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W.P.No.15800 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

W.P.No.15800 of 2016

and

W.M.P.No.13716 of 2016

Dr. K. Rajendran

....

Petitioner

Vs.

1. Government of Tamil Nadu
Rep. by its Principal Secretary,
Health and Family Welfare Department
Fort St. George
Chennai 600 009

2.The Director of Public Health and
Preventive Medicine,
DMS Compound,
Teynampet, Chennai 600 006 .

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified mandamus, calling for the concerned records from the respondents quash the order of the 1st Respondent dated 17.3.2016 bearing G.O.(D)No.440, Health



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and Family Welfare (D2) Department in so far as imposing the punishment of compulsory retirement and consequently direct the Respondents to retire the Petitioner with effect from 30.06.2015 pay pension, Death cum Relief Fund and all other terminal benefits within the time framed stipulated by this Court.

* * *

For Petitioner : Mr.R.Kamatchi Sundaresan

For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

Challenging the order passed by the first respondent confirming the provisional decision taken to impose a punishment of compulsory retirement of the petitioner, this Writ Petition has been filed.

2. The factual matrix of the case is described hereinbelow.

(i) The petitioner had joined the services of the first respondent on 01.10.1984 as a Medical Officer. On joining, he was posted at the



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Panchayat Union Dispensary, Chettikulam, Perambalur District. In the year 1998, his services were transferred to the Government Primary Health Centre, Brahambi, Trichy District where he worked till January 2002. His services were subsequently transferred to the Government Hospital, Perambalur. The order of transfer was cancelled and he was transferred to Manaparai and thereafter to Ariyalur.

(ii) Challenging the transfer, the petitioner filed O.A.No.697 of 2002 on the file of the then Tamil Nadu Administrative Tribunal which had stayed the order of transfer by order dated 28.02.2002 and the respondents were directed to permit the petitioner to continue at Brahambi, Trichy District . However, the petitioner would submit that he was not permitted to join duty.

(iii) Meanwhile, the second respondent had issued a charge Memo dated 25.05.2003 containing two charges (a) that the petitioner



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was unauthorizedly absent from 01.02.2002, resulting in dislocation of work and (b) that he has disobeyed the orders of superiors by not joining duty in the transferred place. The enquiry was conducted on 29.11.2004 and thereafter, the petitioner did not hear anything. He was also not permitted to join duty despite repeated requests. Ultimately, after his continuous efforts, he was permitted to join duty as Assistant Surgeon on 03.02.2012 in the Primary Health Centre, Irungalur, Trichy District. He has been discharging his duty therein and there has been no complaint.

(iv) Since the petitioner has not heard anything about the fate of the enquiry, he was under the bonafide impression that the same had been closed. While so, he received a letter dated 30.01.2014 from the first respondent, asking him to give an explanation to the enquiry report of the Enquiry Officer, holding that the charges levelled against him have been proved and that the Government had decided to accept the



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findings. The letter annexed a copy of the enquiry report. The petitioner had given a detailed reply dated 06.03.2014 requesting to drop the charges. Thereafter, there were no further orders. Due to his indifferent health, the petitioner was unable to continue in employment and had sought for voluntary retirement on 28.11.2014. This request was turned down on the ground that the proceedings under the Charge Memo dated 25.05.2003 is still pending.

(v) The petitioner would submit that his actual date of retirement was 30.06.2015. While so, on 26.06.2015, the first respondent had placed the petitioner under suspension on the ground that disciplinary proceedings were pending against him due to his absence from duty for the period from 01.02.2002 to 02.02.2012 nearly for 10 years. The petitioner was also not permitted to retire from services by orders of the first respondent dated 30.06.2015.



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(vi) The petitioner would submit that for the charge memo issued on 25.05.2003, the enquiry was concluded on 29.11.2004 and the enquiry report had been submitted on 01.03.2005. However, no action was taken, pursuant to the enquiry report and it was only on 30.01.2014 that the enquiry report had been forwarded to the petitioner with a letter of the first respondent. The petitioner had sent a reply on 06.03.2014 and even thereafter, no orders were passed. Therefore, the petitioner had filed W.P.No.20382 of 2015 seeking a direction to the respondents to conclude the disciplinary proceedings in respect of the charge memo dated 25.05.2003. By an order dated 09.07.2015, the writ petition was allowed directing the respondents to dispose of the proceedings within a period of two months from the date of receipt of the copy of that order. Despite such orders, the respondents had not passed final orders and it was only after the petitioner had filed a contempt petition and before the same was numbered that the first respondent had issued the impugned order imposing the punishment of compulsory retirement.



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This punishment has been imposed contrary to the recommendation of the Tamil Nadu Public Service Commission through its letters dated 23.03.2015 and 18.06.2015 recommending the respondents to drop the charges and punishment. Despite this, the first respondent has proceeded to pass the impugned order. Challenging the same, the petitioner is before this Court.

