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W.P.No.8011 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 21.12.2024**

CORAM:

**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.No.8011 of 2020**

Dr.K.P.Sampath Kumar

...Petitioner

-Vs-

1.The Secretary,  
Health and Family Welfare Department,  
Fort St. George,  
Chennai – 600 009.

2.The Director of Medical Education,  
Directorate of Medical Education,  
Kilpauk, Chennai – 600 010.

3.The Dean Coimbatore Medical College,  
Coimbatore – 641 018.

...Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 14.09.2017 in G.O.(D)No.1758 and to quash the same and to consequently direct the first respondent to grant voluntary retirement to the petitioner retrospectively from 31.12.2008 with back wages and pensionary benefits and pass such further orders.



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For Petitioner : Mr.S.Mukunth, Senior Counsel  
for Sarvabhauman Associates

For Respondents : Mr.Tippu Sulthan  
Government Advocate

### **ORDER**

This writ petition is filed to quash G.O.(D)No.1758 passed by the first respondent dated 14.09.2017 and consequential direction to the first respondent to grant voluntary retirement to the petitioner retrospectively from 31.12.2008 with back wages and pensionary benefits.

2. The case of the petitioner is that the petitioner is a Doctor under the 3<sup>rd</sup> Respondent College. The petitioner joined the 3<sup>rd</sup> Respondent college in the year 1988 after completing his Mch Urology from Madras Medical College. Pursuant to the memo of the 3<sup>rd</sup> Respondent dated 27.10.2009, the 2<sup>nd</sup> Respondent in Ref.No 55682/SCI/2/2012 dated 17.09.2012 issued a charge memo and framed three charges against the petitioner. The first charge was for dereliction of duty since he was unauthorisedly absent from work from 01.01.2009 to 31.12.2009. The second charge was disobeying his superiors by not joining duty as instructed in Memo No.18479/E1/2008 dated 03.12.2009. The third charge was that his acts violated Rule 20 of



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Tamil Nadu Government Servants Conduct Rules, 1973. The inquiry officer held that the petitioner's reply to charges was not satisfactory and came to the conclusion that all three charges were proved. Agreeing with the findings of the inquiry officer, the 1<sup>st</sup> Respondent thereafter proceeded to pass final orders vide G.O.(D).No 1490 dated 25.11.2015. The 1<sup>st</sup> Respondent in consultation with the Tamil Nadu Public Service Commission held that all the charges were proved and proceeded to dismiss the petitioner from service. The 1<sup>st</sup> Respondent in its impugned order in G.O(D).No.1758 dated 14.09.2017 dismissed his review application, holding that he hasn't raised any new grounds for consideration and held that the punishment imposed is appropriate. Hence the present writ petition is filed.

3. Learned senior counsel appearing for the petitioner submitted that the petitioner's full attention was required in his family as his father was suffering from Parkinson's disease and his mother's health was simultaneously deteriorating. Therefore, the petitioner submitted his application for Voluntary retirement to the 3<sup>rd</sup> Respondent on 04.07.2005 to come into effect from 30.09.2005. On 04.07.2005, the 3<sup>rd</sup> Respondent has forwarded his application to the 2<sup>nd</sup> Respondent.



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4. It is seen that the 1<sup>st</sup> respondent vide its order dated 28.09.2005 rejected petitioner's request on the ground that the consumer case is pending against him and consequently the 3<sup>rd</sup> respondent by its letter dated 04.10.2005 directed the petitioner to continue his service and did not allow him to go for Voluntary retirement. Though his application was rejected, he had once again sent a letter dated 14.11.2005 stating that he was only a formal party in the Consumer case initiated and the main grievance is only against the Government and requested to accept his Voluntary retirement. Considering his request for Voluntary retirement, the 3<sup>rd</sup> respondent in its letter dated 22.11.2005 forwarded petitioner's request along with the payment challan, his service particulars to the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent once again rejected his request vide its Letter dated 15.02.2006 citing a pendency of consumer case and instructed the petitioner to not apply for Voluntary retirement till the disposal of the consumer case.

5. On 29.05.2008, the consumer case that was initiated against the petitioner came to be dismissed by the District Forum. The pending consumer case was the reason for negating his request for VRS, the petitioner sent his representation dated 27.08.2008 to the respondents to



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accept his Voluntary retirement. The 1<sup>st</sup> respondent vide its order dated 28.10.2008 again rejected his request citing a new reason that as per G.O.(Ms).No 315, Health and Family Welfare Department dated 31.08.2007 the specialties under the Tamil Nadu Medical Service have been declared to be scarce and since he held the post coming under the said scarce category, his request for Voluntary Retirement cannot be considered. The petitioner's application for Voluntary retirement after the disposal of the consumer complaint is as per the earlier order of the 1<sup>st</sup> Respondent dated 15.02.2006 and the rejection of VRS application based on G.O.(Ms).No 315, Health and Family Welfare Department dated 31.08.2007 is not in consonance with Rule 41-A (d) of the Tamil Nadu State and Subordinate Rules and thus the 1<sup>st</sup> Respondent is obligated to accept his Voluntary retirement.

