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Writ Petition No.18684 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.18684 of 2023

and

W.M.P.No.17926 of 2023

K.Sivagnanam
S/o.Karupiah

... Petitioner

Vs.

1.The Director of Medical and Rural
Health Service,
Teynampet, Anna Salai,
Chennai - 600 006.

2.The Joint Director of Health Service,
Government Head Quarters Hospital Campus,
Dharapuram Road,
Tiruppur - 641 601.

3.The Inquiry Officer/Administrative Officer,
Office of Joint Director of Health Service,
Erode.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the entire records connected with the impugned order passed by the first respondent in Na.Ka.No.19558/CK2/2/2020 dated 17.03.2021 and quash the same.



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For Petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the proceedings of the first respondent dated 17.03.2021 wherein punishment of three months increment cut without cumulative effect was imposed against the petitioner.

2. The case of the petitioner is that he was appointed on compassionate ground as a Junior Assistant in the year 2001. He was posted in the District Government Head Quarters Office Hospital at Tiruppur. Thereafter, the petitioner was promoted as Assistant in the year 2013 and was working in Coimbatore zone in the office of the Assistant Director of Drug Control. Subsequently, the petitioner was transferred to the office of the Regional Audit Party Office, Tiruppur, on 07.03.2016.

3. The first respondent, through proceedings dated 13.12.2019, transferred the petitioner from the Regional Audit Party Office, Tiruppur



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to Government Hospital, Erode, on administrative grounds. The petitioner requested to retain him in the same station. However, the request was not favourably considered and the petitioner was relieved from duty on 24.12.2019.

4. The petitioner filed W.P.No.1736 of 2020 challenging the said transfer order and the writ petition came to be dismissed and the same was also confirmed in appeal.

5. The petitioner applied for medical leave for the period from 23.12.2019 to 24.03.2020. Thereafter, due to the pandemic, the petitioner was not able to join duty.

6. The second respondent, issued a charge memo dated 10.03.2020 by framing two charges against the petitioner. The first charge was that the petitioner went on medical leave only to get over the order of transfer and the petitioner also refused to report to duty to the transferred place. The second charge is that the petitioner failed to furnish the correct address in the leave letter that was sent to the second respondent.



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7. The proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. An enquiry officer was appointed and ultimately, the first respondent, through proceedings dated 17.03.2021, held that the charges have been proved and imposed punishment of stoppage of increment for three months without cumulative effect. Even though the proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it ultimately ended with a minor penalty.

8. Initially, the petitioner was not intending to challenge the order since it was only a minor penalty and the petitioner thought it will not impact his service benefits. The petitioner was eligible for promotion as Office Superintendent. When the seniority list was drawn in the year 2022, the name of the petitioner was not included on the ground that the petitioner suffers from punishment of stoppage of increment for three months without cumulative effect. Only then, the petitioner realised that unless the punishment order is challenged, he may not be able to get any promotion for five years. It is under these circumstances, the present writ petition has been filed before this Court.



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9. The respondents have filed counter affidavit. The respondents have taken a very specific stand that the petitioner went on medical leave only to avoid joining in the transferred place and thereby, he failed to obey the transfer order passed by the competent authority. The respondents have also taken a stand that the petitioner has intentionally omitted to mention his address in the leave application submitted by him and thereby, the petitioner committed a misconduct. The enquiry was conducted and ultimately, charges were held to be proved and punishment was imposed against the petitioner. The respondents have also taken a stand that the petitioner is not entitled to be considered for promotion in the light of Schedule X1, Para II, Clause 11 of the Tamil Nadu Service (Condition of Services) Act, 2016. According to respondents, the crucial date for the panel year was 15.03.2022 and the punishment imposed on the petitioner is within the check period of five years prior to the crucial date. In view of the same, the name of the petitioner was not considered in the panel for the post of Office Superintendent for the year 2022-23. Accordingly, the respondents have sought for the dismissal of the present writ petition.



