



W.P.No.33932 of 20 --

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2024

PRONOUNCED ON : 15.10.2024

CORAM

THE HON'BLE MR. JUSTICE **BATTU DEVANAND**

W.P.No.33932 of 2019
and WMP.No.34508 of 2019 and 16216 of 2021

Rukmani

... Petitioner

Vs.

1. The Assistant Commissioner of Labour (Enforcement),
Office of the Assistant Commissioner of Labour,
Coimbatore.
2. The Commissioner of Labour,
Office of the Commissioner of Labour,
D.M.S. Building, Teynampet,
Chennai 600 006.

... Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari to call for the records of the 1st
respondent in his proceedings No.A/3569/2018 dated 06.02.2019 and quash
the same.

For Petitioner : Ms.Ramapriya Gopalakrishnan
for M/s.M.Liagat Ali

For Respondents : Mr.V.Jeeva Giridharan,
Additional Government Pleader



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ORDER

This Writ Petition has been filed to quash the proceedings of the first respondent dated 06.02.2019 in No.A/3569/2018.

2. It is the case of the petitioner that on 25.06.1984 she joined the Labour Department. While she was working as Deputy Inspector of Labour, Coimbatore, by order dated 31.05.2018 she was transferred to TASMAC office, Chennai as Manager, Labour. Since she had only 2 more years of service left before her due date of retirement, she made a representation on 06.06.2018 to the Commissioner of Labour requesting to retain her in service in Coimbatore. However, the Assistant Commissioner of Labour (Enforcement), Coimbatore without considering her representation issued a charge memo dated 06.02.2019 to the petitioner stating that she neither joined the new post for a period of 206 days after issue of the transfer order nor appeared before the Medical Board to ascertain the genuine nature of her leave.



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3. Subsequently, the petitioner submitted her explanation to the said charge memo stating that as she had been suffering from back pain and urinary infection, she had taken leave after duly sent the leave application. She also stated that she did not receive any letter to appear before the Medical Board.

4. The petitioner also filed WP.No.10682 of 2019 challenging her transfer order from the post of Deputy Inspector of Labour-I, Coimbatore to TASMACH Office, Chennai stating that she was only having 4 months in service and being a lady she was reluctant to serve at TASMACH. The learned Single Judge dismissed the said Writ Petition. Challenging the same, the petitioner preferred appeal in W.A.No.1908 of 2019. The Division Bench of this Court vide order dated 30.07.2019 set aside the transfer order and permitted the petitioner to continue to work as Deputy Inspector of Labour at Coimbatore. Subsequently, as per the order of the Labour Commissioner, Chennai, the petitioner took over the charge of the post of Deputy Inspector of Labour-I, Coimbatore and joined duty on 30.07.2019.



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5. The grievance of the petitioner is that on 06.02.2019, the Assistant Commissioner of Labour issued charge memo with 5 charges and most of the charges are connected only with the transfer order. Since the Division Bench of this Court set aside the transfer order, the respondent Commissioner got wild and punished her by issuing the charge memo. The impugned order is nothing but a vindictive action against the petitioner. Since all the charges issued against her are all connected with the transfer order, they are not maintainable in view of the order passed by the Division Bench of this Court. Hence, the petitioner filed the present Writ Petition.

6. The learned counsel for the petitioner submitted that all the charges in the memo are related to the transfer order of the petitioner dated 31.05.2018 and the said order has been set aside by the Division Bench of this Court in W.A.No.1908 of 2019, dated 30.07.2019 and hence, all the charges ceased to exist. He further submits that since the second respondent Commissioner has given a letter of declaration before the Division Bench stating that without any reservation of his earlier memo of charges dated 06.02.2019 the petitioner can take over the charges, the respondent is estopped from reviving the earlier charges in connection with the transfer.



