



W.A(MD)No.1210 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.1210 of 2024
and
C.M.P(MD)No.9291 of 2024**

- 1.The Secretary to the Government,
Health and Family Welfare (K2) Department,
Secretariat,
Chennai.
- 2.The Director of Medical and Rural Health Services,
DMS Complex,
361, Annasalai,
Chennai – 600 006.
- 3.The Joint Director of Health Services,
Tirunelveli,
At Tenkasi,
Tirunelveli District.

... Appellants/Respondents

vs.

P.Bharathi Lakshmi

... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 16.09.2022 made in W.P(MD)No.15542 of 2015.



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For Appellants

: Mr.A.Kannan
Additional Government Pleader

For Respondent

: Mr.R.Anand

JUDGMENT

[Judgment of the Court was made by G.ARUL MURUGAN, J.)

This intra Court Appeal is directed against the order, dated 16.09.2022 made in W.P(MD)No.15542 of 2015, whereby the writ Court had modified the punishment of 'dismissal from service' into that of 'compulsory retirement' imposed on the respondent.

2.The short facts to be noted in the appeal is that the respondent, who possessed the Degree in MBBS and DGO, was appointed in the second appellant Department as Assistant Surgeon on 30.12.1991 at Government Primary Health Centre, Utchinatham, Ramanathapuram District. Thereafter, she served in the transferred place at Kelavikulam Government Primary Health Centre, Virudhunagar District till 24.03.1994, thereafter, served in the Government Rajaji Hospital, Madurai from 25.03.1994 to 29.03.1996 and thereafter, she was transferred to the Government Hospital, Rajapalayam, Virudhunagar District.

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3.While so, the respondent had applied for an extraordinary leave for a period of six months from 22.05.2006. The second appellant had rejected the leave application on 21.07.2006 and the respondent was directed to join duty immediately. However, the respondent did not report for duty and submitted another leave application on 05.10.2006 extending the extraordinary leave up to May 2007. This application was also not entertained and the respondent was intimated to rejoin duty on or before 28.12.2006, failing which, disciplinary action will be initiated against her. Pursuant to which, the respondent joined duty on 28.12.2006, where she worked for three days till 30.12.2006 and by a letter, dated 31.12.2006 applied for further extraordinary leave for six months from 31.12.2006. Even though the leave was refused and she was directed to report for duty, the respondent did not turn up for the service, for which, a memo was issued on 13.08.2007. But even then, the respondent did not report for duty and thereby, the appellant initiated disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 (in short hereinafter referred to as 'the said Rules, 1973') and a charge memo dated 22.02.2008 was issued to the respondent framing five charges for the unauthorized absence.



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4.The respondent submitted a reply and was not satisfied with the same, an enquiry officer was appointed on 10.12.2008. During the enquiry, the respondent expressed her unwillingness to continue in service and submitted a resignation letter, dated 10.12.2008. As the resignation cannot be considered or accepted during the pendency of the charges, the enquiry officer submitted his report on 30.01.2009 holding that the charges are proved. When the enquiry report was forwarded to the respondent for her response, no response was forthcoming and the first appellant, after consulting with the TNPSC vide G.O.(D).No.719, Health and Family Welfare (K2) Department, dated 09.06.2015, imposed a punishment of 'dismissal from service' for the proven charges of unauthorized absence. The respondent challenged the punishment imposed against her by preferring the Writ Petition.

5.The writ Court, after considering the factual matrix and also taking note of the fact that at the time of filing the Writ Petition, the respondent was aged 51 years and when the Writ Petition was finally taken up for hearing she was aged 58 years and also the respondent having put in 15 years of service was not able to continue in the service due to the health



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condition as she was diagnosed with Cancer and taking note of all these aspects, had interfered with the punishment imposed as against the respondent and had modified the punishment of 'dismissal from service' into that of 'compulsory retirement'. Assailing the order of the writ Court, the Government had preferred the above appeal.

6.The learned Additional Government Pleader appearing for the appellants argued that when once the respondent had been appointed in the services of the Government, that too, in the Health Services which is an essential service, the respondent had absented from duty continuously inspite of issuing letters and memos and the unauthorized absence of the respondent, who is a Doctor in the Hospital had put the patients in the concerned Hospital into great trouble and since the respondent had violated the said Rules, 1973, charges were framed against her and after conducting proper enquiry, punishment of 'dismissal from service' has been imposed against her.

7.The learned Additional Government Pleader further contended that if the respondent was not willing to serve in the appellant Department, then she should not have opted to join in the service and in such case,



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some other eligible person would have joined and continued in the service of treating the patients in the Hospital. It is his further contention that during the enquiry, the respondent had categorically expressed her stand that she was not willing to serve in the appellant Department due to her personal family problems and only before the writ Court, had taken a new stand that she was not able to continue in the service due to her health condition.

