



WEB COPY



W.P. No. 23184 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 11.09.2024

ORDERS PRONOUNCED ON : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 23184 of 2018

and

W.M.P. No. 27087 of 2018

Dr. V. Balasubramaniam

... Petitioner

Vs.

1.The Principal Secretary to Government,
Health & Family Welfare (K2) Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Medical and
Rural Health Services,
DMS Compound,
Teynampet,
Chennai – 600 018.

3.The Joint Director of Health Services,
Udagamandalam,
The Nilgiris.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings of the first respondent issued in G.O. (D) No. 1546 Health and Family Welfare (K2)

Department dated 07.08.2017 and orders passed in Review Petition in G.O. (D) No.

<https://www.mhc.tn.gov.in/judis>



837, Health and Family Welfare (K2) Department dated 16.05.2018 and quash the same with the consequential direction, directing the respondents to treat the period of absence of the petitioner as Ex-ordinary leave on medical certificate and to confer seniority and promotion with pay and allowances.

For Petitioner : Mr. R. Vijaya Kumar

For Respondents : Mr. K. Tippu Sulthan,
Government Advocate

ORDER

This Writ Petition has been filed to call for the records of the proceedings of the first respondent issued in G.O. (D) No. 1546 Health and Family Welfare (K2) Department dated 07.08.2017 and orders passed in Review Petition in G.O. (D) No. 837, Health and Family Welfare (K2) Department dated 16.05.2018 and quash the same with the consequential direction, directing the respondents to treat the period of absence of the petitioner as Ex-ordinary leave on medical certificate and to confer seniority and promotion with pay and allowances.

2. The case of the petitioner is that, he joined service as an Assistant Civil Surgeon in the Tamil Nadu Medical Services, selected through Tamil Nadu Public Service Commission on 28.01.1998 and further, promoted to the rank of Senior Civil Surgeon in the Government Head Quarters Hospital, Udagamandalam on 27.11.2011.



While he was working as a Senior Civil Surgeon, the third respondent in his proceedings No.1485/E4/2012 dated 07.10.2012 framed the following two charges: -

Charge No.1:

That 'he is on unauthorized absence from 04.07.2012 without any information or prior permission and hence failed to maintain absolute integrities and violated Rule 20 of the TNGSC Rules, 1973'.

Charge No.2:

That 'even after instructions issued by the Joint Director of Health Services, Ooty, he has neither joined duty nor submitted any leave application, till date'.

3. The petitioner has submitted a written statement of defense on 13.02.2013. The third respondent without considering his defence statement in proper perception has issued proceedings in No.124/A1/2013 dated 19.06.2013 by appointing the enquiry officer to enquire into the charges framed against the petitioner. On completion of the enquiry, the enquiry officer submitted her report to the second respondent. The second respondent vide proceedings dated 31.10.2013 had requested the third respondent to remit the case details about the petitioner along with the service records. After lapse of more than 15 months, the petitioner received a communication from the third respondent dated 12.03.2015 to appear before the Medical Board as per direction of the Director of Medical and Rural Health Services. The petitioner also appeared and submitted his certificates. Then, in accordance with the proceedings of the second respondent dated 24.08.2015 received on 09.09.2015,



the petitioner rejoined as Senior Civil Surgeon at Government Head Quarters Hospital, Udagamandalam on 14.09.2015. Then, an enquiry was conducted by the Joint Director of Health Services, Coimbatore, on 09.08.2016. During the enquiry, he explained his predicament. But the enquiry officer without considering it, has given the findings that the unauthorized absence for the period from 04.07.2012 to 13.09.2015 are held proved. The petitioner further submitted his representation on the findings of the enquiry officer. The first respondent without considering any of the aspects submitted by the petitioner, the first respondent issued impugned order in G.O.(D) No.1546 Health and Family Welfare Department dated 07.08.2017 imposing the punishment of “Stoppage of Increment for a period of two years with cumulative effect”.

4. Aggrieved by the order of the first respondent dated 07.08.2017, the petitioner prepared a detailed Review Petition dated 23.10.2017 to the Government, under Rule 20(1)(C) of TNCS (DRA) to set aside the punishment awarded by the first respondent. After imposing the punishment, the first respondent has sought for opinion from the Tamil Nadu Public Service Commission. Then, the first respondent issued proceedings in G.O.(D) No. 837 Health and Family Welfare (K2) Department dated 16.05.2018, by rejecting the review petition. Hence, left with no other option, the petitioner approached this Court.



5. A counter affidavit has been filed on behalf of the respondents. It is averred in the said counter that, while the petitioner working as Senior Civil Surgeon at Government Headquarters Hospital, Udagamandalam, he was on unauthorized absence from duty from 04.07.2012. In spite of instructions from the concerned authorities, he did not join duty. Hence, the third respondent has initiated disciplinary action against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In his defence statement, he has stated that he was financially crippled and on treatment and counselling for severe bipolar depression by a psychiatrist and he was willing to be examined by a Medical Board if so desired to substantiate the same, and he was unable to write and request leave due to the acuteness of medical status.

