



Writ Petition No.6464 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-01-2025

CORAM

THE HONOURABLE MR JUSTICE BATTU DEVANAND

WP No. 6464 of 2018

Dr.G. Kasthuri
TI Green House Apartment, 672, Thiruvalluvar
Street, Subramaniya Nagar, Suramangalam,
Salem- 636 005.

Petitioner(s)

Vs

- 1.The Government of Tamilnadu
rep by its Principal Secretary, Health and Family
Welfare Department, Fort St George,
Chennai-600 009
2. The Director
Public Health and Preventive Medicine, Teynampet, Chennai.
3. The Deputy Director
of Health Services, Salem.

Respondent(s)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Ref no.56227/PHC3/A4//2001 dated 12.12.2017, quash the same and direct the first respondent to reinstate the petitioner into service.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Tippusulthan, GA



Writ Petition No.6464 of 2018

ORDER

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This Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Ref no.56227/PHC3/A4//2001 dated 12.12.2017, quash the same and direct the first respondent to reinstate the petitioner into service.

2. According to the petitioner, while she was working as Medical Officer in the Government Primary Health Centre at various places, had applied leave from the year 1991 till 2002 for certain periods due to health issues and the same were accepted by the authorities. While so, the 3rd respondent issued a charge memo dated 09.08.2001 and initiated disciplinary proceedings with regard to her absence. The petitioner also attended the enquiry. Thereafter, on 03.03.2002, the petitioner received a letter from the 2nd respondent, directing her to appear before him with joining report on 15.03.2002 to consider her request for re-posting. On 15.03.2002, she also reported to duty and submitted her joining report and requested the 2nd respondent to place her in and around Government Primary Health Centre of Edapapadi Taluk, Salem District since she had not recovered fully from her ailment. However, the petitioner was not allowed to



Writ Petition No.6464 of 2018

attend the duty. Thereafter, on 09.04.2013, the petitioner received a letter from the 3rd respondent, asking her to once again attend the enquiry in respect of charge initiated under Rule 17(b). The petitioner also attended the enquiry. On 30.09.2015, the petitioner sent a letter to the 2nd respondent expressing her willingness to rejoin duty. In December, 2015, the petitioner received a letter from the 2nd respondent dated 27.10.2015, reposting the petitioner to Primary Health Centre, Sendarapatti, Salem District and directed her to report to the 3rd respondent. Pursuant to which, the petitioner also jointed duty on 09.12.2015 and sent joining report to the 2nd respondent and also informed that she never received any letter rejecting the request for leave that was applied on 14.12.2001. While so, the petitioner received a letter dated 24.03.2017 with a notice dated 10.03.2017 along with the enquiry Officer's report dated 20.09.2016, wherein, the 3rd respondent has held that the charges were proved and she was called upon to submit her objections to the enquiry. On 20.04.2017, the petitioner sent a reply to the 1st respondent, requesting him to drop the charges. However, the 1st respondent sent a recommendation for removal of the petitioner from service to the Tamil Nadu Public Service Commission, which in turn, accepted and confirmed the proposal vide proceedings dated 21.09.2017. Thereafter, the



Writ Petition No.6464 of 2018

1st respondent, vide G.O.(D) No.2161, dated 20.11.2017, removed the petitioner from service. Challenging the same, the petitioner has constrained to file the present Writ Petition.

3.A counter affidavit has been filed on behalf of the respondents, wherein, it is stated that the delinquent officer, while working as Medical Officer in the Government Primary Health Centre, Thevur, Salem District proceeded on leave by having applied for Extraordinary Leave stating her family problems, for six months from 01.08.2000, without obtaining prior permission from the competent authority. The leave applied for by the petitioner was refused by the third respondent, viz., the Deputy Director of Health Services, Salem, vide letter R.No.703/E1/2000, dated 08.09.2000 wherein, the petitioner was further directed to appear before the third respondent and to report for duty in the Primary Health Centre, Thevur. Though the petitioner received the said communication sent by Registered Post with acknowledgment due, on 14.9.2000, she did not report for duty but remained on unauthorised absence from duty, thereafter, from 14.09.2000 onwards.

