



W.P.No.22598 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

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THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

W.P.No.22598 of 2013

K.Ramizabi
Petitioner

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Vs.

1.The Secretary to Government
Health & Family Welfare Department
Fort St. George, Chennai-9

2.The Director of Medical Education
Kilpauk
Chennai 600 010

3.The Director of Medical & Rural Health Services
Chennai 600 006

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the second respondent herein in awarding the punishment in Ref. No.733/SC2(1)/2008 dated 13.01.2010 and the consequential order passed in appeal confirming the punishment by the first respondent herein in G.O.(D) No.396 Health and Family Welfare (I-1) Department dated 29.04.2013 and quash the same and consequently direct the first and second respondent



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herein to confer the promotion post of Nursing Superintendent Grade-II with retrospective effect on par with petitioner's juniors and confer all the consequential benefits with due regards to the petitioner's seniority.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.E.Sundaram
Government Advocate

ORDER

The instant writ petition has been filed against the order of the punishment dated 13.01.2010 and its the consequential appeal order dated 29.04.2013.

2.The learned counsel for the petitioner would vehemently submit that the Charge Memorandum did not disclose the name of witnesses through whom the charges are going to be proved and that the documents relied also have not been furnished upon her. It is the further contention of the learned counsel for the petitioner that the findings of the enquiry officer is contrary to the principles laid down in the case of **Roopsingh Negi V. Punjab National Bank and Others** reported in **2009(2) SCC 570**. The learned counsel has also relied upon yet another judgment of the Division Bench of this Court in **SBI**



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Life Insurance Company Limited V. Amrit Kaur reported in **CDJ 2014**
MHC 1025 in support of his case.

3. Per contra, Mr.E.Sundaram, the learned Government Advocate would vehemently contend that the petitioner has over stayed in Saudi Arabia, beyond the permitted period from 01.07.1994 to 10.08.1997, and also for another period from 14.02.2003 to 17.01.2008. Therefore, a charge memorandum was issued to the petitioner, however, the same was returned with a postal endorsement that the same could not be delivered since the petitioner had gone abroad. Therefore, the department took efforts to serve the charge memorandum in person on 27.08.2008. It is the further submission of the learned Government Advocate that after serving of the summons, the copies of the documents were also furnished, and that the petitioner also submitted her statement of defence. Thus, after concluding the enquiry, ultimately the enquiry report was submitted on 16.07.2009, holding that the charges framed against the petitioner are proved. The learned Government Advocate would further contend that they followed due procedures. Hence, it is the contention of the learned Government Advocate that under the power of judicial review this Court cannot re-appreciate the



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evidence. It is the further submission that even the existence of an alternative view cannot be a ground to interfere with the order of the disciplinary authority.

4. I have given my anxious consideration to either side submissions.

5. The first and foremost submissions raised by the learned counsel for the petitioner is by relying upon the judgment of the Hon'ble Supreme Court, reported in ***Roopsingh Negi V. Punjab National Bank and Others*** [2009(2) SCC 570], that in the charge memorandum, no reference was made as to 'through whom' the charges are proved. But in the case in hand many documents were marked (relied by the Enquiry Officer). But while carefully perusing the enquiry report, I could not find any reference as to the objection raised by the petitioner while marking the documents. Therefore, when there are no materials to infer that inspite of the objections, the documents have been marked without examining the witnesses, there is no scope to make use of the reported judgment in favour of the petitioner.

6. The further submission made by the learned counsel for the



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petitioner is that, similarly placed delinquents have been considered by the department and they have been permitted to join in the service without there being any punishment. Though this submission was made, no materials have been submitted before this Court to consider this argument. Even otherwise when the department has imposed punishment, merely because leniency had been shown to other similarly placed persons, can not be a ground to seek such leniency as a matter of right. It is well settled principle of law that when the Writ Court exercises its jurisdiction under Article 226, it cannot decide the issue as an Appellate Forum. This position has been settled in *B.C.Chaturvedi V. Union of India* reported in 1995 (6)SCC 749 and *Deputy General Manager and Others V. Ajay Kumar Srivastava*, reported in 2021(2) SCC 612.

7.The learned counsel for the petitioner would further contend that there is not even any material before the respondent so as to arrive at a positive conclusion against the petitioner. However, while perusing the records, the department has relied upon the G.O, and apparently even according to the petitioner, she was in abroad and over stayed beyond the permissible period. Therefore, it cannot be construed that there are no



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evidence against the petitioner. Therefore, on a perusal of the enquiry

C.KUMARAPPAN, J.

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report, as well as the order of the Appellate Authority, this Court finds that sufficient reasons have been given by the enquiry authority to arrive at such positive conclusion. Accordingly this Court does not find any perversity over the same. Therefore, this Court finds no ground to interfere with the order of the disciplinary authorities.

8.In the result, this writ petition stands dismissed. No costs.

12.09.2024

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Index: yes / no

Neutral Citation : yes / no

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