



WEB COPY



WA No. 319 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.319 of 2024

D.Geetha
W/o. R. Prabhakar Mohan
Staff Nurse
Government Medical College and ESI Hospital
Coimbatore 641 015 .

.. Appellant

Versus

1. Government of Tamil Nadu
represented by Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 600 009.
2. The Director of Medical Education,
Chennai 600 010.
3. The Superintendent,
Government Hospital of Thoracic Medicine,
Tambaram Sanatorium, Chennai 600 047.
4. The Dean,
Govt. Medical College and ESI Hospital,
Coimbatore 641 015

.. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 13.09.2022 passed in W.P.No.28657 of 2017.



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For Appellant : Mr. J. Sushil Rajkumar

For Respondents : Mr. Abishek Murthy
Government Advocate

JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN, J.]

Challenging the order dated 13.09.2022 passed by the learned Judge, dismissing the Writ Petition No. 28657 of 2017 filed by the appellant/writ petitioner, the present intra-court appeal is filed.

2.The case of the appellant in brief is as follows:

2.1. The appellant was initially appointed as a staff nurse in the Medical Services Department on 13.03.1981 and her probation was declared on 14.04.1983. While so, the appellant was deputed to undergo B.Sc. (Nursing) Course in Madras Medical College between February 1986 and April 1998. On completion of such training, she was posted as Staff Nurse in Government Hospital, Chennai, on 01.05.1988.

2.2. When the appellant was working as such, due to domestic compulsions, she did not turn up for duty from May 1988 to 1989 for more than a year. Therefore, she was issued with a charge memo dated 06.10.1989 by the Dean, Government General Hospital, Chennai issued a charge memo dated 06.10.1989 to the appellant under Rule 17 (b) of the Tamil Nadu Civil



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Services (Discipline and Appeal) Rules. On receipt of the charge memo, the appellant submitted her reply on 20.12.1989 denying the charges, inter alia explained the circumstances, which prompted her to remain absent for more than a year. An enquiry was ordered to be conducted by the fourth respondent in which the appellant participated. Ultimately, the enquiry officer submitted his report dated 29.11.1990 to the fourth respondent and the same was served on the appellant so as to enable her to submit further explanation.

2.3. During the pendency of the enquiry, the second respondent, by order dated 28.09.1993, permitted the appellant to re-join duty and posted her in Government Hospital for Thoracic Medicine, Tambaram, Chennai. The appellant also joined duty on 09.10.1993. In view of the same, the fourth respondent cancelled the earlier charge memo dated 06.10.1989 and issued a fresh charge memo dated 03.07.1995 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which ended in the order of removal from service on 17.07.1998. The appeal filed against the said order, was also rejected by G.O.(D)No.247, Health and Family Welfare Department, dated 22.02.2001. Challenging the order of rejection, the appellant filed O.A. No. 3328 of 2002 before the Tamil Nadu Administrative Tribunal. The Tribunal, by order dated 22.04.2004, modified the order of punishment of dismissal from service into one of stoppage of increment for a period of 3



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years with cumulative effect. The Tribunal also directed that the period of absence from May 1988 to 1989 shall be treated as loss of pay and the period from 1989, the date on which the appellant expressed her willingness to rejoin duty till posting order was issued in the year 1993, shall be treated as duty period for which the appellant is entitled to half of the wages.

2.4. Pursuant to the order of the Tribunal dated 22.04.2004, the first respondent passed G.O. (D) No.440, Health and Family Welfare Department dated 02.04.2007 thereby reinstating the appellant in service. In the said order passed by the Government, it was stated that separate orders will be issued for regularising the period of absence. Pursuant to the order dated 02.04.2007, a posting order was issued to the appellant on 29.05.2007, posting her as Staff Nurse in Primary Health Centre, V. Chandrapuram, Coimbatore and she also joined duty on 16.06.2007. After joining duty, the appellant said to have repeatedly sent representations to regularise her period of absence, as per the order dated 22.04.2004 passed by the Tribunal in O.A. No. 3328 of 2002, however, no order was forthcoming from the Government.

2.5. In the mean while, the appellant was issued with a third charge memo dated 16.06.2017 for her unauthorised absence from 14.11.1993. According to the appellant, the charge memo dated 16.06.2017 was issued after 17 years from the date of her absence; and that, the third respondent,



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without regularising the period of absence of the appellant, as directed by the Tribunal in its order dated 22.04.2004 in O.A. No. 3328 of 2002, issued the third charge memo dated 16.06.2017 and it is legally not sustainable. However, the appellant submitted her explanation to the third charge memo on 10.07.2017. On receipt of the same, the third respondent, by a communication dated 17.07.2017, directed the appellant to appear for an enquiry on 19.07.2017. While so, she was suspended from service on 27.07.2017 and she was not permitted to retire from service on reaching the age of superannuation i.e., on 31.07.2017.