8.The learned Additional Government Pleader further contended that when the respondent was continuously absent even after her leave was rejected and she was instructed to report for duty, she did not turn up and even her request to be transferred to the place of her choice was considered and she was posted at the Government Hospital at Virudhunagar, even where she only reported duty for three days and thereafter, had been unauthorizedly absent and taking note of all these aspects and also the report of the enquiry officer holding that the charges are proved, the Disciplinary Authority has imposed the punishment of removal from service, which has been erroneously interfered with by the writ Court. It has been repeatedly held by the Hon'ble Supreme Court that when once the Court comes to the conclusion that the enquiry conducted in the departmental

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proceedings is proper, then the Court shall not interfere in the punishment imposed unless it is disproportionate and shocks the conscience of the Court and therefore sought to interfere with the orders passed by the writ Court.

9.Per contra, the learned counsel appearing for the respondent would submit that when the respondent had been appointed in the service as early as in the year 1991 as an Assistant Surgeon, she had put in 15 years of unblemished service and she had worked in the place wherever she had been posted, but only in the year 2006, suddenly she was diagnosed with life-threatening disease and due to which, the respondent was not able to report for duty due to the sudden intervention of health and also the incidental circumstances.

10.The learned counsel further submitted that in fact, the respondent had also taken the stand before the enquiry officer, which had not been taken note of rightly by the enquiry officer and only due to such circumstances, in fact, the respondent even opted to resign from service and also submitted the resignation letter, which was not considered citing pendency of the charge and the appellants went ahead and imposed an order of 'dismissal from service' which is disproportionate and taking note of



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all these aspects only, the learned Judge had interfered with the punishment and sought for dismissal of the Appeal.

11.Heard the learned counsel appearing on either side and perused the materials available on record.

12.The respondent, who was qualified with Degree in M.B.B.S and D.G.O, was appointed in the second appellant Department as an Assistant Surgeon on 30.12.1991 in the Government Primary Health Centre, Utchinatham, Ramanathapuram District and after serving at various places, she worked as an Assistant Surgeon in the Government Hospital, Rajapalayam, Virudhunagar District, thereby putting in service of 15 years. During her service in the Government Hospital at Rajapalayam, the respondent had submitted an application for extraordinary leave for a period of six months from 22.05.2006 due to her daughter's ill health. However, the leave was rejected by the second appellant on 21.07.2006 and she was directed to report for duty. The respondent did not report for duty as instructed but submitted a further letter requesting leave on 05.10.2006 up to May 2007. This request was also refused and the respondent was directed to rejoin for duty on or before 28.12.2006, failing which,



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disciplinary proceedings will be initiated against her. Pursuant to which, the respondent reported for duty on 28.12.2006, but however, after working for three days till 30.12.2006, she submitted a letter on 31.12.2006 seeking for an extraordinary leave for six months.

13.The request of the respondent was refused and a memo, dated 08.02.2007 was issued directing the respondent to rejoin duty. But since she failed to report for duty, a memo dated 13.08.2007 was again issued to the respondent that if she failed to report for duty, further disciplinary action would be proceeded against her. In spite of which, as the respondent did not turn up for duty and remained in unauthorized absence, a charge-memo, dated 22.02.2008 was issued as against the respondent by initiating disciplinary proceedings under Rule 17(b) of the said Rules, 1973. The charge-memo was issued containing five charges mainly on the ground that in spite of the leave application being rejected, the respondent had not turned in for duty and she had been continuously remaining on unauthorized absence by deserting the Hospital work depriving the medical treatment to the poor patients coming to the Hospital and thereby she had violated Rule 20(1) of the said Rules, 1973.



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14.On receipt of the charge-memo, the respondent submitted a reply on 13.05.2008. Not satisfied with the reply, an enquiry officer was appointed and during the enquiry, on 10.12.2008, the respondent expressed her unwillingness to continue in service and had also submitted a resignation letter, dated 10.12.2008. As the disciplinary action under Rule 17(b) of the said Rules, 1973 was under process, her resignation was not accepted and the enquiry officer submitted a report on 30.01.2009 holding that the charges against the respondent is proved. Based on the enquiry report, the first appellant in consultation with the Tamil Nadu Public Service Commission issued G.O.(D).No.719, Health and Family Welfare (K2) Department, dated 09.06.2015, by imposing a punishment of 'dismissal from service'.

15.It is the vehement contention of the appellants that the respondent had wantonly not reported for duty inspite of several reminders and memos issued and she had been unauthorizedly absent from duty particularly when she is a Doctor, who has to treat the patients coming to the Hospital and in fact, the very stand taken by her before the enquiry officer that she is not willing to continue her service and also submitted her

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letter of resignation, fortifies the fact that the respondent was having no explanation to offer and she had abandoned the duty and had been unauthorizedly absent only due to her personal reasons which cannot be accepted, when the respondent is in the Government service, that too, under the Health Department.

