



W.P.Nos.17359, 17365 and 17372 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.17359, 17365 and 17372 of 2024
and

W.M.P. Nos.19130, 19131, 19133 and 19134 of 2024

W.P. No. 17359 of 2024

Dr. S.Subbiah

Vs

... Petitioner

1. The State of Tamil Nadu
represented by its Secretary to Government,
Health and Family Welfare (A-1) Department,
Fort St George, Chennai – 600 009.
2. The Director of Medical Education,
Kilpauk, Chennai – 600 010.
3. The Dean,
Kilpauk Medical College,
Chennai – 600 010.
4. The Medical Superintendent,
Government Royapettah Hospital,
Chennai – 600 014.

5. Dr. D.Sureshkumar

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in his proceedings G.O (D). No. 641, Health and Family Welfare A1 Department dated 19.06.2024 served on 24.06.2024 and quash the same and direct the first and second respondents to accommodate the petitioner in any one of the Government Medical College Hospital in Chennai City including Madras Medical College, Omanthurar Government Multi-Speciality Hospital or Kilapuk Medical College and Hospital.

W.P. No. 17365 of 2024

Dr. S.Subbiah

... Petitioner

Vs

1. The State of Tamil Nadu
represented by its Secretary to Government,
Health and Family Welfare (A-1) Department,
Fort St George, Chennai – 600 009.

2. The Director of Medical Education,
Kilpauk, Chennai – 600 01

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent in his proceedings G.O (D). No. 649, Health and Family Welfare A1 Department dated 24.06.2024 served on 25.06.2024 and quash the same.



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Dr. S.Subbiah

... Petitioner

Vs

1. The State of Tamil Nadu
represented by its Secretary to Government,
Health and Family Welfare (A-1) Department,
Fort St George, Chennai – 600 009.
2. The Director of Medical Education,
Kilpauk, Chennai – 600 01.
3. The Dean,
Kilpauk Medical College,
Chennai – 600 010.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to grant the petitioner his annual increments with effect from 01.04.2022 onwards and to pay the arrears of salary to him with interest at the rate of 9% per annum.

For Petitioner
in all W.Ps

: Mr. S.Selva Thirumurugan

For R-1 to R4
in W.P.No.
17359 of 2024
and for Respondents
in W.P.Nos.17365 and
17372 of 2024

: Mr. J.Ravindran,
Additional Advocate General
assisted by Mrs. M.Sneha,
Special Counsel for Health



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COMMON ORDER

Heard Mr, S.Selva Thirumurugan, learned counsel for the petitioner and Mr. J.Ravindran, learned Additional Advocate General assisted by Mrs. M.Sneha, learned Special Counsel for Health takes notice for the first to fourth respondents in W.P. No.17359 of 2024 and respondents in W.P.Nos.17365 and 17372 of 2024 and perused the materials placed on record, apart from the pleadings of the parties.

2. W.P. No. 17359 of 2024 has been filed challenging the order dated 19.06.2024, passed by the first respondent, thereby transferring the petitioner from Kilpauk Medical College/Government Royapettah Hospital, Chennai to Arignar Anna Memorial Cancer Research Institute, Kancheepuram.

3. W.P. No. 17365 of 2024 has been filed challenging the order dated 24.06.2024, passed by the first respondent, thereby suspending the petitioner from his service.



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4. W.P. No. 17372 of 2024 has been filed for a direction to direct the respondents to grant annual increments with effect from 01.04.2022 onwards and to pay the arrears of salary to him with interest at the rate of 9% per annum.

5. The petitioner in all these Writ Petitions is one and the same. Though the prayers sought in all these Writ Petitions are not one and the same, in pursuance of the charges pending against the petitioner, initially, the petitioner was transferred and subsequently, he was placed under suspension. While the charges were pending, the petitioner was not granted annual increments. Therefore, this Court is inclined to pass a common order.

6. The petitioner was selected and appointed to the post of Civil Assistant Surgeon on 10.02.1992. After completing his super speciality in Oncology, he was posted as Senior Assistant Professor of Surgical Oncology. Subsequently, he was promoted to the post of Associate Professor of Surgical Oncology in Government Kilpauk Medical College and Surgical Oncologist, Institute of Non-Communicable Diseases and Government



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Royapettah Hospital, Chennai, in an existing vacancy. Thereafter, the petitioner was transferred and posted as Professor of Surgical Oncology, Government Kilpauk Medical College, Chennai. While that was so, the petitioner was suspended from service on 17.02.2022, on a complaint alleging that he was contemplated for his association with a political organization, political statements, and activities, and also propaganda expressing disloyal sentiments, which is a violation of Rule 14 of the Tamil Nadu Government Servants' Conduct Rules, 1973. It was challenged before this Court in W.P. No. 4594 of 2022.