7. The learned counsel further submits that the second respondent has initiated proceedings and appointed an inquiry officer vide his proceedings dated 11.11.2019 i.e., 8 months after the charge memo dated 06.02.2019 only to avenge the petitioner as she got favourable order setting aside her transfer orders from the Division Bench. Therefore, the proceedings of the respondents are against law, arbitrary and liable to be quashed.

8. A counter affidavit has been filed by the respondents, wherein it has been stated that the transfer order of the petitioner is part of her terms of appointment and without reporting for duty in the transferred place, she submitted medical certificates on her convenience. The respondents by following the existing legal procedures passed the transfer order to the petitioner and there is no vindictive action against her in respect of the transfer order and initiation of disciplinary proceedings. Having relieved from service in view of the transfer order / non reporting for duty at the transferred place by the petitioner amounts to disobedience of the order of the Department.

9. It is further stated that the petitioner filed a Writ Petition challenging the transfer order, which was dismissed. Challenging the same,



she filed Writ Appeal and the same came to be allowed on sympathetical ground. However, since the petitioner did not report for duty at the transferred place, disciplinary action was initiated against her and charge sheets dated 06.02.2019 and 28.04.2019 were issued.

10. The learned Additional Government Pleader submits that the petitioner did not get any direction from the High Court in WA.No.1098 of 2019 to the effect that the disciplinary action initiated against her has to be dropped. As the act of the petitioner in not reporting duty at the transferred place is a very serious and grave offence, the disciplinary action was initiated and charges were framed under Section 17 (b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. He further submits that the first respondent did not violate the terms of the G.O.(Ms.).No.51, Labour and Employment (E1) Department, dated 21.03.2017 while issuing transfer order to the petitioner. Hence, he sought to dismiss the Writ Petition.

11. Having heard the submissions of the respective counsels and on perusal of materials available on record, this Court finds that the main issue involved in this case is whether the respondents can proceed further



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pursuant to the charge memo dated 06.02.2019 issued to the petitioner by appointing an enquiry officer on 11.11.2019 to enquire into the charges levelled against the petitioner in the light of the subsequent events relating to the order dated 31.05.2018 and subsequent order dated 29.07.2019 issued by the respondents or not.

12. Admittedly, the facts of this case are that the petitioner joined in the service of Labour Department on 25.06.1984. While she was working as Deputy Inspector of Labour-I, Coimbatore, she was transferred to TASMACH Office in Chennai as Manager, Labour by order dated 31.05.2018. Admittedly, at that time, she had only 2 more years of service left to her from the due date of retirement. On 06.06.2018, she made a representation to the second respondent requesting to retain her at Coimbatore, and thereafter, she made several representations on 06.07.2018, 26.07.2018, 20.08.2018, 11.09.2018, 23.09.2018, 17.10.2018 and 14.11.2018, but the same were not considered. On 06.02.2019, the first respondent issued a charge memo to the petitioner levelling 5 charges and the substance of the charges is that the petitioner did not join the new post for a period of 206 days after transfer order and she did not appear before the Medical Board.



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On 15.03.2019, the petitioner submitted her explanation stating that she had been suffering from back pain and urinary infection and she had duly sent leave applications to avail leave. It is also stated in the explanation that she did not receive any letter or communication asking her to appear before the Medical Board.

13. In the mean time, the petitioner filed W.P.No.10682 of 2019 before this Court against the transfer order dated 31.05.2018 and the same was dismissed by order dated 09.04.2019. Aggrieved by the order of the learned Single Judge, the petitioner preferred W.A.No.1908 of 2019 before a Division Bench of this Court. On 13.06.2019, the Division Bench of this Court by order dated 24.06.2019, granted interim stay of the transfer order. Thereafter, the second respondent issued modification order to the transfer order dated 31.05.2018 and reposted the petitioner as Deputy Inspector of Labour-I, Coimbatore in the existing vacancy and instructed her to take over the charge of the said post on expiry of leave. The Writ Appeal in W.A.No.1908 of 2019 was disposed of by order dated 30th July 2019 taking into account the subsequent event happened during the pendency of Writ Appeal, particularly, taking into consideration of the order dated 29.07.2019



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issued by the second respondent in modifying of the earlier order dated 31.05.2018. It is also recorded in the said order that since the appellant would be retiring very shortly, the respondent was retaining her in Coimbatore till her retirement.

