



W.P.No.19724 of 2016

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No.19724 of 2016

1.Smt.M.Parvathy (Deceased)

2.M.Ezhumalai

(P2 substituted as the legal heir of the deceased p1 vide order dated 19.03.2024 made in WMP.4633/2024 in WP.19724/2016 by DNRJ)

... Petitioners

Vs.

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St. George, Secretariat,
Chennai-600 009.

2.The Director of Medical and Rural
Health Services,
Chennai-600 006.

3.The Joint Director of Health Services,
Kancheepuram District.

...Respondents



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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to the impugned order dated 03.02.2016 under G.O.(D) 210, which was signed on 15.02.2016 and was served on the petitioner only on 11.04.2016 through the 3rd respondent vide letter Ref.No.Na.Ka.No.1698/C.Ka/2016 dated 31.03.2016 and quash the same and consequently direct the respondents to give all adequate promotional and seniority benefits to the petitioner retrospectively.

For Petitioner : M/s.M.Kempraj

For Respondents :
(for R1 to R3) :Mr.E.Sundaram, Govt. Advocate.

ORDER

The above Writ Petition is filed challenging the order dated 03.02.2016 passed by the 1st respondent in and by which the 1st respondent had imposed a punishment of stoppage of increment for 2 years with cumulative effect on the petitioner.



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2. The petitioner is working as a Staff Nurse in the Government Maternity Hospital at Thirukazhukundram and on the date of the filing of the writ petition had been working in the Primary Health Centre at Mahabalipuram. In the year 2008, disciplinary proceedings were initiated against the petitioner and the Head Nurse and another Staff Nurse on the basis of false complaints given by the witnesses who have in turn been forced to give the complaint under the threat by the Inspector of Police, one Mr.Joy Dayal who had acted on the instigation of the Medical Officer of the Hospital.

3. It is the contention of the petitioner that the entire proceedings had been initiated at the behest of the Medical Officer who had an axe to grind with the Head Nurse. The petitioner would submit that the said Head Nurse was shifted to another hospital and proceedings were initiated against her and two others. The petitioner would submit that during the cross examination before the Principal Secretary/Commissioner for Disciplinary Proceedings, Chennai, the



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witnesses had turned hostile and stated that they had not given any complaint. The Principal Secretary/Commissioner for Disciplinary Proceedings, Chennai after recording this denial had however given a finding that charges (iii and v) were found proved against the petitioner.

4. The enquiry report of the Commissioner for Disciplinary Proceedings, Chennai was served on the petitioner vide communication dated 18.12.2012 which was signed by the Superintendent on 05.11.2012, calling upon the petitioner to submit his representation within a period of 15 days from the date of receipt of the communication.

5. The petitioner would submit that the order of the 2nd respondent dated 25.01.2014 was served on her by the 3rd respondent vide communication dated 20.05.2014. On a perusal of the said order, it appears that the 2nd respondent had confirmed the findings of the Commissioner for Disciplinary Proceedings and had imposed a



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punishment of stoppage of increment for two years with cumulative effect. In the said order, liberty had been granted to the petitioner to prefer a statutory appeal before the 1st respondent herein within a period of two months from the date of the order.

6. The petitioner would submit that thereafter she had preferred a statutory appeal against the order passed by the 2nd respondent before the 1st respondent. However, despite receiving the appeal it was not taken up for enquiry for over 2 years which constrained the petitioner to seek a mandamus from this Court for the disposal of the appeal within a fixed time frame in W.P.No.9177 of 2016. This Court by order dated 11.03.2016 was pleased to direct the 1st respondent to dispose of the appeal within a period of 8 weeks from the date of receipt of the copy of the order. Thereafter, the 1st respondent had hurriedly passed the impugned order confirming the order passed by the 2nd respondent's and it is this order that has been challenged in the instant Writ Petition.



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7. The respondents have filed a counter affidavit contending that the allegations against the petitioner was that she was in the habit of demanding and accepting bribes for showing the newly born babies to their parents and relatives. There were 6 such incidents. Therefore, since the complaint had been received, the 1st respondent had directed the Commissioner, Tribunal for Disciplinary Proceedings, Chennai to conduct an enquiry against the petitioner in respect of these allegations under Section 17(b) of the Tamil Nadu Civil Services (Disciplinary Proceedings for Tribunal) Rules, 1955.

8. The Commissioner, Tribunal for Disciplinary Proceedings had thereafter framed charges against the petitioner charging her with official misconduct and misdemeanor and for failure to maintain absolute integrity and devotion to duty which was violative of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. This charge memo was served on the petitioner on 21.11.2008. However, she did not submit her defence statement to the charges. The



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disciplinary enquiry was started on 13.10.2010 and concluded on 01.03.2011 by the Commissioner for Disciplinary Proceedings, Chennai and she submitted her enquiry report to the 1st respondent holding the petitioner guilty of charges 3 and 5 and partly in respect of the other charges. Against the said order, the Writ Petition has been filed.

9. The respondents would submit that they have passed an order only after examining the records properly and the statements of the witnesses. Two charges have been found against the petitioner and it clearly shows that the petitioner is guilty of accepting bribes.

10. Heard the counsels on either side.

11. The charge against the petitioner is that on 6 occasions she has not shown the newly born baby to the parents and relatives without them giving her a bribe. Some of the persons who have been affected have lodged a complaint with the respondents. Though most



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of the witnesses have turned hostile, however, a perusal of the cross examination of one Nogorebee who was one of the complainants and whose deposition is filed in the typed set of papers filed by the petitioner has stated that the petitioner had come to visit her 10 days prior to the evidence being recorded. This clearly shows that the petitioner had attempted to interfere in the proceedings. One of the witnesses reiterated the contention that the petitioner had accepted a bribe.

12. The Commissioner, Tribunal for Disciplinary Proceedings has clearly observed that the allegations against the petitioner stood proved in respect of two charges and partly in respect of the rest. The offence which the petitioner is guilty of is that she had refused to show the newly born babies to the parents and relatives without them giving a bribe. Such a conduct is deplorable and the authorities have rightly imposed the punishment of stoppage of increment for 2 years with cumulative effect. The petitioner has not given any reasons as to how the order is erroneous.



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13. Accordingly, the writ petition stands dismissed. No costs.

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(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

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P.T. ASHA. J.,

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