



W.P.No.30963 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2024

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.30963 of 2023

Dr.K.Kalaiselvi

...Petitioner

Vs

1.The Secretary
Government of Tamil Nadu,
Department of Health and Family Welfare,
Fort St.George, Chennai - 9.

2. The Director of Medical
and Rural Health Services,
Teynampet, Chennai - 600 006.

3.The Joint Director of Medical and Rural
Health Services,
Race Course Road,
Coimbatore - 641 018

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 13.07.2023 bearing M.M.No.1691/Ne.P3/3/2023 issued by the 2nd respondent and set aside the same and consequently direct the 2nd respondent to grant all the service benefits including pay and increment accrued to the petitioner for



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the entire 78 days by treating the said period of suspension as duty period or on medical leave.

For Petitioner : Mr.C.P.Sivamohan

For Respondents : Mr.M.Bindran
Additional Government Pleader

ORDER

This writ petition has been filed to call for the records relating to the impugned order dated 13.07.2023 bearing M.M.No.1691/Ne.P3/3/2023 issued by the 2nd respondent and set aside the same and consequently direct the 2nd respondent to grant all the service benefits including pay and increment accrued to the petitioner for the entire 78 days by treating the said period of suspension as duty period or on medical leave.

2. According to the petitioner, she joined the services as Assistant Surgeon on 09.03.1996 of the Tamil Nadu Medical Services and later she was promoted as Chief Civil Surgeon (Surgery) and posted at Government Head Quarters Hospital, Pollachi on 07.01.2017. After that, the post of Hospital Superintendent of Government Head Quarters Hospital, Pollachi fell vacant on 30.06.2018, the 2nd respondent



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appointed one Dr.E.Raja as Hospital Superintendent against the petitioner's seniority and desirability for the reason that she was not present in the promotion counselling, which was held on 20.09.2019. Challenging the non-selection, the petitioner filed a writ petition in W.P.No.28985 of 2019 before this Court and this Court vide order dated 12.11.2019 had set aside the order of appointment with liberty to conduct a fresh promotion counselling. As per the said order, fresh counselling was conducted and the petitioner was appointed as Hospital Superintendent from 08.02.2020 in the cadre of Chief Civil Surgeon. While she was serving as Hospital Superintendent, she availed Medical Leave between 06.08.2022 and 26.09.2022 as she was affected by corona virus. After availing the medical leave for 52 days, she resumed her duty on 27.09.2020. On 28.09.2022, an accident had occurred at Ayyambalayam Village, which is 20 km away from Pollachi. On the same day, the petitioner was placed under suspension by the 3rd respondent by proceedings dated 28.09.2022. Then, the 3rd respondent by her proceedings dated 14.12.2022 revoked the order of suspension and reinstated the petitioner in service. Pursuant thereto, the petitioner joined duty on 15.12.2022. Subsequently, on 08.02.2023, the petitioner



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requested the 2nd respondent to regularise the period of suspension as duty period. But, the 2nd respondent vide his impugned order dated 13.07.2023, sanctioned petitioner's leave and regularised her service as EOL without pay and allowance, thereby, depriving the petitioner from all the benefits which she is entitled to. Therefore, the petitioner approached this Court with the present writ petition.

3. Learned Additional Government Pleader appearing for the respondents would submit that on 28.09.2022, a major accident has occurred at Ayyambalaym Village and nearby 38 accident victims were brought to the Hospital for emergency treatment and the Joint Director arrived the Hospital at 09.30 a.m. and the District Collector arrived at 10.00 a.m. But, the petitioner being the Hospital Superintendent has not attended the duty on time during the emergency situation. For the said reason, the petitioner has derelicted in her duties of attending the hospital in emergency situation, she was placed under Suspension vide Ref. No. 7959/E2/2022, dated 28-09-2022 passed by the 3rd respondent under Rule 17(e) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. He further submitted that the Government in G.O.(Ms). No 19. Personnel and Administrative Reforms (N) Department, dated



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11.02.2008 have delegated the powers to all the authorities directly higher to the member holding the posts included in the state service to frame charges under Rule 17(b) or 17(a) even they are not competent to impose the penalty. Accordingly, the Joint Director of Health Services, Coimbatore District who is the immediate superior official to the Hospital Superintendent has framed charges against the petitioner in Ref No.7959/E2/2022, dated 25-11-2022 against the allegations levelled against the petitioner. Subsequently, on considering the representation of the petitioner, the suspension issued to the petitioner has been revoked vide Ref. No. 7959/E2/2022, dated 14-12-2022, of the Joint Director of Health Services, Coimbatore. Hence, the above orders are within the powers delegated in G.O.(Ms). No. 19, Personnel and Administrative Reforms (N) Department, dated 11.02.2008. Further, the Disciplinary charges initiated against the petitioner under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules has been finalized and a punishment of "CENSURE" have been awarded against the petitioner in Proceedings Ref No. 60255/SC2/2/2022, dated 06-01-2023.

4. Learned Additional Government Pleader further submitted that as per Rule 10 of Fundamental Rule 54-B, the official who has been



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suspended for any charges and she is entitled for any pay and allowances only if he is exonerated from the charges. Rule 10 of Fundamental Rule 54-8 states as follows:

"10. When a Government servant, who was suspended, is fully exonerated of the charges on appeal, the period of suspension shall be treated as duty; and he shall be entitled to pay and allowances for the entire period of suspension, provided the period of suspension ended before the date of his superannuation."

5. The petitioner has been awarded a punishment of "CENSURE" in Proceedings Ref No 60255/SC2/2/2022, dated 06-01-2023, for the committed lapses and hence, as per the Ruling 10 of Fundamental Rule, the suspension period of 78 days have been regulated as Extra Ordinary Leave without pay and allowances without Medical Certificates in K.Dis. No. 1691/E3/3/2023, Dated: 13-07-2023.

6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



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7. Admittedly, the petitioner, being the Hospital Superintendent and in-charge of the Hospital, she has not attended the duty on time and failed to reach the hospital even during the emergency situation to take care of the victim/patients and to save their lives by giving treatment. It appears that on 28.09.2022, the petitioner has absented from attending the hospital to take care of the patients who are coming for treatment/admitted in the hospital. The 3rd respondent placed the petitioner under suspension vide order dated 28-09-2022. Further, the petitioner was awarded a punishment of "CENSURE" in Proceedings Ref No 60255/SC2/2/2022, dated 06-01-2023, for the committed lapses. Therefore, this Court is not inclined to interfere with the impugned order dated 13.07.2023 passed by the 2nd respondent and the petitioner is not entitled for the period of suspension as duty period or as unearned leave or Medical Leave.

8. Accordingly, this writ petition is dismissed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order

msv

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V.BHAVANI SUBBAROYAN,J.

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