6. Learned senior counsel further submitted that the petitioner continued his services with the 3<sup>rd</sup> respondent and was carrying on his duties with utmost sincerity. During the month of December 2008, his mother fell really ill and had to be admitted to the Intensive Care Unit (ICU) in Kovai Medical hospital. Though she was discharged from the hospital, she required constant care and thus the Petitioner was taking care of her the entire time.



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The Petitioner was shocked to know that another doctor had replaced him and consequently the 3<sup>rd</sup> respondent vide letter dated 26.08.2009 relieved him from his duties. The 3<sup>rd</sup> respondent vide its letter dated 27.10.2009 issued a memo asking the petitioner to explain why he had proceeded on leave without obtaining prior sanction from the competent authority. A perusal of the said letter would reveal that the petitioner was eligible for a year's leave and thus the petitioner's absence cannot be deemed to be misconduct since his absence is not willful and was only under compelling circumstances to take care of his mother.

7. Learned senior counsel appearing for the petitioner relied on the judgment of the order passed by this Court in **W.P.No.6874 of 1996 decided on 04.10.2002** reported in **2003 (1) LLN 376** in the case of **Chellamani Vs. Presiding Officer, Labour Court and another**, wherein this Court held as follows:

“The petitioner was terminated from service after domestic Inquiry on charges of unauthorized absence from duty, disobedience of order of management and abusing his superior officer. Though the Labour Court found allegation against the petitioner proved but did not consider the question of relief as petitioner employee had reached the superannuation age by the time the matter came to be decided by the Labour Court. It was



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held by this Court that the punishment of termination from service appears to be somewhat disproportionate as employee has reached superannuation age and reinstatement not being possible punishment modified into retirement with retiral benefits without wages from the date of dismissal till the deemed date of retirement.”

8. A counter affidavit was filed on behalf of the respondents dated 08.02.2022.

9. Learned Government Advocate appearing for the respondents submitted that the reason framed in the G.O.(D)No.315, Health and Family Welfare Department, dated 31.08.2007 and the reasons framed in Rule 41-A(d) of the Tamil Nadu State and Subordinate Rules are different from each other. The reason for the rules framed in the Government Order is on behalf of the Health of the Tax payers of poor people. Most of the poor people expect the Government to provide proper medical facilities to maintain their Health. Therefore, it is the duty of the Government to provide proper medical facilities with the help of the doctors working in the Government hospital.

10. Learned Government Advocate further submitted that the medical students who are studying in the Government medical colleges are



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encouraged by Government by giving stipend money for their entire study period. This money was paid by the people through various taxes. Therefore, it is the bounden duty of the petitioner to render his service to the taxpayers through the Government till he attains the age of superannuation. But he failed to do so.

11. Heard both sides and perused the materials available on record.

12. In the case on hand, the petitioner joined the third respondent college in the year 1988 and attained the age of superannuation on 30.11.2015.

13. The petitioner worked from 1988 to 2009 and no service benefits were paid to the petitioner for the service rendered by the respondents. **The petitioner has given his Voluntary Retirement Scheme as early as on 2005 on 04.07.2005 citing the reason that the petitioner's father was suffering from Parkinson's disease and his mother's health was simultaneously deteriorating. Despite that his application for Voluntary Retirement Scheme was rejected by the respondents on two occasions,**



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**i.e., on 28.09.2005 and 15.02.2006 and the reason cited in both rejection orders is that the consumer case is pending against the petitioner. Hence his request could not be accepted by the respondents.**

**14. The consumer case which was initiated against the petitioner was also dismissed by the District Consumer Forum on 29.05.2008. Thereafter, the petitioner sent representation dated 27.08.2008 to the respondents to accept his Voluntary Retirement. Even this third representation was also rejected by the first respondent by its order dated 28.10.2008 citing a new reason that as per G.O.Ms.No.315, Health and Family Welfare Department dated 31.08.2007 the specialties under the Tamil Nadu Medical Service have been declared to be scarce and since he held the post coming under the said scarce category, his request for Voluntary Retirement cannot be considered.**

**15. It is pertinent to note that the petitioner's application for Voluntary retirement after the disposal of the consumer complaint is as per the earlier order of the 1<sup>st</sup> respondent dated 15.02.2006 and the rejection is not in consonance with Rule 41-A (d) of the Tamil Nadu**



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**State and Subordinate rules. Hence there is no justification for rejecting the application of the petitioner for Volunteer Retirement.**

**16. It can be seen from the records that the first two representations, which came to be rejected by the first respondent vide order dated 28.09.2005 and 15.02.2006, the reason cited is the consumer case and not the scarce category under which the petitioner was working is declared as scarce category. The petitioner has given application for Voluntary Retirement on three occasions, but the same was rejected citing the pending consumer case and the scarce category.**

**17. At this juncture it is pertinent to mention that the main purpose of giving Voluntary Retirement Scheme application by the petitioner is due to the father's ill health i.e., he was suffering from Parkinson's disease and his mother's health was deteriorating, he has to take care of the parents. But the same was not considered by the respondents in the correct and right perspective. The third respondent issued a memo dated 27.10.2009 and subsequently the second respondent in Ref.No.55682/SCI/2/2012 dated 17.09.2012 issued a charge memo and**



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framed three charges against the petitioner.

