



W.P.(MD)No. 10695 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 10695 of 2014

and

M.P(MD)No.1 of 2014

E.Muthukumari

... Petitioner

Vs.

1. The Director of Medical Education,
Kilpauk,
Chennai – 600 010.

2. The Dean,
Thoothukudi Government Medical College,
3rd Mile, Kamaraj Nagar,
Thoothukudi – 8.

3. Dr.Ravisankar

4. Dr.R.Parameswari

5. Dr.K.Rajendra Ratnam

6. Dr.R.Nepolean

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, calling for the records pertaining



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to the impugned order passed by the 2nd respondent in Na.Ka.No.6966/Nipi4/08, dated 16.05.2014, quash the same and consequently direct the respondents to reinstate the petitioner in service with back wages and with all monetary and service benefits.

For Petitioner : Mr.P.Saravanakumar
For R-1 & R-2 : Mr.D.Sadiq Raja
Additional Government Pleader
For R-3 to R-6 : No Appearance

ORDER

This writ petition is filed challenging the dismissal order, vide proceedings, dated 16.05.2014 with consequential relief to reinstate the petitioner with backwages.

2. Heard Mr.P.Saravanakumar, learned counsel appearing for the petitioner and Mr.D.Sadiq Raja, learned Additional Government Pleader, appearing for the respondents 1 & 2. Perused the material documents available on record.

3. The petitioner was appointed as a Junior Assistant through Employment Exchange temporarily on consolidated pay on 02.01.2006.



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Thereafter, on 31.05.2007, the government has sanctioned 27 posts of Junior Assistants to the respondent College and the petitioner was appointed on 31.05.2007 on a time scale of pay. The petitioner was assigned to do the Junior Assistant work in the MEI Students Section, which deals with the entire activities of the students admitted from the first year to final year. There is a separate cashier available to transact the student fees, admission fees, examination fees, etc.

4. The contention of the petitioner is that the 4th respondent who was the then Vice Principal of the Thoothukudi Medical College, directed the petitioner to deal with the cash in respect of student fees, examination fees, etc., which related to the 1st year to final year students and also directed to deal with the cash in respect of account called “M/s. Students Welfare Fund and Dean's Fund”, in Account No.505578603, Indian Bank, Melur Branch, Thoothukudi. The petitioner came to know that the account was an exclusive account of the Dean and Vice Principal who exclusively deals with that account and the signing authority of this account was only the 3rd respondent who was the then Dean and the 4th respondent who was the then Vice Principal. The other accounts related to



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the College activities and transactions were dealt with by the cashier and the Junior Administrative Officer who was appointed for that purpose.

5. The further contention of the petitioner is that she was appointed as Junior Assistant by Dean, the 2nd respondent herein who is the appointing authority. The 3rd respondent, who was serving as Dean then, has been impleaded in his personal capacity. The 3rd respondent being the Dean, the appointing authority, then the petitioner ought to abide by the directions of the 2nd and 3rd respondents, who are one and the same person.

6. The charge memo, dated 19.11.2008 was issued and the charge against the petitioner is that the petitioner has collected excess amount from the students and remitted the same to the accounts. The petitioner had submitted his explanation stating that the said cash was remitted in the bank account and the amount is being handled by the 2nd to 6th respondents. In the meanwhile, the petitioner was placed under suspension, which is challenged in W.P.(MD) No. 4912 of 2010 and the same was dismissed. Subsequently, the petitioner has preferred an appeal in W.A(MD)No.57 of 2011 and the same was also dismissed,



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vide order, dated 01.02.2011. However the Hon'ble Division Bench has issued direction to pay Subsistence Allowance and further direction which is as follows:

“after the final report is filed in Crime No.1258 of 2008, it is open to the delinquent to seek review of the order of suspension and the competent authority shall consider it in the light of the statutory provisions and guidelines issued thereunder, if any decision is taken against the delinquent by the authority concerned, the delinquent has to wait till she is exonerated finally”.