4.It is further stated that the petitioner was in the habit of availing



Writ Petition No.6464 of 2018

leave in piecemeal without obtaining prior permission and without furnishing her leave address for communication violating the provisions as laid down under Tamil Nadu Leave Rules. Earlier, she was deputed to the Medical camps under 'Arasu Nalavazhvu Varumun Kaappom Thittam', from the month of January 2000. Evading from attending the camps, she proceeded on Unearned leave on Medical Certificate from 11.01.2000 to 31.01.2000 and extended her leave for 15 days from 01.02.2000. While she was referred to the Medical Board for second medical opinion, she appeared before the Medical Board on 07.02.2000, obtained medical fitness certificate to resume duty with effect from 08.02.2000 and rejoined duty on that date, viz., 08.02.2000. Again she applied for Extraordinary leave on Medical Certificate from 01.04.2000 to 25.05.2000. While she was referred to the Medical Board and directed to appear before the Medical Board for second medical opinion on 08.05.2000, she did not appear before the Medical board, but extended leave in various spells from 26.05.2000 to 19.06.2000; 20.06.2000 to 14.07.2000; 15.07.2000 to 28.07.2000 respectively and rejoined duty on 29.07.2000. She had worked for only two days, viz., 29.07.2000 and 30.07.2000, then proceeded on extraordinary leave on personal affairs from 01.08.2000 and remained on unauthorised absence



Writ Petition No.6464 of 2018

from duty thereafter. She has also not submitted her leave applications in the prescribed formats. The petitioner who was working as the Medical Officer in the Government Primary Health Centre, who had to render service to the poor and needy rural public, has deprived the medical facilities to them and also dislocated the smooth functioning of the Government Primary Health Centre.

5.It is also stated that since the petitioner did not resume duty for a continuous period of one year from 01.08.2000, necessary disciplinary action was initiated against her under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as warranted under Rule 18 (3) of the Fundamental Rules of the Tamil Nadu Government. The second respondent framed two specific charges on the petitioner vide Charge memo - Na. Ka. No.56227/PHC3/A4/01, Dated: 09.08.2001, for her unauthorised absence from duty beyond 01.08.2000 and for having disobeyed the orders of her superiors by her failure to appear before the Medical Board and to rejoin duty, as directed. The petitioner who received the charge memo, submitted her statement of defence, dated 04.09.2001. As a further course of action in that disciplinary case, the Deputy Director of Health Services,



Writ Petition No.6464 of 2018

Salem, the third respondent herein was nominated by the second respondent as the enquiry Officer to inquire into the charges framed against the petitioner. Accordingly, the said Enquiry Officer fixed the enquiry on 14.12.2001, in which the petitioner attended and deposed herself. During the enquiry, the petitioner stated that, she would submit the evidences of leave applications to substantiate her explanation at a later date, however, the petitioner has submitted a false statement in the affidavit stating that she produced all relevant documents to support her claim. She has also not submitted any such documents even on the later date.

6.It is further stated that as the petitioner did not appear before the second respondent on 15.03.2012, for reposting, as directed, again she was directed to appear on 18.07.2002 for reposting. Accordingly, the second respondent issued necessary reposting order to the petitioner vide R.No.80229/E5/A4/2001, dated 18.07.2002, posting her at Primary Health Centre, Thengumarahada, Udhagamandalam District, as there was no vacancy in the place, to which requested by the petitioner or in and around Salem District, at that time. However, the petitioner did not rejoin duty in the new station. Hence, the statement of the petitioner submitted in the



Writ Petition No.6464 of 2018

affidavit therein, that she was not allowed to attend duty, is not correct. The third respondent after taking necessary action to verify the statements of the petitioner during the enquiry with the Medical Officer, Primary Health Centre, Thevur, etc., finally called for the petitioner to attend the further enquiry on 22.04.2013 along with the documentary evidence as said to be submitted by the petitioner, so as to give her a reasonable opportunity. Though the petitioner attended the further enquiry on that day, but she has not submitted any documentary evidences on her defence.

7. However, the petitioner has again submitted a false statement in the affidavit therein that, the charge memo dated 09.08.2001 was for the period from 01.02.2001 to July 2001, which is factually not correct. In the said charge memo, dated: 09.08.2001 charges were framed that, the petitioner who proceeded on leave in piecemeal from 11.01.2000 to 28.07.2000 and then applied for leave for 6 months from 01.08.2000 has remained on unauthorised absence from duty duly dislocating the normal functioning of the Primary Health Centre, and that, she had disobeyed the orders of her



Writ Petition No.6464 of 2018

superiors by having failed to appear before the Medical Board and to rejoin duty, as directed.