16.It is also the contention of the appellants that the only ground on which the punishment was interfered with and modified of 'dismissal from service' to that of 'compulsory retirement' by the writ Court is by accepting the contention of the respondent that only due to health ground, she was not able to report for duty, but this stand was never taken by the respondent before the enquiry officer.

17.In the order issued by the Government in G.O.(D).No.719, Health and Family Welfare (K2) Department, dated 09.06.2015, whereby the punishment of 'dismissal from service' was inflicted as against the respondent, the charges and the defence taken by the delinquent officer for the delinquency committed and also the findings of the enquiry officer had been referred to.



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18. In respect to the second charge that inspite of permitting her to join duty on 28.12.2006, after working for three days, she had requested an extraordinary leave for six months and even though the same was refused, she did not rejoin for duty and was unauthorizedly absent, the respondent/delinquent has submitted her defence, in which among other reasons she had specifically stated that her health condition did not also co-operate and the health deteriorated. The relevant portion in the order issued by the Government in G.O.(D).No.719, Health and Family Welfare (K2) Department, dated 09.06.2015, is extracted hereunder for easy reference:

'Defence statement of the delinquent Officer:

The delinquent officer has stated that in order of obeying the orders of the higher authorities though still her family problem has not settled she decided to join duty and applied for permission from the Directorate. Accordingly, she has joined duty on 28.12.2006, she has worked for two days ie., 29.12.2006 and 30.12.2006. That time also her family problem has not settled and her health was also not co-operated and the health deteriorated. In order to settle all the problems she was forced to apply for further six months leave from 31.12.2006 for which she has



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submitted her application. She has not stayed away from duty with intention of away from serving to poor. Therefore, she has requested to drop the charge 2 framed against her.'

19.The perusal of the above explanation given by the delinquent before the enquiry officer shows that on receiving the intimation from the appellants, she had joined duty on 28.12.2006, where she worked for three days and only since her health condition did not cooperate and the health got deteriorated, she had applied for an extraordinary leave for six months, but the same has not been properly considered and refused. In fact, at that stage, even the appellants could have considered the health condition of the respondent and could have taken steps for medical invalidation.

20.From the perusal of the materials, it could be seen that after joining the service in the Health Department in the year 1991, the respondent had been serving in the Health Department for nearly 15 years in all the transferred places without any demur or protest and had been holding an unblemished service, but only due to diagnostic of the serious life-threatening disease, she was not able to report for duty and she had been managing by taking the treatment and necessary check-ups. When her



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request for leave was refused and she had received a memo, she had also reported for duty, where after working for three days, she was not able to continue with her work, particularly, considering the fact that she herself is a Doctor, who has to treat the patients at the Hospital. In fact, before the enquiry officer, the respondent/delinquent had putforth this aspect that on joining duty and working for three days, her health condition did not cooperate and her health deteriorated.

21.Apart from this, the respondent also went to the extent of submitting her resignation letter, as she came to the conclusion that due to her health condition having been diagnosed with Cancer, she will not be able to further pursue her career by serving in the Health Department by treating the patients, but however, this explanation offered by the respondent/delinquent was not properly taken note of by the enquiry officer and mainly on the ground that she had expressed her willingness not to continue in the services of the Health Department and submitting a resignation letter was taken note of by the enquiry officer as that she is not willing to serve duty due to her personal reasons and submitted a report holding that the charges are proved, based on which, a punishment of 'dismissal from service' came to be inflicted on the respondent.

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22.The learned Judge, by considering the above factual aspects and taking note of the fact that the respondent had served for nearly 15 years in the Department and only since she was diagnosed with Cancer, she was not able to continue in the services of the Health Department and as she had already reached the age of 58 years, had come to the conclusion that the punishment of removal from service imposed on the respondent is harsh and disproportionate to the charges framed in view of the facts of the case and thereby had interfered with the punishment and modified the punishment of 'dismissal from service' to that of 'compulsory retirement'.

23.From the above discussions and the materials available on record, it could be seen that only due to the health condition of the respondent, she was not able to report for duty and continue with her services and in such circumstances, the order of the learned Judge by modifying the punishment to that of 'compulsory retirement', in our considered opinion, does not suffer from any error or infirmity in view of the peculiar facts and circumstances of the present case.



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24.In view of the above, the order passed by the learned Judge is sustained and accordingly, the Writ Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
24.07.2024

NCC : Yes / No
Index : Yes / No
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To

- 1.The Secretary to the Government,
Health and Family Welfare (K2) Department,
Secretariat,
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R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.A(MD)No.1210 of 2024

DATED : 24.07.2024