2.6. Feeling aggrieved, the appellant has filed Writ Petition No. 28657 of 2017 before the writ Court to issue a Writ of Certiorarified Mandamus to call for the records relating to (i) Charge Memo in Na.Ka.No.4356/N2/2017 dated 16.06.2007 of the third respondent (ii) Pro Ref.No.27496/SC.II/1/2017 - 1 dated 27.07.2017 of the second respondent (iii) Pro Ref.No.27496/SC II/1/2017-2 dated 27.07.2017 of the second respondent and to quash the same and to issue a consequential directions to the respondents (i) to implement the order dated 22.04.2004 in O.A. No. 3328 of 2002 passed by the Tamil Nadu Administrative Tribunal (ii) to sanction periodical annual increments from June 2007 onwards till 31.07.2007 (iii) to re-fix the pay in accordance with successive Pay Commission's recommendations and (iv) to permit her to retire



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on 31.07.2017 A.N. in the normal course with entitlement to all pensionary and retirement benefits with interest.

3.By order dated 13.09.2022, the learned Judge dismissed the aforesaid writ petition, with the following observations:

“4. This being the factum, the respondents are directed to dispose of the departmental disciplinary proceedings as expeditiously as possible. The petitioner is directed to co-operate for the early disposal of the departmental disciplinary proceedings. In the event of any non-cooperation on the part of the writ petitioner, the same may be recorded in the proceedings itself and in such circumstances, the petitioner cannot seek any relief merely on the ground of delay in disposal of the disciplinary proceedings.”

Assailing the order of the learned Judge, the writ petitioner is before this court with the present appeal.

4.The learned counsel appearing for the appellant made the following submissions:

(i)There is inordinate delay in commencing and concluding the disciplinary proceedings initiated against the appellant.

(ii)The Tribunal in its order dated 22.04.2004 passed in O.A. No. 3328 of 2002 directed the respondents to regularise the period of absence of the appellant, but the same has not been complied with, till date.

(iii)The appellant was not permitted to retire from service on attaining



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the age of superannuation on 31.07.2017 and for more than six years, she is not in receipt of her terminal benefits as also pension.

(iv) The successive charge memos issued to the appellant has caused serious prejudice to the appellant.

(v) Without considering all these aspects, the learned Judge erred in dismissing the writ petition filed by the appellant.

Therefore, the learned counsel prayed for setting aside the order of the learned Judge and for allowing this writ appeal.

5. On the above contention of the counsel for the appellant, we have heard the learned Government Advocate appearing for the respondents and also perused the materials placed on record.

6. The challenge made in the writ petition was the third charge memo issued to the appellant, and the learned Judge refused to entertain the same, as it required detailed enquiry.

7. The main ground on which the present appeal has been filed by the appellant is that there is enormous delay in completing the disciplinary proceedings and that, successive charge memorandums issued for the same set



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of charges, are legally not sustainable and hence, the same vitiate the disciplinary proceedings.

8.It is evident from the facts involved herein that the first charge memo dated 06.10.1989 was issued to the appellant, however, it was revoked by the fourth respondent in view of her reinstatement in service on 09.10.1993. Thereafter, the second charge memo dated 03.07.1995 was issued to the appellant and it culminated in passing of the order dated 17.07.1998, removing her from service. The said order of removal from service was set aside by the Tribunal by order dated 22.04.2004 in O.A. No. 3328 of 2002, pursuant to which the appellant was again reinstated in service. Later, the appellant was issued with a third charge memo dated 16.06.2007 and by citing the same, she was not permitted to retire from service on attaining the age of superannuation i.e., on 31.07.2017. Therefore, the contention of the learned counsel for the appellant that three charge memorandums have been issued for the same set of charges and the same vitiate the entire disciplinary proceedings, cannot be countenanced by this court.

9.It is settled law that in exercise of power conferred under Article 226 of the Constitution of India, the court cannot interfere with the disciplinary



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proceedings and the petitioner can very well participate in the inquiry and prove his innocence. In the present case, taking note of the facts and circumstances of the case, the learned Judge has rightly dismissed the writ petition, on the premise that the scope of entertaining the writ petition against the charge memo is certainly limited and judicial review can be exercised only on exceptional circumstances, when the writ petitioner establishes the legal infirmity for quashing the charge memo. While so, the learned Judge directed the respondents to conclude the disciplinary proceedings initiated against the appellant as expeditiously as possible. We do not find any reasons to interfere with the same. However, it is always open to the appellant to participate in the enquiry and raise all the points that were raised in the writ petition.

10. With the above observation, this writ appeal is dismissed. No costs.

[R.M.D., J]

[M.S.Q., J]

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Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

nsd/rsh



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R.MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

nsd

To

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