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**18. The first charge is for dereliction of duty since the petitioner was unauthorized absence from work from 01.01.2009 to 31.12.2009. The second charge is disobeying his superiors by not joining duty as instructed in Memo No.18479/E1/2008 dated 03.12.2009 and the third charge is that his acts violated Rule 20 of Tamil Nadu Government Servant Conduct Rules, 1973.**

**19. It is crystal clear and evident from the above facts of the case that the petitioner's absence from work for the aforesaid period is due to the reasons bona fide/genuine which he has mentioned in the Voluntary Retirement Scheme application submitted by him on three occasions. The Voluntary Retirement Scheme application was submitted by the petitioner since he could not attend the work due to the genuine reasons and the respondents ought to have accepted the application if not on first two occasions on 04.07.2005 which was rejected on 28.09.2005 and secondly on 22.11.2005 which was rejected on 15.02.2006. on the ground that the consumer case is pending against the petitioner. At least after**



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**the dismissal of the consumer Court case on 29.05.2008, the first respondent ought to have accepted the application of the petitioner Voluntary Retirement which was submitted on 27.08.2008, but the same was also rejected by citing a new reason “scarce category” on 28.10.2008. The reason scarce category was not the reason for rejecting the earlier two VRS applications dated 04.07.2005 and 22.11.2005 is that the consumer case is pending against the petitioner.**

20. The petitioner's explanation/reply to the parties was not satisfactory and the Inquiry Officer came to the conclusion that all three charges were proved. The first respondent is agreed with the findings of the Inquiry Officer and the said letter was communicated to the petitioner on 11.07.2014. The first respondent passed final orders vide G.O.(D).No.1490 dated 25.11.2015 and in consultation with the Tamil Nadu Public Service Commission held that all the charges were proved and dismissed the petitioner from service. The review application submitted by the petitioner on 15.10.2016 was also dismissed holding that he has not raised any ground for consideration and the punishment imposed on the petitioner was appropriate and proportionate.



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**21. In regard to the first charge that the petitioner was unauthorized absent from 01.01.2009 to 31.12.2009, it is due to the bona fide / genuine reasons stated supra, i.e., ailment of his father suffering from Parkinson disease and mother's health was deteriorating.**

**22. In regard to second charge that he disobeyed his superiors by not joining duty as instructed in Memo No.18479/E1/2008 dated 03.12.2009 the reason is the same as stated in regard to the first charge.**

**23. In regard to third charge, his acts violated Rule 20 of Tamil Nadu Government Servant Conduct Rules, 1973.**

**24. It is pertinent to mention that in regard to the first charge, the petitioner had requested one year leave from 01.01.2009 to 31.12.2009 in his letter dated 10.12.2008. Since his leave was not sanctioned by the Competent Authority, the petitioner unauthorizedly absent himself for that period.**

**25. The petitioner could not report for duty and he was dismissed**



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**from service on 25.11.2015, one week before his date of superannuation, i.e., on 30.11.2015. There is no justification on the part of the first respondent in rejecting the third request letter dated 27.08.2008 for the Voluntary Retirement of the petitioner which was rejected by the first respondent vide order dated 28.10.2008 citing a new reason that as per G.O.No.315, Health and Family Welfare Department dated 31.08.2007 that the specialties under the Tamil Nadu Medical Service have been declared to be scarce and since he held the post coming under the said scarce category is unsustainable and untenable for the reason that it is for the first time this first respondent has been given such reason for rejecting his request for Voluntary Retirement Scheme, after the dismissal of the consumer Court case on 27.08.2008 before that the reason stated by the respondents are pending consumer case against the petitioner.**

**26. Having regard to the admitted facts, this Court is of the considered view that the petitioner is entitled for his benefits for the services which he rendered in the third respondent College from 1988 to 2009 (21 years) for the reason that the petitioner had already given the**



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**Voluntary Retirement Scheme application on three occasions viz., 04.07.2005, 14.11.2005 and on 27.08.2008 citing the genuine reason of his father and mother's ailment and he has to take care of them. The petitioner's request was rejected twice on the ground that the consumer case is pending against him and for the third time for specialties in which he is working, which comes under the scarce category which is the new reason given under the third rejection order dated 28.10.2008.**

**27. In view of the above factual matrix of the case, the first respondent is directed to settle all the benefits for the service rendered by the petitioner for the period from 1988 to 2009 as per the rules in vogue at the relevant point of time within a period of eight weeks from the date of receipt of a copy of this order.**

**It is made clear that the petitioner is not entitled for any monetary or other benefits from the year 2009 to till the date of dismissal on 25.11.2015.**

**The writ petition stands disposed of with the above observations and direction. No costs.**



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cda

Index : Yes / No

Speaking / Non-speaking Order

**J.SATHYA NARAYANA PRASAD, J.**

cda

To

- 1.The Secretary,  
Health and Family Welfare Department,  
Fort St. George,  
Chennai – 600 009.
- 2.The Director of Medical Education,  
Directorate of Medical Education,  
Kilpauk, Chennai – 600 010.
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