7. The further contention of the petitioner is that the charge sheet was not filed until the higher officials had retired from service, but the petitioner is still facing the criminal case. The petitioner submitted that the petitioner collected the amount based on the directions of the higher officials. The specific contention raised by the petitioner is that when she was appointed in the year 2006, the higher officials had directed the petitioner to collect the fees and remit the same in the exclusive account. Since the petitioner was a newly appointed person in the year 2006, the petitioner has carried out the directions of the respondents. After remittance, there were certain allegations that the College is collecting excess fees. When the petitioner has reported the same to the higher officials, they have



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instructed the petitioner that they will protect the petitioner appropriately, since collection of fees is not an illegal act. When for the next year admission of students was carried out, again the petitioner was directed to collect the amount. Again, same allegation was reported to the higher officials and the respondents have issued a charge memo in the year 2008 as well. The petitioner has submitted an explanation that it was collected as per directions of the respondents, especially, 3rd and 4th respondents and also objected before the authorities that this act of collecting money is causing her stress and therefore, she has prayed to transfer to some other post. But, the respondents have pacified the petitioner to continue in the said post and also stated that the petitioner would be adequately protected. When the said request was submitted to the respondents, the respondents ought to have transferred the petitioner to some other department. However, such transfer was not made there. But the respondents have proceeded with the departmental enquiry and subsequently, dismissed the petitioner from service.

8. It is seen from the records that the petitioner was appointed as Junior Assistant only. From the date of appointment, the petitioner has collected



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amount. The specific contention raised by the petitioner is that, it was deposited in favour of “M/s. Students Welfare Fund and Dean's Fund”, bearing account No. 505578603, Indian Bank, Melur Branch, Thoothukudi, which account was operated in the name of Dean and Vice Principal. The respondents have initiated disciplinary enquiry against the petitioner. The specific plea taken by the petitioner is that the 3rd and 4th respondents have directed the petitioner to collect amount from the students and remit the same into the exclusive account. Then the 1st respondent ought to have initiated action against the 3rd and 4th respondents in their personal capacity. But the 1st respondent has not taken any action against the 3rd and 4th respondents and the petitioner alone is targeted. Even in the counter the respondents have not specifically denied this allegation. It is also to be noted that the respondents have not filed any charge sheet in the criminal case until the higher officials are retired from service.

9. By taking into consideration of the facts and circumstances, this Court is of the considered opinion that the 2nd respondent has taken action against the petitioner alone and has not taken any action against the 3rd and 4th respondents and more so, they were allowed to retire from service, hence the



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disciplinary action against the petitioner is discriminatory. Therefore, this Court is inclined to quash the impugned punishment order.

10. The petitioner submitted that the respondents have paid subsistence allowance to the petitioner for a period from 2006 to 2010 only, subsequently, she was not paid any subsistence allowance. The respondents are directed to pay subsistence allowance for a period from 17.05.2014 to until today. The petitioner is entitled to 50% of back wages

11. Therefore, this Court is inclined to pass the following orders:

- 1.The impugned order, dated 16.05.2014, passed by the 2nd respondent in Na.Ka.No.6966/Nipi4/08, is hereby quashed.
- 2.The respondents are directed to reinstate the petitioner with continuity of service and the petitioner shall be posted in post, where the collection of money is not involved.
- 3.As far as the Subsistence Allowance is concerned the petitioner is entitled to full subsistence allowance from the date of suspension until the date of dismissal i.e. 16.05.2014.



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4.As far as the backwages is concerned the petitioner is entitled to 75% of the backwages for the period from 17.05.2014 until the date of reinstatement.

5.This order shall be implemented, within a period of four weeks from the date of receipt of a copy of the order.

12. Accordingly, this Writ Petition is allowed. No Costs.

Consequently, connected miscellaneous petition is closed.

Index : Yes / No

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Internet : Yes

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To:

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S.SRIMATHY, J

ksa

**Order made in
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