3. Though a counter has not been filed, the learned Government Advocate appearing for the respondents had made his submissions on the available records.

4. Heard the learned counsels on either side and perused the materials available on record.

5. The main contentions that have been put forward by the learned counsel for the petitioner are that the respondents have



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unnecessarily dragged on the enquiry proceedings and that apart, despite the categoric recommendation of the Tamil Nadu Public Service Commission to drop the charges and the punishment against the petitioner, the impugned order has been passed. The learned counsel for the petitioner would also submit that pursuant to the orders of transfer from Brahambi to Perambalur, the petitioner had filed proceedings before the Tamil Nadu Administrative Tribunal and had obtained an order of interim stay. Despite this interim order, the petitioner has not been permitted to rejoin duty at Brahambi. It was only in the year 2012 that the petitioner had been permitted to join duty at Irungalur, Trichy District.

6. The learned Government Advocate appearing for the respondents would submit that there is no explanation whatsoever on the part of the petitioner as to why he had kept quiet from the year 2002 till 2015 to speed up the enquiry proceedings. Further, there is no



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evidence on record to show that the petitioner had attempted to rejoin duty. The unexplained absence for over 10 years had been taken note of and the punishment was imposed. The respondents would submit that the petitioner has not made out any case for setting aside the impugned order.

7. Admittedly, the petitioner was transferred from Brahambi, Trichy District to the Government Hospital, Perambalur District in January 2002. The order of interim stay has been obtained by him in O.A.No.697 of 2002 only on 28.02.2002. Though it is his case that he has attempted to join duty and that he was not permitted to join, this has not been substantiated by any piece of evidence, particularly when the petitioner had already approached the Tamil Nadu Administrative Tribunal, where the interim order of stay has been granted, to bring it to the notice of the Tribunal that the interim order had been flouted. Thereafter, the petitioner received a Charge Memo on 25.05.2003 to



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which he has submitted his explanation and the enquiry had been conducted on 29.11.2004. It is the case of the petitioner that after the conclusion of the enquiry, he did not receive any information about the enquiry proceedings. There appears to be no communication from the petitioner enquiring about the report or moving this Court for appropriate orders. There appears to be no explanation offered by the petitioner since, in the papers submitted before this Court, the first explanation that has been offered is with respect to the enquiry report submitted by the enquiry officer. The petitioner has not given any explanation to the first charge, which was that he had not reported for duty from 01.02.2002 at the Primary Health Centre without any prior intimation, as result of which the daily work of the primary health centre has been effected. The first explanation to the enquiry report with reference to the second charge is as follows:-

"I have no intention to do against the advice and order given by Deputy Director of Health Services, Trichy. But due to unavoidable family circumstances, I



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could not join duty in Primary Health Centre, Sukkampatti. I accept my inability. For that loss of job for the period from 01.02.2002 to 01.02.2012 is the punishment for me. Kindly I request you to take necessary action to cancel the 17B charges framed against me."

For the first time, the petitioner, in his letter signed on 29.08.2013, has stated that he could not join the Government Hospital, Perambalur due to his personal inability and that at Brahambi and Perambalur, the posts had been filled up and there was no vacancy. Therefore, he had not been posted for 10 years anywhere. He has not stated that he was not permitted to rejoin.

8. The opinion given by the TNPSC is at best based on the information received, and it is ultimately for the authorities to consider the same, i.e either accept or reject it, and therefore much reliance need



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not be placed upon the said enquiry report. The petitioner has admittedly been staying away from employment for over 10 years, for which there is absolutely no explanation. When the petitioner was not permitted to continue at Brahambi despite the orders of the Tribunal, he ought to have moved the Tribunal for further orders. With regard to the charge memo also, there appears to be no explanation from the side of the petitioner. This is also evident from the fact that, in his affidavit filed in support of the petition, there is no mention about the response / explanation given to the said Charge Memo. The explanation has been offered only in response to further explanation sought for pursuant to the authorities accepting the enquiry report and deciding provisionally to accept the findings. Owing to the petitioner not taking charge at his original post at Brahambi or the transferred post at Perambalur, the vacancy has been filled up. The long duration of the enquiry without the petitioner being given a posting also remains unexplained. The TNPSC has failed to appreciate that the petitioner, who has been accused of dereliction of duty, has not taken steps primarily to defend



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the inquiry and to ensure that the results of the enquiry is made known to him at the earliest. They have also failed to appreciate that the petitioner has not moved his little finger to speed up the inquiry. The authorities have rightly considered the case and decided to compulsorily retire the petitioner. I see no reason to interfere with the said order. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.07.2024

Index : Yes/No

Internet : Yes

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To

1. The Principal Secretary Health
and Family Welfare Department
Government of Tamil Nadu
Fort St. George
Chennai 600 009

2.The Director of Public Health and

13/14



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P.T.ASHA, J.

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