



WP (MD) No.20676 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P.(MD)No.20676 of 2021
and
W.M.P.(MD)No.17297 of 2021

P.Susila Mary

: Petitioner

Vs.

1.The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai – 10.

2.The Dean,
Government Rajaji Hospital,
Madurai – 20.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order in Na.Ka.No.732/Ne4(3)/2017, dated 17.05.2019 passed by the second respondent and the consequential appeal order in Na.Ka.No. 312/C.Ma.B2/2/2020, dated 26.02.2020 passed by the first respondent and quash the same and consequently, directing the respondents to grant all service and monetary benefits to the petitioner.



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For Petitioner : Mr.P.Karthick

For Respondents : Mr.J.Ashok,
Additional Government Pleader

ORDER

The petitioner was employed as a Cook in the second respondent hospital from 19.10.2007. She availed a loan of Rs.1,25,000/- from a private individual. Some dispute arose between the petitioner and the said individual, which led to the filing of a suit for recovery of money before the Sub Court, Madurai, in O.S.No. 846 of 2014. An *ex-parte* degree was passed as against this petitioner on 30.11.2015 and thereafter, an Execution Petition was filed in E.P.No.193 of 2016, which was also ordered *ex-parte* on 13.08.2019 for attachment of salary. On receipt of the order copy from the Court, the second respondent / the disciplinary authority issued a charge memo as against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, that she received loan without obtaining prior permission and imposed a punishment of stoppage of increment for three months without cumulative effect by order dated 17.05.2019 in Na.Ka.No.732/Ne4(3)/2017. As against this order, the petitioner preferred an



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appeal and the first respondent by order dated 26.02.2020 in Na.Ka.No. 312/C.Ma.B2/2/2020, confirmed the orders passed by the second respondent.

Aggrieved over the orders passed by the disciplinary authority and the appeal authority, the petitioner has moved the instant writ petition.

2.Learned Counsel appearing for the petitioner submitted that the petitioner is a widow survived by two daughters. Her husband died in the year 1997, leaving the petitioner and the daughters in lurch. Therefore, she obtained a hand loan for her livelihood, before her appointment in the second respondent hospital. The petitioner was appointed as a Cook in the second respondent hospital and joined service with effect from 19.10.2007 and this loan was obtained prior to the date of her appointment. Therefore, he prayed for allowing this writ petition.

3.Learned Additional Government Pleader appearing for the respondents submitted that as per the Civil Court decree, the cause of action arose on 17.09.2011. The petitioner was appointed and joined the second respondent Hospital on 10.10.2007. Therefore, it is not correct to say that the petitioner had borrowed the loan amount prior to her appointment. Since the petitioner has violated the conditions laid down under Rule 6(4)(a) of the Tamil Nadu



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Government Servant Conduct Rules, 1973, a charge memo was issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. He further submitted that the Department has taken only a lenient view by imposing the punishment of stoppage of increment for three months without cumulative effect, which does not warrant any inference. Therefore, he prayed for dismissal.

4. This Court considered the rival submissions made on either side and also perused the materials placed on record.

5. The petitioner is an employee of the second respondent hospital and she is said to have borrowed a loan from a private individual, without obtaining prior permission and as such, she has violated Rule 6(4)(a) of Tamilnadu Government Servant Conduct Rules, 1973. Departmental proceedings were initiated against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and in conclusion of the same, she was imposed with a punishment of stoppage of increment for three months without cumulative effect. This order of punishment passed by the second respondent was confirmed by the appellate authority, viz., the first respondent.



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6. Admittedly, the petitioner is a destitute widow and in the strength of her registration with the Employment Exchange, she was appointed as a Cook in Government Rajaji Hospital on 19.10.2007 and at present, she is working as a Record Clerk. One Jesitha, W/o. Jeyakumar, has filed a suit for recovery of money as against the petitioner in O.S.No.846 of 2014 before the Sub Court, Madurai and obtained an *ex-parte* decree on 30.11.2015. Subsequently, she filed an Execution Petition in E.P.No.193 of 2016, which was also decreed *ex-parte* on 13.08.2019, for attachment of salary of the petitioner. On receipt of the orders passed by the Civil Court, the respondents have initiated disciplinary action as against the petitioner for obtaining loan without the prior permission of the authorities concerned.

7. The Petitioner has been appointed in the respondent hospital only on the ground that she is a widow. Her husband died in the year 2007 leaving the petitioner and two minor daughters in lurch. The petitioner claims that she has borrowed the money prior to her appointment, however, she has not produced any materials to substantiate this claim. She further claims that because of her financial condition, she was not able to contest the suit effectively and that the suit has been



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decreed *ex-parte*, based on which the Department has proceeded with the disciplinary proceedings.

8. This Court is not expressing anything on this claim made by the petitioner inasmuch as there is a Civil Court decree as against her, however, considering the facts and circumstances of the case, the status and the financial condition of the petitioner, this Court, by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, is modifying the punishment imposed against the petitioner as a 'censure', instead of 'stoppage of increment for three months without cumulative effect'.

In the result, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
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