7. While the said Writ Petition was pending, a Government Order in G.O (D). No. 234, Health and Family Welfare (I-1) Department dated 09.03.2022, issued by the Government of Tamil Nadu, thereby ratified the order of suspension. It was also separately challenged before this Court in W.P. No. 6737 of 2022. This Court, by a common order dated 31.03.2022, quashed the order of suspension as well as the ratification order and directed the respondents therein to reinstate the petitioner in service with all monetary benefits as per Rules. While the said Writ Petitions were pending,



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the petitioner was arrested and remanded to judicial custody on 19.03.2022, and a complaint was lodged by one of the women doctors was registered in Crime No. 1123 of 2020 for the offences under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998, and Sections 271 and 427 of IPC. Subsequently, the said offences were altered to Sections 271, 427, and 447 of IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998, on the file of the Inspector of Police, S-8, Adambakkam Police Station, Chennai District. Thereafter, the petitioner was granted interim bail by this Court by order dated 21.03.2022, which was subsequently made absolute.

8. Further, the petitioner filed a Criminal Original Petition in CrI. O.P. No. 16881 of 2022 to quash the aforementioned First Information Report in Crime No. 1123 of 2020 before this Court. This Court, by order dated 10.08.2022, quashed the First Information Report on the ground that the de-facto complainant did not want to proceed further with the complaint and she personally appeared before the Magistrate and requested that the



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complaint not be proceeded with further. In view of the compromise entered into between them, the First Information Report was quashed by this Court. While quashing the order of suspension, this Court granted liberty to the respondents to proceed with the disciplinary proceedings as contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules' for short) and to conclude the same within a period of 12 weeks from the date of issuance of the charges.

9. Once again, the petitioner filed a Writ Petition in W.P. No. 7650 of 2023 challenging the charge memo, and it is pending before this Court. While that was so, one of the doctors, viz., Dr. G. Vijayalakshmi, lodged a complaint against the petitioner, alleging that the petitioner misbehaved with her in the dressing room. The CCTV footage was aired on a private news channel. The said complaint was referred to the Vishaka Committee, and a preliminary enquiry was conducted after issuing notice to the petitioner. The petitioner submitted an explanation for the complaint lodged by the said Dr. G. Vijayalakshmi. Therefore, the petitioner was transferred to Arignar Anna Memorial Cancer Research Institute, Kancheepuram, by order



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dated 19.06.2024. Thereafter, the petitioner was relieved on 21.06.2024.

While that being so, the petitioner was served with a suspension order dated 24.06.2024, on the ground that disciplinary proceedings were contemplated based on a prima facie case made out in the complaint of staff working at the Department of Surgical Oncology in Kilpauk Medical College/Government Royapettah Hospital, Chennai.

10. The learned counsel for the petitioner submitted that the petitioner has rendered 31 years of sincere service without even a single memo. The petitioner was the president of a non-political students' organization called Akhil Bharatiya Vidyarthi Parishad from 2017 to 2020. The membership of the said organization is renewed every year. However, the petitioner had not renewed the same since 2020. Therefore, the petitioner is no way connected with the said organization. The criminal case registered against the petitioner was quashed by this Court; even then, the petitioner is suffering from false complaints one after another. In fact, the subsequent charge is under challenge in W.P. No. 7650 of 2023, and it is pending. After submitting his explanation before the Vishaka Committee,



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the petitioner lodged a complaint before the Commissioner of Police regarding the installation of a camera by some private person in the dressing room, and it is pending for enquiry. While that was so, the petitioner was transferred to Arignar Anna Memorial Cancer Research Institute, Kancheepuram; it is nothing but punitive in nature and cannot be sustained.

11. He further submitted that immediately after relieving the petitioner, he was suspended from service under Rule 17(e)(1)(i) and (ii) of the Rules. The suspension should be in the public interest. Whereas, the order of suspension issued against the petitioner is not in the public interest. Therefore, the order of suspension cannot also be sustained. In view of the charges, the petitioner was not granted annual increments with effect from 01.04.2022. In support of his contentions, he relied upon the judgment of this Court in the case of ***K. Venugopal vs. Joint Director of School Education***, reported in 2009 5 MLJ 1009, which held that before issuing any suspension order, the authority concerned should be satisfied about the public interest involved in the matter warranting the issuance of a suspension order against the delinquent officer.



