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W.P.No.546 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM :

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.546 of 2020

1.M.Mani (deceased)

2.M.Suguna

...

Petitioner

(P-2 - substituted as legal heir of the deceased P-1, as per order dated 27.02.2024 in WMP.No.2097/2022 in WP.No.546/2020)

-Vs-

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

2.The Dean,
Government Kilpauk Medical
College & Hospital,
Kilpauk, Chennai - 600 010.

...

Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the order in L.Dis.No.108/E2/1/2019 dated 10.09.2019 passed by the 2nd respondent and quash the same and consequently, direct the respondents to pay to the petitioner all monetary and other benefits with continuity of service.



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For Petitioner : Mr.S.Sathia Chandran
For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

Heard Mr.S.Sathia Chandran, the learned counsel for the petitioner and Mr.E.Sundaram, the learned Government Advocate for the respondents.

2. The petitioner has filed this writ petition challenging the order of the second respondent in L.Dis.No.108/E2/1/2019 dated 10.09.2019 and to direct the respondents to pay to the petitioner all monetary and other benefits with continuity of service.

3. The petitioner's husband was appointed as Ambulance Driver with the second respondent. FIR has been registered against the husband of the petitioner on the allegation that he had furnished false education certificate at the time of joining service. Subsequently, a charge sheet has been filed in C.C.No.10917/90 and in which, the petitioner's husband was convicted. The petitioner's husband preferred an appeal against the conviction. However, the said appeal was dismissed. Later the



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petitioner's husband filed a revision petition in CrI.R.C.No.262 of 2000 and in which, the conviction and sentence imposed against the petitioner was set aside and he was acquitted from the charges.

3.1. On 10.02.2003, the petitioner's husband made a representation to the second respondent seeking to revoke his dismissal from service and to reinstate him in service. Subsequently, the petitioner's husband filed a Writ Petition in W.P.No.22100 of 2013 seeking appropriate direction and in the above Writ Petition, an order has been passed by directing the authorities to initiate fresh enquiry and the respondents, if so advised can initiate fresh enquiry against the petitioner. The enquiry, if initiated, should be completed within three months from the date of receipt of a copy of that order. In case, the Department decides not to initiate fresh proceedings, then terminal benefits of the petitioner should be settled within a period of four months from the date of receipt of a copy of that order. However, the respondents have chosen to initiate disciplinary action on the same set of charges and he was dismissed from service with retrospective effect from 2000 and the said dismissal is now under challenge. During the pendency of this proceedings, the husband



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of the petitioner died and the petitioner is impleaded as his legal heir.

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4. Mr.S.Sathia Chandran, the learned counsel for the petitioner, submitted that once the criminal proceedings for the same set of facts had ended into acquittal, no disciplinary proceedings can be initiated on the same set of facts once again. In support of his above contention, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court held in ***Ram Lal Vs. State of Rajasthan and Others, reported in CDJ 2023 SC 1109*** wherein it is held as under:

“ .. 13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances. The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]

5. This Court in similar other matter involved in ***V.S.Varadharajan***



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Vs. Tamil Nadu Generation and Distribution Corporation

(TANGEDCO) reported in 2024 (1) CTC 55 has held as under:

“.. 8. This apart, most of the documents relied upon in the impugned Charge Memo as well as several of the Witnesses listed in the Annexure IV of the Charge Memo, one and the same as that of the List of Documents and the Witnesses before the Criminal Court. When the Criminal Court has applied the strict principles governing the law of evidence and after examination of these documents and the Witnesses, had acquitted the Petitioner, I am unable to comprehend as to how the Disciplinary Authority may consider evidences from these documents and take a contrary view from the Criminal Court’s decision. Thus, for all the foregoing reasons, I am of the affirmed view that the Petitioner should not be subjected to the rigorous process of a Departmental Enquiry.”

6. Mr.E.Sundaram, the learned Government Advocate for the respondents, submitted that the petitioner's husband after having convicted in the lower Court was given with charges and he was dismissed from service; subsequent to his acquittal in Crl.Rc.No.262/2000, the petitioner's husband once again filed another writ for reinstatement; only in the said writ petition an order has been issued to direct the authorities to take a decision as to whether fresh proceedings are needed or not by making an enquiry; however, the



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second respondent had convinced himself to proceed with the departmental proceedings once again and at the conclusion of the same, the petitioner's husband got once again removed from service; when the petitioner's husband challenged the same by way of filing this writ petition, he died during the pendency of the petition.

7. Now the matter has to be dealt only on the narrow aspect of whether departmental enquiry can be initiated on the identical facts once the criminal charges on the same set of facts had ended in acquittal. The law on this point is well settled as per the earlier judgment rendered by the Hon'ble Supreme Court and followed by this Court in several judgment. Hence, the decision to initiate the departmental enquiry is not in tune with the legal position settled already. Even if the punishment imposed upon the petitioner is quashed, no reinstatement can be ordered in view of the fact that petitioner's husband is no more and he had also attained the age of superannuation while he filed this writ petition.

8. In the result, this Writ Petition is allowed and the impugned



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order passed by the 2nd respondent in L.Dis.No.108/E2/1/2019 dated 10.09.2019 is hereby quashed and the respondents are directed to pay the petitioner all monetary and other benefits with continuity of service of her husband except back wages, during the period for which he was not under employment, within a period of six weeks from the date of receipt of a copy of this order. No costs.

15.03.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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

2.The Dean,
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College & Hospital,
Kilpauk, Chennai - 600 010.

R.N.MANJULA, J.,



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