14. While the matter stood thus, the second respondent appointed an enquiry officer vide his proceedings dated 11.11.2019 to enquire into the charges levelled against the petitioner. At that stage, the petitioner filed the present Writ Petition challenging the charge memo issued by the first respondent on 06.02.2019. On 05.02.2019, this Court passed an order of interim stay of the charge memo dated 06.02.2019.

15. During the course of hearing, learned counsel for the petitioner brought to the notice of this Court that the petitioner retired from service on 31st March 2020. As the retirement benefits were not settled by the respondents, the petitioner filed W.P.No.14705 of 2021 before this Court and this Court by order dated 11.08.2022 directed the petitioner to make a fresh application for payment of the retirement benefits. Since the request of the petitioner was not considered, she filed a Contempt Petition No.944 of



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2023 on 15.03.2023. The said Contempt Petition was closed on 22.02.2024 recording the fact that the amounts of Special Provident Fund, General Provident Fund, Earned Leave Salary, Provisional Pension and Additional Charge Allowance have been received by the petitioner.

16. The learned counsel for the petitioner also brought to the notice of this Court that DCRG, Commutation Pension, Leave Salary for the period from 15.06.2018 to 29.07.2019 and Special Provident Fund (Government Contribution) are not yet disbursed to the petitioner by the respondent.

17. On the other hand, the learned Additional Government Pleader appearing for the respondents submitted that enquiry officer was appointed to enquire into the charges levelled against the petitioner as per rule 17 (b) of the Tamil Nadu Civil Works (Disciplinary and Appeal) Rules and disciplinary enquiry can be continued as per Rule 91 of Tamil Nadu Pension Rules even after retirement of the petitioner. Accordingly, he sought to dismiss the Writ Petition as it is filed against the charge memo only.



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18. On hearing both sides and on perusal of records it is clear that the basis for issuance of charge memo dated 06.02.2019 is the transfer order issued against the petitioner. Admittedly, it was modified by the second respondent as per the order dated 29.07.2019 posting the petitioner as Deputy Inspector of Labour-I, Coimbatore in the existing vacancy. In the modified order dated 29.07.2019, the second respondent instructed the petitioner to take over the charge of the post of Deputy Inspector of Labour-I, Coimbatore on expiry of leave. On plain reading of the modified order dated 29.07.2019, it establishes that she is continuing on leave as on the date of the modified order dated 29.07.2019. In fact, it is the contention of the petitioner from the beginning that he had taken leave only after duly sending the leave application in view of the ill health.

19. It is also the case of the petitioner that she did not receive any communication from the respondents to appear before the Medical Board. Under such circumstances, the respondents are not justified in issuing charge memo based on the allegation as if the petitioner did not join the place on which she was originally transferred. The action of the respondents to proceed to conduct enquiry against the petitioner pursuant to the charge



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memo dated 06.02.2019 in the light of the modified order issued by the second respondent dated 29.07.2019 is illegal, unjust, arbitrary and against the principles of natural justice.

20. In view of the above in the considered opinion of this Court, the petitioner successfully satisfied this Court on facts and law for interference of this Court against the proceedings issued in this Writ Petition and quash the same to meet the interest of justice. Accordingly, this Writ Petition is allowed and the proceedings No.A/3569/2018 dated 06.02.2019 and the consequential proceedings are hereby quashed.

No costs.

Consequently, connected miscellaneous petitions are closed.

15.10.2024

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

pvs



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BATTU DEVANAND.J.,
pvs

Pre-delivery order in

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