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W.P.No.11318 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11318 of 2012
and M.P.No.1 of 2012

Dr.S.Babu M.S.,
Tutor, Tumor Pathology,
Government Rajaji Hospital,
Madurai.

... Petitioner

-VS-

1.The Principal Secretary to Government,
Health and Family Welfare (1-2) Department,
Fort St. George, Chennai – 9.

2.The Director of Medical Education,
Kilpauk, Chennai – 10.

3.The Dean,
Madurai Medical College,
Rajaji Hospital, Madurai.

... Respondents

PRAYER: Writ petition is filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling



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for the records relating to the Impugned Punishment issued by the 1st respondent, the Principal Secretary to Government Health and Welfare (1-2) Department in G.O.(D) No.1104 Health and Family Welfare (1-2) Department dated 27.09.2011 quash the same as Arbitrary, illegal and direct the respondents to issue all the consequential service and attendant benefits to the petitioner within short date that may be fixed by this Hon'ble Court.

For Petitioner : Ms.G.Sridevi

For Respondents : Mr.Tippu Sultan,
Government Advocate

ORDER

The petitioner is a medical Doctor who was employed as a Tutor in the Government Rajaji Hospital, Madurai at the time of presentation of the writ petition. With regard to medical certificates issued by him between 1999 and 2002, the following charge was framed against him:



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“That Dr.S.Babu while working as Civil Surgeon in Government Rajaji Hospital, Madurai, had issued false medical certificate after having received bribe from the claimants (Government servants) during the period 1999-2002, who had claimed medical expenditure exemption under section 80 DDB of Income Tax Act 1961 and thereby caused Revenue loss to the Government. Thus the accused officer has violated the four conditions laid down in Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973.”

2. Pursuant to the conclusion of disciplinary proceedings, by order dated 27.09.2011, the punishment of stoppage of increment for a period of one year with cumulative effect was imposed on him. The present writ petition arises in the said facts and circumstances.

3. Learned counsel for the petitioner submits that the charge of bribery was not proved even on a preponderance of probability. She



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further submits that the incidents relate to the period 1999-2002, whereas the charge memo was issued on 23.01.2008; the enquiry report was submitted on 18.04.2011; and punishment was imposed thereafter. She further submits that the charged officer was not provided copies of documents relied upon and, therefore, he was unable to avail of the opportunity of cross examination. After pointing out that the charged officer attained superannuation in 2015, without prejudice to the contention that the impugned order is liable to be quashed, at a minimum, learned counsel contends that the punishment be modified so as to enable the petitioner to receive full pensionary benefits.

4. In response to these contentions, learned counsel for the respondents submits that the charged officer admitted that he issued false certificates. By referring to the explanation dated 23.05.2011 from the petitioner, he submits that the petitioner / charged officer admitted that one medical certificate issued by him was found to be false by the Medical Expert Committee. He submits that it was



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further admitted that this would have resulted in revenue loss. In these circumstances, learned counsel contends that no case is made out to interfere with the impugned order.

5. As is evident on reading the charge, the petitioner was charged with the offence of issuing false medical certificates after receiving a bribe from Government servants during the period 1999-2002. In the impugned order, the findings of the enquiry officer have been set out. Such findings are as under:

“On perusal of the records, the special medical board determines that of the total issued certificates, 1 certificate was false. The delinquent officer has given a written statement that he does not want to cross-examine the members of Special Medical Board or the patients. The delinquent officer denies bribery, accepts his diagnosis may be wrong by which it is clear that the certificate is false. However there may be the revenue loss to the Government and the quantum of revenue loss may be very negligible. Hence the charge framed



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against the delinquent officer is held as proved."

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6. The above extract discloses that the charged officer denied having accepted a bribe. In view of such denial, it was incumbent on the respondents to lead evidence and prove the charge of bribery. This has not been done. As regards the issuance of a false certificate, the petitioner / charged officer admitted that his diagnosis may have been wrong. In fact, he appears to have stated that the members of the Medical Board may be more experienced and specialized than him. To that extent, he may be liable to be punished for having issued the medical certificate without properly examining the patient and diagnosing the condition.

7. In spite of not leading evidence and establishing the charge as regards bribery, the punishment of stoppage of increment for a period of one year with cumulative effect was imposed on the petitioner. In view of the above conclusion that the charge was not proved as regards bribery, the punishment imposed on the petitioner



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is grossly disproportionate and has an adverse impact on the petitioner's retirement and other monetary benefits. Therefore, the interest of justice warrants that the punishment be modified as stoppage of increment for a period of one year without cumulative effect. The impugned order shall stand modified to that extent. As a corollary to this conclusion, the petitioner's pensionary and other benefits shall be re-fixed within a reasonable time and preferably within *three months*.

8. W.P.No.11318 of 2012 is disposed of on the above terms without any order as to costs. Consequently, M.P.No.1 of 2012 is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

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