8.It is further stated that the previous enquiry was conducted by the enquiry Officer on 14.12.2001. During the said enquiry, the petitioner herself had stated that she would submit the relevant documentary evidences on her defence, Later, in spite of lapse of time of more than a year, the petitioner has not submitted any documentary evidences on her behalf. Meanwhile, the request of her reposting was being considered and necessary action on the same was being pursued. So as to give her a reasonable opportunity in the light of natural justice, she was granted another opportunity for enquiry and to submit the documentary evidences on her defence on 22.04.2013. The enquiry summon on the further enquiry fixed on 22.04.2013 was sent to the petitioner by the third respondent, through Registered Post with acknowledgment due, which was received in the last known address of the petitioner on 13.04.2013. In spite of lapse of time of more than one year from the previous enquiry and 10 days of time from the receipt of enquiry summon, the petitioner was still not ready to produce any documentary evidences during the enquiry fixed on 22.04.2013 and sought



Writ Petition No.6464 of 2018

for time to drag the enquiry further. In her letter, dated 22.04.2013, addressed to the respondents, the petitioner expressed her disagreement of the enquiry conducted on 22.04.2013 and requested that she might be exonerated and posted suitably. As she was not satisfied with the further enquiry conducted by the Enquiry Officer on 22.04.2013, she was directed again to attend the enquiry on 28.9.2015. But the petitioner has not attended the enquiry on that day. Hence, she was called for again to attend the enquiry on 25.07.2016, in which she has attended.

9. Thereafter, the petitioner in her representation dated 30.09.2015, expressed her willingness to rejoin duty duly requesting posting at Salem District. Her request was considered and the second respondent issued order vide R.No.90577/E5/A4/2015, dated 27.10.2015, posting her to Primary Health Centre, Sendharapatti, Salem Health Unit District, pending finalization of disciplinary action against her. Accordingly, the petitioner reported for duty in the said Primary Health Centre on 09.12.2015. The petitioner might be aware of the pending disciplinary action against her which was not finalised, then. The petitioner has remained on unauthorised absence from duty for more than 15 years. While she had stated that she



Writ Petition No.6464 of 2018

would submit the evidences on her leave application, etc., later, it is not correct that, she had produced sufficient records to the third respondent on 14.12.2001 and the third respondent was satisfied with that, as submitted by the petitioner, in the affidavit, therein, as she has not produced any evidences of her leave application. Meanwhile, the petitioner has requested in the representation, dated 26.04.2016 to close the file if any pending and regularise her service and her representation has also been considered by the respondents.

10. Thereafter, after conducting the enquiry, the Enquiry Officer, taking into consideration of the relevant material evidences available in the record and the depositions of the petitioner during the oral enquiry held both the charges framed against the petitioner as proved. On a careful consideration of the report of the Enquiry Officer, the first respondent agreed with the findings of the Enquiry Officer holding both the charges framed against the petitioner as proved. Hence, as per the provisions as laid down under Tamil Nadu Civil Services (Discipline and Appeal) Rules, a copy of the Enquiry Officer's report was communicated to the petitioner along with the Government Letter No.5709/D2/2017-1, Health and Family



Writ Petition No.6464 of 2018

Welfare (D) Department, Dated 10.03.2017, duly calling for her further representation on the same. Again, it was to provide a reasonable opportunity to the petitioner before finalising the disciplinary proceedings. It was clearly stated in the said communication that, the first respondent/ Government agreed with the findings of the Enquiry Officer holding the charges framed against the petitioner as proved.

11. Therefore, for the proven charges against the petitioner, the first respondent Government arrived at a provisional decision to impose a punishment of 'removal from service' on the petitioner. The Tamil Nadu Public Service Commission was consulted for its views, under Regulation 18(1)(b)(iv) of the Tamil Nadu Public Service Commission Regulations, 1954. While offered its views, the Tamil Nadu Public Service Commission stated that, the said provisional decision of the Government was in order and advised the Government to proceed with the above said provisional decision of the Government. The first respondent have further examined the case carefully and independently with all connected records along with the views of the Tamil Nadu Public Service Commission. It was observed by the first respondent that, the petitioner had been on unauthorised absence from duty



Writ Petition No.6464 of 2018

for 15 years and 4 months and neglected the legitimate duty of a Medical Officer. Hence, for the proven charges of unauthorised absence from duty, the first respondent herein decided to confirm the provisional decision already arrived to impose a punishment of "removal from service" on the petitioner. Accordingly the first respondent has issued the order, vide G.O.(D) No.2161, Health and Family Welfare (D2) Department, Dated 20.11.2017, duly complying the provisions as laid down under Tamil Nadu Civil Services (Discipline and Appeal) Rules. With these averments, the respondents sought for dismissal of the Writ Petition.

12.Heard the leaned counsel for the petitioner and the learned Government Advocate for the respondents and perused the entire materials placed on record.

