



WEB COPY



W.P.No.17264 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.17264 of 2021
and W.M.P.No.18278 of 2021

R.Samiyathal

/vs/

...

Petitioner

1. The Principal Secretary to Government,
Health and Family Welfare (K-1) Department,
Fort St. George, Chennai – 9.

2. The Director of Medical and Rural Health Service,
E.S.I.Scheme, Chennai – 6.

3. The Regional Administrative Medical Officer,
ESI Scheme, Trichy Road,
Singanallur, Coimbatore – 15.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the impugned G.O. issued by the first respondent in G.O.(D) No.460, Health and Family Welfare (K1) Department, dated 12.03.2019 whereby confirming the order passed by the second respondent in his proceedings Na.Ka.No.5700/ESI/C.Ma/1/2010, dated 12.12.2017 and quash the same and consequently directing the respondents to disburse the arrears of the increment to the petitioner.



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For Petitioner ... Mr.C.Prakasam
For Respondents ... Mr.P.Sanjai Gandhi
Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the order of the first respondent in G.O.(D) No.460, Health and Family Welfare (K1) Department, dated 12.03.2019 whereby confirming the order passed by the second respondent in his proceedings Na.Ka.No.5700/ESI/C.Ma/1/2010, dated 12.12.2017 and consequently to direct the respondents to disburse the arrears of the increment to the petitioner.

2. The limited ground on which the petitioner has filed this writ petition is that the appellate authority while modifying the punishment of stoppage of one year increment to six months increment, did not deal the grounds of appeal raised by the petitioner.

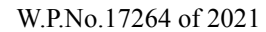
3. On perusal of the order of the appellate authority dated 12.12.2017, it is learnt that the appellate authority had accepted the orders



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of disciplinary authority without discussing the grounds of appeal. The petitioner had stated that 19 witnesses who were examined on the side of the department were not cross-examined and their evidence should not be relied and that Presiding Officer was not appointed. In toto, the petitioner has stated that a fair opportunity was not given to her during the enquiry proceedings.

4. It is seen from the proceedings of the third respondent dated 10.12.2012 that the first and second charges were proved on the basis of the evidence available on record. Due discussions have also been made by the disciplinary authority in the order of punishment. However the previous track records of the petitioner was not considered while imposing the punishment of stoppage of increment. So far as the cross-examination of the witnesses is concerned, the petitioner cannot claim that she was not given with any opportunity. It is up to the petitioner to avail the opportunity and cross-examine the witnesses. Having failed to cross-examine the witnesses, the petitioner cannot say that she was not given with any opportunity of fair hearing.



5. In the order of punishment the disciplinary authority has not

6. Accordingly, this Writ Petition is partly allowed and the order of

03.01.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation: Yes / No
bkn



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