10. Heard Mr.S.Sathia Chandran, learned counsel for petitioner and Mr.M.Bindran, learned Additional Government Pleader appearing for respondents.

11. It is not in dispute that the petitioner was served with a transfer order dated 13.12.2019, transferring the petitioner from the Regional Audit Party Office, Tiruppur, to Government Hospital, Erode. Subsequently, the petitioner was also relieved from duty by the second respondent on 24.12.2019. Aggrieved by the same, the petitioner had challenged the order of transfer before this Court and the writ petition was dismissed and it was also confirmed in appeal. During this period, the petitioner submitted leave letter and had taken medical leave. It is also not in dispute that the period between 23.12.2019 and 24.03.2020 has been considered to be an authorized absence based on the leave letter submitted by the petitioner. It is only the subsequent period from 25.03.2020 to 16.06.2020, which was taken to be period of unauthorized absence by the petitioner. The charge memo came to be issued only for this period for unauthorized absence. Apart from that, the petitioner was also charged for misconduct on the ground that he did not obey the order of transfer and join in the transferred place. That apart, the petitioner also did not give the correct details of his address in the leave letter.



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12. The proceedings were initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. What started as proceedings for a major penalty, ultimately ended with a minor penalty and the first respondent, through the impugned proceedings dated 17.03.2021 imposed punishment of stoppage of increment for three months without cumulative effect. Under normal circumstances, this punishment which is a minor penalty would not have been challenged. However, the petitioner realized that this punishment is now standing in his way of getting further promotion to the post of Office Superintendent. This is in view of Schedule X1, Para II, Clause 11 of the Tamil Nadu Service (Condition of Services) Act, 2016, which states that apart from the punishment of censure, any punishment imposed on a member of service within a period of five years prior to the crucial date will be a bar to grant promotion. Considering the severity of the consequences of the punishment imposed against the petitioner, the petitioner had chosen to challenge the impugned proceedings of the first respondent dated 17.03.2021 in the year 2023.

13. The fact remains that the period from 25.03.2020 to 16.06.2020 was the first phase of the pandemic period and there was a



complete lock down. Hence, the petitioner has submitted a reply to the charge memo to the effect that he was not able to report to duty or communicate during this period. Under normal circumstances, this explanation will not hold water. However, the pandemic period was a challenge to the entire human existence. Therefore, whatever happened during that time, has been dealt with by this Court leniently. Probably, that is the reason why the first respondent has also imposed a minor penalty against the petitioner. There is definitely some negligence on the part of the petitioner in not obeying the order of transfer and joining in the transferred place and he was fighting his case before the Court. The Court was not inclined to interfere with the order of transfer and during this period, the petitioner never attended work and he had applied for medical leave. Therefore, the charges against the petitioner have been proved during enquiry and there is no need to interfere with the finding of the first respondent in this regard.

14. The next issue is with regard to the punishment imposed against the petitioner. Considering the facts and circumstances of the case and considering the fact that this unauthorized absence had taken place during the pandemic period and the petitioner was agitating his



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right against the transfer order during the relevant point of time, this Court is inclined to take a lenient view and to modify the punishment of stoppage of increment for three months without cumulative effect to one of censure. To that extent, the order passed by the first respondent is modified.

In the light of the above discussion, this writ petition is partly allowed and the order passed by the first respondent is interfered insofar as the punishment imposed and the punishment of stoppage of increment for three months without cumulative effect is modified to one of censure. In the light of this order, the claim made by the petitioner for considering his promotion to the post of Office Superintendent shall be considered and necessary orders shall be passed by the first respondent in this regard within a period of six (6) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.09.2024

Neutral Citation: Yes/No
Index: yes/no
Speaking Order/Non-Speaking Order
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N.ANAND VENKATESH, J

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To

- 1.The Director of Medical and Rural
Health Service,
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Chennai - 600 006.
- 2.The Joint Director of Health Service,
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Dharapuram Road,
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