



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.21820 of 2023

and

W.M.P.(MD)No.18197 of 2023

P.Muthunagai

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. By its Secretary,
Health and Family Welfare Department,
Secretariat,
Chennai.

2.The Director of Medical Education and Research,
O/o. Director of Medical Education and Research,
Kilpauk,
Chennai - 600010.

3.The Dean,
Government Rajaji Hospital,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent vide his proceedings in Na.Ka.No.54896/CMaP2(1)/2023 dated 09.08.2023 and quash the same as illegal.

For Petitioner : Mr.N.Mohammed Imran,
For M/s.Ajmal Associates



For Respondents : Mr.J.John Rajadurai
Government Advocate

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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the second respondent vide his proceedings in Na.Ka.No.54896/CMaP2(1)/2023 dated 09.08.2023.

2.This petitioner was initially appointed as Staff Nurse on 25.03.1998 at Institute of Child Health, Egmore, Chennai. Subsequently she was transferred to Government Rajaji Hospital, Madurai on 02.06.2000 and she is continuing to serve. While so, the third respondent has issued a show cause notice under Rule 17(a) on 02.05.2023, seeking to submit her explanation as to why she did not seek prior permission before buying property in her name. In response to the show cause notice, she submitted her detailed explanation refusing the allegations explaining that she had sought for prior permission from the third respondent as early as on 22.07.2020. However, without considering her explanation, the impugned proceedings dated 09.08.2023, came to be passed by the second respondent. Challenging the same, this Writ Petition came to be filed.



3.Heard Mr.N.Mohammed Imran, learned counsel appearing for the petitioner and Mr.J.John Rajadurai, learned Government Advocate appearing for the respondents and perused the materials available on record.

4.The learned counsel for the petitioner Mr.N.Mohamed Imran, submitted that the purchase of property pertaining to issuance of show cause notice under Rule 17(a) on 02.05.2023 had happened exclusively during the corona period. The petitioner and her husband contemplated to buy a property in Resurvey No.106/8A-1, situated at TPM Nager, Ward No.66, Madurai west Taluk, Kochadai Village. They availed a loan through State Bank of India and also by utilizing the personal savings of the petitioner. The petitioner sought for prior permission from the third respondent duly vide a letter dated 22.07.2020, annexing all the relevant details with respect to the said property and the proposed loan. However, the permission letter submitted by the petitioner was not responded by the authorities concerned. In the meanwhile, due to the pressure of the Bank Authorities, the petitioner was left with no other opinion, rather proceeding with the execution of the sale deed in her favour. Only on compelling situation and due to the non response of the respondents during the pandemic period, the petitioner proceeded to register the sale deed in the property mentioned supra during the said period. All the facts were elaborated in her explanation in response to the show cause notice under Rule 17(a).



However, the same was not considered. The learned counsel for the petitioner further drew my attention as to the manner in which the respondent had dealt with similar case of yet another person Tmt.A.Manjula, who is serving as Government Nurse in Government Hospital, at Parangipettai, Cuddalore District. The order dated 22.08.2023 of the second respondent Director of Medical Education Research pertaining to the purchase of the property in similar manner by one Tmt.A.Manjula, was with respect to the purchase of property without getting prior permission. However, in the said case, the said Tmt.A.Manjula has sought for further ratification after the purchase of property and the same was recorded vide order dated 22.08.2023 and she was given a warning as to avoid such practices in future.

5.The learned counsel for the petitioner vehemently submitted that the petitioner stands on the same footage as that of Tmt.A.Manjula, however, she has been treated indifferently and this impugned charge memo came to be issued as against her and further he also relied upon the order passed by this Court in W.P.(MD)No.19012 of 2007 dated 26.02.2008 and elaborated that '*misconduct means, misconduct arising from ill motive, acts of negligence, errors of judgment or innocent mistake, do not constitute such misconduct which would attract departmental proceedings*'. The case in hand is a clear case of innocent mistake, which could be pardoned by the respondents by treating



her as in similar terms as how they dealt with the case of Tmt.A.Manjula and pressed for allowing the writ petition.

6.Per contra the learned Government Advocate for the respondents Mr.J.John Rajadurai has filed a counter and vehemently submitted that the petitioner's case cannot be compared with the case of Tmt.A.Manjula by all means and in the said case, the sale consideration involved is just Rs.4,75,000/-. However, in this case, the sale consideration is Rs.47,00,000/- and that apart, the letter seeking permission to purchase the property, which was submitted by the petitioner on 22.07.2020, which was promptly returned by the Director of Medical Education and Research vide communication dated 09.09.2020 seeking to rectify certain queries raised in the said communication. Even before the said communication, the said sale deed was executed. That apart the petitioner and her husband had got debt in the name of 'Expenditure of religious vow' from the General Provident Fund but they have utilized the same for purchase of the property. In view of the same, this case cannot be compared with that of Tmt.A.Manjula and pressed for dismissal of the writ petition.

7.However, following the direction of this Court in W.P.(MD)No.19012 of 2007, I have no hesitation to observe that the petitioner's act would not amount to misconduct but only an innocent mistake that too the entire incident

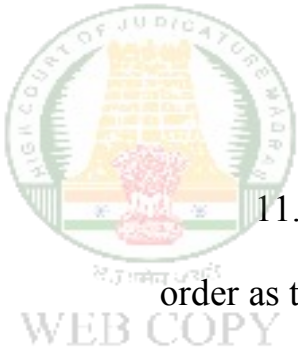


happened during the period of pandemic, which was not taken into consideration by the respondents.

8.That apart while the authorities applying the Doctrine of Equality, I would categorically held that the authorities should treat all the employees with parity and applying Doctrine of Equality. I am of the view that the respondents ought to have treated the petitioner on par with Tmt.A.Manjula,working as Government Nurse in Government Hospital, at Parangipettai, Cuddalore District.

9.At this juncture, the learned Government Advocate for the respondents intervened and submitted that the authorities are different and the petitioner and Tmt.A.Manjula are from two different districts.

10.In view of the same, the criteria adopted in the case of Tmt.A.Manjula is to be applied to the instant case. Hence, I hereby quash the impugned order passed by the second respondent and remand back the same to the second respondent and further direct the second respondent to pass appropriate orders in terms of aforesaid decision within a period of eight weeks from the date of receipt of copy of this order.



11. Accordingly, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.01.2024

NCC : Yes
Index : Yes
Internet : Yes
Mrn

To

1. Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai.

2. The Director of Medical Education and Research,
O/o. Director of Medical Education and Research,
Kilpauk,
Chennai - 600010.

3. The Dean,
Government Rajaji Hospital,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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