



WEB COPY



W.P.No.30043 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.30043 of 2011

and

M.P.No.1 of 2011

K.Bhoopathy

...Petitioner

Vs

1.The Director of Public Health &
Preventive Medicines, Chennai – 6.

2.The Deputy Director of Health Services,
Salem.

3.The Senior Civil Surgeon Officer,
Office of the Regional Medical Officer,
Government Primary Health Centre,
Malliyakarai, Athur Taluk,
Salem District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents 1 and 2 herein and by his proceedings No.29883/DP/09/E3, dated 28.07.2010 and proceedings No.1044/E9/1998 dated 31.07.2003 respectively, and to quash the same and to consequently direct the respondents to treat the period from 20.01.1998 to 26.02.1998 and thereafter the period from 30.04.1998 to 10.03.2002 as duty period for all purposes with all consequential monetary benefits within a limited time frame.



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in Na.Ka.No.1044/E1/98, dated 31.07.2002 under Rule 17(b) of Tamil Nadu

Civil Services (D & A) Rules. The reason for that is, he suppressed his arrest and detention in prison. After conclusion of the enquiry, a punishment of “stoppage of increment for a period of one year with cumulative effect” was imposed by 2nd respondent by his proceedings Na.Ka.No.1044/E9/1998 dated 31.07.2003. 3rd respondent ordered in his proceedings Mu.M.No.56/03/A1, dated 12.09.2003 that the charge of suspension from 30.04.1998 till 10.03.2002 will be regularized as eligible leave. He filed W.P.No.42039 of 2006 against his order and this Court disposed the Writ Petition, giving permission to the petitioner to file an Appeal. Petitioner filed Appeal on 27.11.2006. However, 1st respondent rejected the Appeal in his proceedings in Na.Ka.No.29883/DP/09/E3, dated 08.07.2010. In the said circumstances, this petition is filed.

3.It is the submission of the learned counsel for the petitioner that petitioner's wife had intimated petitioner's arrest and detention to the Medical Officer, Kothampadi Health Centre. However, that was not considered by the Disciplinary Authority and Appellate Authority. The punishment imposed is excessive. Not only that, when a punishment of “stoppage of increment for a period of one year with cumulative effect” was ordered, the further order



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regularizing petitioner's suspension period as earned leave and extraordinary leave is not appropriate, especially, when petitioner was acquitted in the criminal case.

4.In reply, learned Government Advocate submitted that petitioner had failed to inform his involvement in a criminal case, his arrest and detention in prison. Therefore, he was rightly imposed punishment after proper enquiry.

5.Considered the rival submissions and perused the records.

6.The main charge on which, petitioner was imposed punishment of withholding of increment for one year with cumulative effect was, for the reason that, petitioner failed to inform about his involvement in a criminal case, his arrest and detention in prison.

7.On going through the records, this Court finds that petitioner is one of the accused among 29 accused in a case registered under Sections 147, 148, 341, 427, 506(2) IPC in Crime No.85 of 1998. The charge is that the accused had unlawfully restrained movement of traffic and public in Atur to Salem main road and caused a damage to witness Venkatesan's hotel to an extent of Rs.100/-



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and that accused No.1 to 15 using iron rod and cycle chain made criminal intimidation. This case after trial, had ended in acquittal.

8. As already indicated above, petitioner and other accused were charged for committing offence Sections 147, 148, 341, 427, 506(2) IPC in Crime No.85 of 1998. These offences are not serious in nature. Anybody can be roped in as accused with the aid of Section 149 IPC. In view of the acquittal of the petitioner from the charges leveled against him, this Court finds that, the punishment of withholding increment for one year with cumulative effect is a bit excessive. Therefore, that punishment is modified to the punishment of withholding the increment for one year without cumulative effect.

9. The Superior officer of the petitioner, who suspended the petitioner, should have immediately revoked the suspension on framing the charges and permitted him to continue the service. Keeping a person in suspension for a long period from 20.01.1998 to 26.02.1998 and from 30.04.1998 to 10.03.2002 cannot be appreciated. Therefore, this Court sets aside the order passed by the respondents 1 and 2 herein and by his proceedings No.29883/DP/09/E3, dated 28.07.2010 and proceedings No.1044/E9/1998 dated 31.07.2003 respectively, treating the period of suspension from 20.01.1998 to 26.02.1998 and thereafter



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the period from 30.04.1998 to 10.03.2002 as earned leave. If this punishment is enforced, it would amount to double jeopardy, for the reason that petitioner is deprived of his Earned leave and Extraordinary Leave, when the fault mainly lies on the Superior Authority for continuing the suspension for this long period. Therefore, punishment of the petitioner is modified into withholding of increment for a period of one year without cumulative effect.

10. Accordingly, the punishment is modified and this Writ Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No
Speaking order/Non-speaking order
gd

To
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G.CHANDRASEKHARAN, J.

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