



W.P.No.32715 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No. 32715 of 2012

A.Murugesan

... Petitioner

VS.

1.The State of Tamilnadu,
Rep. by its Secretary to Government
Health and Family Welfare Department,
Fort St.George,
Chennai - 600009

2.The Director,
Tamilnadu State Health Transport Department,
Guindy,
Chennai - 600032.

... Respondents

PRAYER: Writ Petition is 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 second respondent in his proceedings G.O.NO.1226 dated 17.11.2009 and quash the same.



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For Petitioner : Mr.S.Selvathirumurugan

For Respondents : Mr.R.Neelakandan
Additional Advocate General assisted by
Mr.K.Tippusultan, Govt. Advocate

ORDER

The petitioner herein who was initially appointed as Junior Assistant in Public Health Department on 22.10.1969 was subsequently promoted to the post of Assistant and Superintendent in the years 1985 and 1993 respectively. Thereafter, the petitioner was sent on deputation to the Regional Workshop in the year 1995 which comes under the control of Tamil Nadu State Health Transport Department. Thereafter, he was deployed and transferred to Regional Workshop under the control of the Tamil Nadu Police Transport Workshop and such deployment was challenged by the petitioner by filing O.A.No.5126 of 1996.

2. Thereafter, the petitioner was continued under the control of the



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2nd respondent herein. While so, the petitioner was subjected to disciplinary proceedings by issuing a charge memo on 29.01.1997 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and thereafter, the said proceedings were converted as proceeding under 17(a) of the said rules and the punishment of censure was imposed on the petitioner by the 2nd respondent herein through proceedings bearing Na.Ka.No.12089/F2/2000-1 dated 28.01.2002. Aggrieved by the same, the petitioner filed an appeal before the 1st respondent and the said appeal was also rejected by passing an order in G.O.(10)Ms.No.1226, Health and Family Welfare (I-2) Department dated 17.11.2009. Hence, aggrieved by the said order, the petitioner approached this Court by filing the present Writ Petition.

3. The learned counsel for the petitioner mainly contested the impugned orders on the ground, the 2nd respondent being a borrowing department has no right to impose punishment on the petitioner as the petitioner is a substantive employee of the health department of the State and he is only working on deputation with the 2nd respondent.



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4. The facts as narrated above are not disputed. Admittedly, the petitioner was substantive employee of the public health department who was sent on deputation to the 2nd respondent and while he was on deputation, the 2nd respondent initiated disciplinary proceedings under 17(b) the Tamil Nadu Civil Services (Discipline & Appeal) Rules and then converted the same into 17(a) of the said rules purportedly with the concurrence of the parent department. The 2nd respondent proceeded to impose punishment of censure on the petitioner instead of submitting the enquiry proceedings to the parent department for passing appropriate orders in the matter. It is settled legal position that the borrowing department is not competent to impose punishment on the person who is on deputation but, it is only the parent department who can pass any orders either under 17(a) or 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules.

5. In such circumstances, the impugned order dated 28.01.2022 passed by the 2nd respondent is totally incompetent and it cannot sustained under law. The 1st respondent without looking into this crucial aspect proceeded to confirm the order passed by the 2nd respondent by passing



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order dated 17.11.2009. Hence, both the impugned orders are not sustainable. Yet another ground this Court is inclined to interfere with the impugned order is that the punishment of censure is practically has no consequence either on the petitioner or on the department. The petitioner has already retired from service much prior to filing of the Writ Petition. Hence, this Court is inclined to set aside the impugned orders and accordingly, both the impugned orders are set aside.

6. This Writ Petition is accordingly, allowed. No costs. Consequently, connected miscellaneous petitions, if any, are closed.

19.09.2024

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Internet : Yes/No

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No



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MUMMINENI SUDHEER KUMAR, J.

KKN

To

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