6. Considering his request, the first respondent instructed the second respondent to refer the petitioner to the Medical Board. Based on the Fitness Certificate issued by the Medical Board, the second respondent issued orders for posting the petitioner at Government Headquarters Hospital, Udagamandalam and he joined duty on 14.09.2015. Thereafter, the second respondent appointed the Joint Director of Health Services, Coimbatore as enquiry officer and he conducted the enquiry. The enquiry officer held both the charges levelled against the petitioner are proved. Accordingly, the first respondent imposed punishment of stoppage of increment for a period of two years with cumulative effect in G.O.(D) No.1546,



W.P. No. 23184 of 2016

Health and Family Welfare (K2) Department, dated 07.08.2017. Aggrieved by the punishment, the petitioner has submitted review petition to the first respondent. After examining the review petition, the first respondent rejected the same in G.O.(D) No. 837, Health and Family Welfare (K2) Department, dated 16.05.2018. A report of the enquiry officer was communicated to the petitioner for his further representation and the petitioner submitted his further representation on the enquiry report. It is further averred that the unauthorised absence period of the petitioner from 04.07.2012 to 13.09.2015 (1167 days) has also been regularised as extraordinary leave without pay and allowance without medical certificate as per Rule 16 of the Tamil Nadu Leave Rules, in relaxation of Rule 18(2) of the Fundamental Rules, by invoking Rule 5 A of the Fundamental Rules, vide G.O.(D) No.1063, Health and Family Welfare (K2) Department, dated 28.09.2021.



7. Learned counsel for the petitioner would submit that, while he was working as Senior Civil Surgeon at Headquarters Hospital, Udagamandalam, due to certified medical reasons, he was unable to attend regular duties from 04.07.2012. The petitioner was unable to write and request leave due to acuteness of his medical status and he does not have the intention of showing any disrespect to the higher officials. Learned counsel further submits that the petitioner appeared before the medical board on 25.03.2015 and submitted all the 14 original Medical Certificates and Fitness Certificate from his Psychiatrist. As per the proceedings of the second respondent dated 24.08.2015, he rejoined duty on 14.09.2015. The enquiry officer without considering the factual aspects in an arbitrary and legal manner, perversely has given findings that the unauthorised absence is proved. The first respondent also without considering any of the aspects both factually and legally has imposed the punishment of stoppage of increment for a period of two years with cumulative effect. While considering the review petition also, rejected the same. The order of the first respondent is against principles of natural justice, unjust and liable to be quashed by allowing the writ petition.

8. On the other hand, the learned Government Advocate appearing for the respondents submit that the petitioner without applying any leave, he was unauthorised absence from duty from 04.07.2012 to 13.09.2015 i.e., for a period of more than three years, for which he was imposed punishment of stoppage of



increment for a period of two years with cumulative effect which commensurate with the gravity of charges. The request of the petitioner to treat his absence as extraordinary leave on medical certificate is not feasible since he has not produced any leave applications with medical certificate during his absence of three long years by abandoning his legitimate duty in serving the needy poor public. While passing the impugned order, the first respondent has followed the procedure and the petitioner was given ample opportunity and as such, the question of violation of principles natural justice does not arise in the present case and accordingly, he submits that the writ petition is devoid of merits and sought to dismiss the same.

9. Having heard the submissions of the respective counsel and on careful examination of the material available on record, it is an admitted fact that the petitioner was on unauthorised absence from duty from 04.07.2012 to 13.09.2015 i.e., for a period of more than three years. As per the admission of the petitioner, it is also an admitted fact that without any intimation to the higher authorities or without obtaining any prior permission, the petitioner was unauthorised absence from duties for the said period. Even after specific instructions from the Joint Director of Health Services, Udagamandalam asking the petitioner to join duty, but he did not join duty and remained unauthorisedly absent. Only during the enquiry proceeding, he agreed that due to financially crippled and on treatment and counselling for severe bipolar depression by a Psychiatrist he was unable to attend his duties or send his leave



request in time.

WEB COPY

10. The petitioner is working as Senior Civil Surgeon in the Government Headquarters Hospital, Udagamandalam, it is his legitimate duty to serve the needy poor public. The medical profession is very noble profession and the Doctors has to discharge their duties with utmost responsibility.

11. In the present case, the petitioner claiming that he is suffering with psychological problems and he is taking treatment. But that fact was not brought to the notice of his higher authorities at any time. Suddenly, he unauthorisedly absence for duties. If the contention of the petitioner is true that he was facing psychological problems, and if he treat patients in that state of mind, definitely it will be very danger to the patients who are treated by him. Besides this, it is the responsibility of the petitioner to make application for leave or he ought to have obtain prior permission from the authorities. But without doing so, he unauthorisedly absent for duties for three years, which is very serious lapse on the part of the petitioner. He has also failed to maintain his absolute integrity as a responsible Government Civil Surgeon.

12. The enquiry officer has conducted the enquiry and the petitioner participated in the enquiry and considering all aspects, he submitted his enquiry



report on 07.10.2012 holding that both charges levelled against the petitioner are proved. The first respondent after giving ample opportunity to the petitioner, by furnishing the enquiry report to enable the petitioner to submit further representation, he has passed the order of punishment against the petitioner of stoppage of increment of two years with cumulative effect. The petitioner preferred review petition and the same was considered by the first respondent in all aspects and after obtaining the views of the Tamil Nadu Public Service Commission, he rejected the review petition.

13. On consideration of the facts and circumstances of the case and on careful perusal of the material available on record, this Court is of the considered opinion that the petitioner has failed to maintain absolute integrity as a responsible Government servant and he has disobeyed the orders of the superior officers, thereby violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973 and as such, he is not entitled for any relief sought in this writ petition.



W.P. No. 23184 of 2016

WEB COPY

14. This Court do not find any illegality or irregularity in the order passed by the first respondent to impose punishment of stoppage of increment of two years with cumulative effect against the petitioner.

15. For the aforesaid reasons, this Writ Petition is dismissed.

16. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

05.11.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To

1.The Principal Secretary to Government,
Health & Family Welfare (K2) Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Medical and
Rural Health Services,
DMS Compound,
Teynampet,
Chennai – 600 018.

3.The Joint Director of Health Services,
Udagamandalam,
The Nilgiris.



WEB COPY



W.P. No. 23184 of 2018

BATTU DEVANAND, J.

AT

Order made in
W.P. No. 23184 of 2018 and
W.M.P. No. 27087 of 2018

05.11.2024