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12. The learned Additional Advocate General appearing for the respondents submitted that the petitioner is now facing a very serious charge, which would definitely affect the public interest. Therefore, in the interest of the public, the petitioner was placed under suspension. It is premature to challenge the order of suspension. The petitioner was suspended only on 24.06.2024. A serious complaint has been lodged against the petitioner, and he is facing an enquiry before the Vishaka Committee. The petitioner is also facing a charge memo dated 08.11.2022, consisting of the following charges:-

“Charge No.1:- You Dr.S.Subbia Professor (Surgical Oncology), Government Kilpauk Medical College/Institute of Non-Communicable Diseases and Government Royapettah Hospital, Chennai had not informed the Government or to your superiors the fact that you were the president of Akhil Bharatiya Vidyarthi Parishad in the year 2017 and your act is in contravention of the Rule 14 of the Tamil Nadu Government Servants Conduct Rules.



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Charge No.2:- *You Dr. S.Subbiah Professor*

(Surgical Oncology), Government Kilpauk Medical College/Institute of Non-Communicable Diseases and Government Royapettah Hospital, Chennai, had gone to Puzhal prison on a working day 16.02.2022 at 13.05 to 13.30 p.m duty time without getting permission from your superiors, to give Auxiliary materials to a lady by name Nidhi belonging to an organisation called ABVP, who was arrested while participating in the agitation before the house of the Hon'ble Chief Minister of Tamil Nadu and your act in contravention of rule 20 of the Tamil Nadu Government Servants Conduct Rules.”

13. Though it is challenged in W.P. No. 7650 of 2023, another complaint was lodged against the petitioner by the said Dr. Vijayalakshmi, alleging very serious allegations against the petitioner. The allegations are related to sexual harassment, and as such, the said complaint was placed before the Vishaka Committee, which is meant for the Committee for



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women against sexual harassment in the workplace. In fact, the learned Additional Advocate General appearing for the respondents has produced CCTV footages showing that the petitioner attempted to misbehave with a nurse in the dressing room. That apart, the petitioner also misbehaved with his neighbour and he urinated on the doorstep of his neighbour.

14. On a perusal of the complaint lodged by the said Dr. Vijayalakshmi dated 20.03.2024, alleging that the petitioner used to call her throughout the night and he used to send messages to her, spread rumors, and claimed to have a personal friendship with her. He also forced her to come to his private hospital, forced her for the same, and intimidated, threatened, and blackmailed her during working hours. Therefore, she lodged the said complaint to take appropriate action against the petitioner for his unlawful activities, intimidating, threatening, harassing, and torturing her continuously by abusing his power during work hours and midnight at his home. Hence, the petitioner was placed under suspension under Rule 17(e)(1)(i) of the Rules. That apart, it is premature to challenge the order of suspension. In view of the above facts and circumstances, this



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Court finds no infirmity or illegality in the order of suspension passed by the first respondent, and the Writ Petition in W.P. No.17365 of 2024 is devoid of merits and is liable to be dismissed.

15. Insofar as challenging the order of transfer is concerned in W.P. No. 17359 of 2024, the petitioner was already relieved from the post of Professor of Surgical Oncology, Government Kilpauk Medical College/Government Royapettah Hospital, Chennai. In fact, the petitioner was already suspended from service on 17.02.2022, and subsequently, it was quashed by this Court. Another criminal case was registered against the petitioner in Crime No. 1123 of 2020 for the offences under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998, and Sections 271 and 427 of IPC. Subsequently, the said offences were altered to Sections 271, 427, and 447 of IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, read with Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998, on the file of the Inspector of Police, S-8, Adambakkam Police Station, Chennai District.



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16. However, compromise was entered into between the de-facto complainant and the petitioner. Therefore, this Court quashed the First Information Report registered in Crime No. 1123 of 2020. It does not mean that the charge itself is baseless. In view of the above circumstances and on administrative grounds, the petitioner was rightly transferred to Arignar Anna Memorial Cancer Research Institute, Kancheepuram. Hence, this Court finds no infirmity or illegality in the order of transfer passed by the first respondent, and the Writ Petition in W.P. No.17359 of 2024 itself is devoid of merits and is liable to be dismissed.

17. Insofar as the annual increment is concerned, admittedly, the petitioner is facing a charge memo dated 18.11.2022, and at present, he is suspended from service for another set of allegations. Therefore, he is not eligible to get annual increment and the directions sought for in the Writ Petition in W.P. No. 17372 of 2024 cannot be considered. Accordingly, the Writ Petition is devoid of merits and is liable to be dismissed.



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18. In the result, these Writ Petitions are dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

08.08.2024

Index: Yes/No
Neutral Citation: Yes/No
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To

1. The Secretary to Government,
The State of Tamil Nadu
Health and Family Welfare (A-1) Department,
Fort St George, Chennai – 600 009.
2. The Director of Medical Education,
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G.K.ILANTHIRAIYAN, J.

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order in
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