



W.P(MD)No.16357 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16357 of 2020

G.Mathialagan

... Petitioner

Vs.

1.The Director of Public Health and Preventive Medicine,
O/o. Director of Public Health and Preventive Medicine,
Chennai -6.

2.The Deputy Director of Health Services,
Trichy.

3.The Block Medical Officer,
Government Primary Health Centre,
Thandalliputhur- 621217,
Musuri Taluk,
Trichy District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the entire records in relating to the impugned order passed by the third respondent vide order in Na.Ka.No.122/A1/2003 dated 28.12.2008 and as well as the impugned order passed by the 1st respondent vide his proceedings in R.No. 76945/DA/09/S3 dated 03.12.2014 and to quash the same and consequently direct the respondents to treat the petitioner's suspension period from



W.P(MD)No.16357 of 2020

26.02.2003 to 28.03.2007 as 'Duty Period' and to pay a full pay and allowances and all other Monetary benefits, including accrued pension benefits to the petitioner forthwith.

For Petitioner : Mr.M.S.Jeyakarthik

For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2.The writ petitioner joined the respondent department as Watchman. When he was working as a watchman in Government Primary Health Centre, Thandalai Puthur, Musiri Taluk, the ambulance vehicle which was stationed in the premises was damaged due to fire. In this regard, Crime No.126 of 2003 was registered on the file of the Musiri Police Station. The petitioner was suspended from service. The criminal case eventually ended in acquittal on 07.03.2007. Thereafter charge memo was issued and punishment of stoppage of increment was imposed on the petitioner on 14.06.2008. Challenging the same, the petitioner filed appeal before the first respondent. The first respondent vide order dated 16.06.2010 confirmed the order passed by the original authority and dismissed the appeal. The petitioner subsequently, was



W.P(MD)No.16357 of 2020

promoted as Junior Assistant and retired from service on 31.03.2018. The petitioner thereafter decided to raise the issue of the treatment of the suspension period.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to quash the impugned orders and grant relief as prayed for. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents.

4. The learned Additional Government Pleader would submit that the petitioner though acquitted in a criminal case was eventually found guilty in the departmental proceedings and therefore, the authority was justified in treating the period of suspension as one of leave on loss of pay. The suspension period between 26.02.2003 and 24.03.2003 was treated as Earned Leave and the period from 25.03.2003 till 24.03.2007 as leave on loss of pay. According to the learned Additional Government Pleader only if the petitioner had been departmentally exonerated, the relief now sought for by him can be granted and not otherwise. The learned Additional Government Pleader submitted that the writ petition deserves to be dismissed on the ground of laches. He pointed out



W.P(MD)No.16357 of 2020

that the cause of action has arisen way back in the year 2008 and after a gap of twelve years, the petitioner had filed the writ petition. According to the learned Additional Government Pleader, such issues should be resolved even when the employee is in service and the employee cannot be allowed to raise stale and settled issues long after retirement. He pressed for dismissal.

5. I carefully considered the rival contentions and went through the materials on record. The petitioner was suspended from service on 27.02.2003 following his arrest by the Musiri Police in Crime No.126 of 2003. A copy of the suspension order has been enclosed at page No.6 of the typed set of papers. It reads as follows:

" WHEREAS Thiru.G.Mathiyalagan, Watchmn, Primary Helth Centre, T.Puthur has been arrested by Police regarding the Fire incident occurred in the Primary Health Centre premises while doing his duty.

WHEREAS a complaint against Thiru.G.Mathiyalagan of a criminal offence is under investigation AND WHEREAS in the circumstances of the case it is necessary in the public interest to place the said Thiru.G.Mathiylagan under suspension from service.

Now, therefore, under sub-rule(e) of Rule 17 of the Tamilnadu Civil Services(Discipline and Appeal) rules the said Thiru.G.Mathiyalagan is with effect from 26.2.2003 placed under suspension from service, until further orders.



W.P(MD)No.16357 of 2020

2. During the period of suspension, the said Thiru G.Mathiyalagan will be paid subsistence allowance and dearness allowance as admissible under Fundamental Rule 53(1).

He will in addition, be paid the eligible compensatory allowance(s).

3. The Head quarters of the said Thiru. G.Mthiyalagan during the period of suspension shall be at T.Puthur and the said Thiru G.Mathiylagan shall not leave the Headquarters without obtaining the prior permission of the authority concerned."

The fact remains that the case ended in acquittal on 07.03.2007 in C.C.No.208 of 2006 on the file of the Additional District and Sessions Judge, (FTC-2), Trichy. The petitioner was reinstated in service on 29.03.2007. When the petitioner was suspended only on account of the involvement in the criminal case and the criminal case ended in acquittal, the natural corollary is that the suspension period shall be treated as duty for all purposes. It is true that subsequently charge memo was issued on 13.07.2007 and the petitioner was found guilty and the punishment of stoppage of increment for one year without cumulative effect was imposed on the petitioner. This subsequent development cannot have any bearing on the petitioner's earlier suspension. If the petitioner had been suspended pursuant to the issuance of charge memo and the petitioner was eventually found guilty there would be considerable force in the



W.P(MD)No.16357 of 2020

submission of the learned Additional Government Pleader. But that is not the case here. The petitioner's suspension was directly linked to his involvement and arrest in the criminal case. It had nothing to do with the issuance of charge-memo. Therefore, the finding of guilt in the department proceedings cannot be a relevant consideration.

6. I must also deal with the submission of the learned Additional Government Pleader that the writ petition deserves to be dismissed on the ground of laches. It is true that the petitioner has come to this Court after a gap of 12 years. The petitioner was after all a watchman during the relevant time. He retired in the year 2018 as Junior Assistant. The petitioner probably was apprehending that if he filed any case against the department, he must be visited with adverse consequences. In any event, on account of the delay on the part of the petitioner, the department cannot be said to have suffered any prejudice. No right of third party has intervened. Only if there has been a change of position on the side of the respondent, this Court would be justified in invoking the principles of laches. I therefore set aside the impugned order insofar it relates to the treatment of the suspension period. The petition mentioned period of suspension shall be treated as duty for all purposes.



W.P(MD)No.16357 of 2020

WEB COPY

7. Accordingly, this writ petition is allowed. No costs.

14.03.2023

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

pnn

To

- 1.The Director of Public Health and Preventive Medicine,
O/o. Director of Public Health and Preventive Medicine,
Chennai -6.
- 2.The Deputy Director of Health Services,
Trichy.
- 3.The Block Medical Officer,
Government Primary Health Centre,
Thandalliputhur- 621217,
Musuri Taluk,
Trichy District.



WEB COPY



W.P(MD)No.16357 of 2020

G.R.SWAMINATHAN, J.

pnn

W.P(MD)No.16357 of 2020

14.03.2023