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W.P.No.8742 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.09.2025

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THE HONOURABLE Mr. JUSTICE K.SURENDER

W.P.No.8742 of 2017
and WMP.Nos.9591 & 9592 of 2017

Dr.(Sqn.Ldr) S.B.Rajesh Ram

... Petitioner

Vs

1.The State of Tamil Nadu
Represented by its Secretary
Health and Family Welfare Department
Fort St.George
Chennai – 600 009.

2.The Director of Medical & Rural Health Services
O/o.D.M.R. & H.S.
Teynampet
Chennai – 600 006.

3.The Joint Director of Medical and Health Services
Thanjavur District
Kumbakkonam – 612 001.

4.Dr.Mohammed Jan
Joint Director of Medical & Health Services
Thanjavur District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the first respondent under Ref.No.G.O.(D).No.1465, Health and Family Welfare (K2) Department dated 23.11.2015 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and all other connected records thereto and quash the same and consequently, direct the respondents to grant the petitioner all the monetary and service benefits due to the petitioner in accordance with law.

For Petitioner : Mr.C.S.K.Sathish

For Respondents : Mr.E.Sundaran
Government Advocate for R1 to R3

ORDER

The present writ petition has been filed seeking to quash the impugned order of the first respondent dated 23.11.2015 in Ref. No.G.O.(D) No.1465, Health and Family Welfare (K2) Department, and to direct the respondents to grant the petitioner the monetary and service benefits due to him in accordance with law.



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2. Brief facts of the case are that the petitioner who was serving as Assistant Surgeon in Government Head Quarters Hospital at Kumbakkonam, had attended to a patient with burn injuries on 30.09.2011. Initially, a dying declaration was recorded by the jurisdictional Magistrate. Thereafter, a second dying declaration was sought to be recorded by the father of the victim. Accordingly, the petitioner addressed a call-memo to the learned Judicial Magistrate requesting to record the second dying declaration, and as per the procedure when this was routed through the Superintendent of Hospital, the Superintendent refused. According to the petitioner, his conversation with the Superintendent of Hospital was recorded in the case sheet of the patient, which reads as follows:

" call memo for dying declaration to Judicial Magistrate for the second time made by ward medical officer.*

" case discussed with Hospital Superintendent regarding and he advised not to send call memo for the second time to obtain dying declaration, until requisition from Nachiyakoil Police Station is forwarded to him."*

3. Unfortunately, the victim succumbed to injuries on 01.10.2011. The petitioner was later charge sheeted and the charges read as follows :



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"CHARGE-I

That Dr.S.B.Rajesh Ram, Assistant Surgeon while working at Government Headquarters Hospital, Kumbakonam, Thanjavur District has failed to take timely proper action to send the call memo to the Judicial Magistrate, Kumbakonam for getting Dying Declaration from the patient Tmt.Manimegalai on 30.09.2011.

CHARGE-II

That Dr.S.B.Rajesh Ram, Assistant Surgeon while working at Government Headquarters Hospital, Kumbakonam, Thanjavur District in the case sheet has misinterpreted the written instructions given in the call memo book by the Hospital Superintendent.

CHARGE-III

By this above act he has derelicted in his duty and thereby violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973."

4. The enquiry was conducted by the appointed Enquiry Officer, who found the petitioner guilty of three charges framed against him. The said enquiry report was submitted on 17.01.2014 to the Government. Thereafter, a letter was addressed by the Secretary to Government, Health and Family Welfare Department, the first respondent herein, to the petitioner seeking any further representation on the findings of the Enquiry Officer.

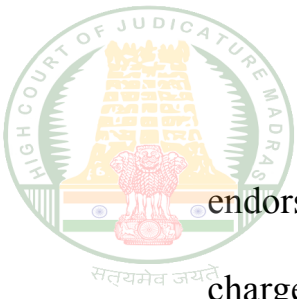


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5. The petitioner gave a representation stating that he was not given opportunity during enquiry and also that, he was targeted. Having considered the representation and explanation of the petitioner, vide impugned order of the first respondent dated 23.11.2015, the petitioner was imposed with a punishment of stoppage of increment for a period of one year without cumulative effect. Hence, the petitioner is before this Court seeking to quash the impugned order and to pay him the monetary and service benefits, which he is entitled to.