13.Unauthorised absence or overstaying leave is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The



Second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct. If the employer is satisfied that there was sufficient cause or justification for the unauthorised absence of the overstay after expiry of leave, the employer may condone the act of indiscipline and sanction leave post facto. Pertinently, a request for condoning the absence may be favourably considered, where, the unauthorised absence is for a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorised absence are not usually condoned.

14. Where the employee, who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause / explanation for the absence.



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15. In the present case, it is not in dispute that the petitioner, after joining as Medical Officer, has been availing leave from time to time and her leave upto 28.07.2000 was considered and thereafter, the petitioner joined and worked for two days, viz., 29.07.2000 and 30.07.2000, then again proceeded to on extraordinary leave on personal affairs from 01.08.2000 onwards for a period of six months. This leave applied for by the petitioner for 6 months from 01.08.2000 was rejected by the third respondent vide R.No.703/E1/2000, dated 08.09.2000 and the same was also communicated to the petitioner through registered post and the same was also received and acknowledged by her on 14.09.2000 as revealed from the postal acknowledgment card duly signed by her. However, the petitioner had not joined duty and remained absence, which prompted the respondents to initiate disciplinary proceedings against her by framing charges under Rule 17(b). The 3rd respondent herein was appointed as Enquiry Officer, who, after following due procedure and extending sufficient opportunities to the petitioner to defend her case, ultimately submitted the Enquiry Report, wherein, the charges framed against the petitioner were held proved. Though the petitioner claimed that she was possessing required documentary



Writ Petition No.6464 of 2018

evidence to defend the charges, but she could not produce the same during the enquiry despite ample opportunities were given to her on 22.04.2013, 28.09.2015 and 25.07.2016.

16.It is pertinent to note that the unauthorised absence from duty commenced as mentioned in the charge memo issued to the petitioner has continued till 08.12.2015, i.e. for 15 years and 4 months. Further, the petitioner, despite instructions by the authorities, failed to appear before the Medical Board and to rejoin duty. Therefore, based on the findings of the Enquiry Officer, the 1st respondent, having obtained the approval of the Tamil Nadu Public Service Commission, vide G.O. (D) No.2161, dated 20.11.2017, imposed the punishment of removal from service, which, in the opinion this Court, requires no interference.

17. However, the learned counsel for the petitioner would submit that it is a settled principle that the punishment imposed by the Disciplinary Authority must be in commensurate with the gravity of the proved charges and if the punishment is excessive or shocking to the conscience, then the Courts exercising the power of judicial review could interfere with the order



Writ Petition No.6464 of 2018

of punishment. He would submit that in the present case, the punishment imposed on the petitioner is very harsh and disproportionate to the charges levelled against her and he would urge this Court to take a lenient view in this matter.

18. When once the leave applied by the petitioner for six months, i.e. from 01.08.2000 onwards is rejected, it is incumbent upon the petitioner to rejoin duty and after joining, she is required to satisfy the leave sanctioning authority that her leave is on genuine grounds. However, the petitioner having applied leave, which was rejected, remained herself absent from duty for years together, i.e. 15 years and 4 months, which can be construed as willful and intentional absence. Even the petitioner has not chosen to appear before the Medical Board nor joined duty when she was posted at Primary Health Centre, Thengumarachada, Udhagamandalam District. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it is a serious misconduct and even amounts to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer. Therefore, the unauthorised absence when it is



Writ Petition No.6464 of 2018

found to be willful and intentional, then the punishment of removal from service, cannot be said to be disproportionate. The petitioner who was working as the Medical Officer in the Government Primary Health Centre, who had to render service to the poor and needy rural public, has deprived the medical facilities to them and also dislocated the smooth functioning of the Government Primary Health Centre, by keep on remaining herself absented from duty for years together. Therefore, this Court is of the considered view that the 1st respondent has rightly imposed the punishment of removal from service on the petitioner, which requires no interference.

19. In the light of the above discussion, the Writ Petition fails and it is dismissed.

No costs.

22.01.2025

Index : Yes/No

Speaking order: Yes/No
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1. The Government of Tamilnadu
rep by its Principal Secretary, Health and Family
Welfare Department, Fort St George,
Chennai-600 009

2. The Director
Public Health and Preventive Medicine, Teynampet, Chennai.

18/20



Writ Petition No.6464 of 2018

3. The Deputy Director
of Health Services, Salem.

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BATTU DEVANAND, J

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Writ Petition No.6464 of 2018

Writ Petition No.6464 of 2018

22.01.2025