by the delinquent officer should be considered by the enquiry officer. It was obligatory on the part of the enquiry officer to pass an order in the said application. He could not refuse to consider the same. It is not for the Railway Administration to contend that it is for them to consider as to whether any witness should be examined by it or not. It was for the enquiry officer to take a decision thereupon. A disciplinary proceeding must be fairly conducted. An enquiry officer is a quasi judicial authority. He, therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice.”

10. Per contra, *Mr.M.Lingadurai*, the learned Special Government Pleader relying upon the counter affidavit filed by them would submit

³ 2008 (6) CTC 257



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that there was no any undue delay in conduct of the disciplinary proceedings as the same can be explained. He would further submit that after tendering resignation in an incorrect format, the petitioner did not bother to report for duty or approach the Court of law as replied by him by his reply dated 23.12.1998. Therefore, he is only now trying to take advantage of the proceedings which is conducted belatedly only on account of his non-cooperation. Without even properly appearing before the enquiry officer, he is now trying to take advantage of the proceedings.

11. We have considered the rival submissions made on either side and perused the material records of the case. By the order impugned in the writ petition, the writ petitioner is dismissed from service on the charge of unauthorised absence. It can be seen that the petitioner was an Assistant Surgeon, thus in a responsible and essential service catering to the need of the patients at the Government Hospital. He was unauthorisedly absent from the year 1998 till the charge memorandum was issued in the year 2004 and thereafter, even till attaining the age of superannuation. His only defence to the charge is that he was harassed by the respondents 2 and 3 herein and therefore, he had tendered the resignation and that he is entitled to mention the said reason in the resignation letter. Even assuming for a moment that he was harassed by



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the respondents 2 and 3 and in that situation he had tendered the resignation, thereafter, nothing prevented him from reporting for duty.

Eventhough he replied to the order refusing to accept his resignation, that he is going to approach the Court of law, he did not do that. Therefore, the charge stands categorically proved. An inquiry was also conducted. Given the complete abandonment of service for long number of years, the punishment of dismissal from service is adequate and is not disproportionate to the delinquency complained of. Now the only question is that whether the order of punishment is vitiated by any illegality so as to interfere with the same by way of judicial review ?

12. The first contention of the learned counsel for the petitioner is that there is an unexplained delay in conduct of the charge memorandum. The question of delay, has to be considered with reference to the facts and circumstances of the case. In the instant case the petitioner himself never cared to report for duty or his claim, even his salary. In that view of the matter, when there was absolute non-cooperation from the petitioner, we do not see that the delay of more than three years in supplying the copy of the enquiry report and asking for the explanation would be fatal as far as this case is concerned and we see no consequential prejudice whatsoever. As a matter of fact, in the facts of the present case, the petitioner can never infer or develop on



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idea that the employer could have dropped the disciplinary proceedings.

On account of the delay, nor he was prevented from mustering any evidence or summoning any witness, which would have been in his favour. Therefore, in the case on hand, absolutely, the disciplinary proceedings cannot be challenged on the ground of delay in initiation or delay in conduct of the proceedings and as such the contention of the learned counsel for the petitioner cannot be countenanced.

13. The second ground of attack made by the learned counsel for the petitioner is that absolutely no subsistence allowance is paid. While there can be no to opinion about the proposition that if the employee is suspended and the disciplinary enquiry is proceeded without even payment of his subsistence allowance, it would not be a fair enquiry as he would not be in the right frame of mind to defend himself. Be that as it may, in the present case, the petitioner who is a Doctor, did not even bother to claim his salary when he was not even suspended. He left service in the year 1998 and until the charge memorandum issued in the year 2004, he did not even make a claim for the salary. That shows that he was very well otherwise settled by way of private practice. Even after issuing of charge memo, when he submitted an explanation, the petitioner did not report for duty or pray for his salary. It is to be noted that he was placed under suspension only on the last day of his



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retirement so as to retain him in service as the disciplinary proceedings were not concluded. In that view of the matter, the said principle which is enunciated by the Hon'ble Supreme Court of India in **CAPT M.Paul Anthony's case (cited supra)**, cannot be applied to the facts and circumstances of the instant case.

14. The third contention raised on behalf of the petitioner is that the enquiry officer did not permit the petitioner to examine the third and fourth respondents as witnesses. The purpose for which, the examination of the said witnesses were sought is to establish that only on account of their undue behaviour, the petitioner tendered his resignation. Even assuming for a moment that the said allegation is correct, and even taking the said fact as proved, even then the petitioner is a Government servant bound by the fundamental rules and he cannot abandon his duty and be without reporting for duty. Thus, their examination or non-examination will not in any manner alter the position as to the delinquency complained in the charge.

15. In that view of the matter, absolutely, no exception whatsoever can be taken to the decision of the enquiry officer in not allowing the petitioner to summon the said witnesses. Thus we find none of the grounds raised by the petitioner are tenable.



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16. We are of the considered view that the petitioner being a Doctor, had tendered his resignation, even though could have been on account of his inability to put up with the attitude of his superiors, even then as a responsible Government servant, he cannot totally abandon the duty. From 1998 onwards, he was not even placed under suspension and the petitioner never cared to question the same. Whiles, when the respondents woke up from slumber and belatedly passed an order of dismissal from the service, by way of this litigation, the petitioner is attempting to gain the service benefits including back wages and pension etc.

17. A government servant who was never interested in the service and never served the people, cannot by filing writ petition under Article 226 of the Constitution of India unjustly enrich himself, just because the proceedings were initiated and conducted in a slow pace. The basic requirement as per Rule 11 of the Fundamental Rules of the Tamilnadu Government, is that whole time of the Government Servant should be at the disposal of the Government which pays him. A person who all the time abandoned his duty is not entitled for the extraordinary relief in Writ Jurisdiction. The present writ petition is nothing but an abuse of process of law and therefore, this Court will not exercise its



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extraordinary jurisdiction under Article 226 of the Constitution of India
to grant any relief to the petitioner.

18. In the result, finding no merits, this Writ Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

13.09.2023

NCC : Yes / No
Index:Yes/No
Internet:Yes/No
sjj

To:

The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai-600 009



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S.S.SUNDAR, J.
AND
D.BHARATHA CHAKRAVARTHY,J.

Pre-Delivery Order made in
W.P.(MD)No.4105 of 2010
and
M.P(MD)No.1 of 2010

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