6. The learned counsel appearing on behalf of the petitioner would submit that the duty of the Magistrate was to record the dying declaration, by ensuring that the patient was not under any duress. Secondly, it is the duty of the police to send requisition to the Magistrate for recording any further dying declaration, and the petitioner who was a duty doctor cannot be held liable for not sending the requisition in time. In fact, the petitioner had requested the Superintendent of the Hospital to call for the Magistrate to record the dying declaration and the same was written in the case sheet by the petitioner. The Hospital Superintendent bore grudge against the petitioner for making such



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endorsement in the case sheet and accordingly, the petitioner was targeted and charges were framed.

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7. On the other hand, the learned Government Advocate appearing for the respondents-Government would submit that the petitioner who was a doctor ought to have taken steps to see to that the second dying declaration was recorded. In the absence of taking any such steps, the petitioner has failed to discharge his duties.

8. It is not in dispute that the petitioner made an endorsement in the case sheet that the Judicial Magistrate had to be called for the second time for the purpose of recording the dying declaration. According to the counsel for the petitioner, the second recording was needed for the reason of the patient expressing concern about the first statement made to the Magistrate exonerating the persons responsible for the burns. The victim girl allegedly informed the petitioner that she was under duress to not state about the persons responsible for her burns. For the said reasons, the petitioner-doctor wanted the second dying declaration to be recorded and accordingly, informed the Hospital Superintendent. Further, according to the case sheet, the petitioner



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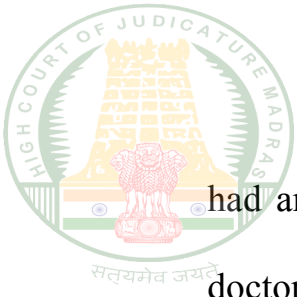
recorded that the Hospital Superintendent advised the petitioner not to give any call-memo to the Judicial Magistrate for recording the dying declaration for the second time and it is for the police to give a requisition.

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9. The alleged charges levelled against the petitioner are that the petitioner-doctor not has taken timely and proper action to send the call-memo to the Judicial Magistrate for getting the dying declaration recorded. Further, the petitioner had made an endorsement in the case sheet of the patient by misinterpreting the instructions of the Superintendent of the said hospital.

10. A reading of the charges would clearly reflect that they are not only absurd but also framed against the petitioner, only for the reason that the petitioner had made the remarks in case sheet as against the Superintendent of the Hospital, who according to the petitioner, had refused the request of the petitioner to call for the Magistrate for the second time.

11. In the normal course of events in any case of burns, the police or the hospital authorities send a requisition to the Magistrate for the purpose of recording a dying declaration. In fact, in the instant case also, the Magistrate



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had arrived and recorded the dying declaration. According to the petitioner-doctor, he then wanted another dying declaration to be recorded only for the reason of the victim expressing that she could not implicate the persons responsible for her burns in the first dying declaration due to the insistence of her close relatives.

12. It is the duty of the police to call for the Magistrate for the purpose of recording the dying declaration. In the present case, the Magistrate has already recorded the dying declaration of the victim girl. As requested by the victim, the petitioner made an endeavour to call for the Magistrate the second time to record the dying declaration. The endorsement that was made in the case sheet only reflects that the petitioner was making a genuine attempt to call for the Magistrate to record the dying declaration for the second time, and the only reason to write his remarks in the case sheet was apparently the denial by the Hospital Superintendent. Therefore, the charges that were levelled against the petitioner was a malafide action. There is no *prima facie* case of dereliction of duty by the petitioner.

13. In the present facts of the case, the charges are absurd. The facts



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reflect that the petitioner was diligently and effectively discharging his duties and was targeted only for the reason of making the endorsement in the case sheet against the Superintendent of Hospital. The punishment deserves to be set aside and consequently all the benefits that accrue to the petitioner has to be given. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(K.SURENDER,J.)
12.09.2025

Index : Yes / No

Neutral Citation : Yes / No

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To:

- 1.The State of Tamil Nadu
Represented by its Secretary
Health and Family Welfare Department
Fort St.George, Chennai – 600 009.
- 2.The Director of Medical & Rural Health Services
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