

W.P(MD)No.17412 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 07.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD). No.17412 of 2022 and
WMP(MD) Nos.12681 & 19281 of 2022

Dr.I.Sivasubramania Jayasekar

... Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health and Family Welfare (K2) Department,
Secretariat, Fort St.George,
Chennai 600 009.

2.The Joint Director of Health Service,
Tanjore @ Kumbakonam,
Tanjore District.

3.The Dean,
Government Head Quarters Hospital,
Kumbakonam,
Tanjore District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue Writ of Certiorari, to call for the records pertaining to the impugned order in G.O.(D) No. 253, Health



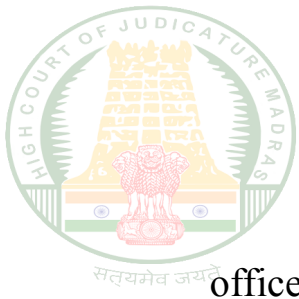
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and Family Welfare (K2) Department, dated 17.02.2021 served to the petitioner on 12.03.2021, on the file of the Respondent No.1 and quash the same as illegal.

For Petitioner : Mr.J.Pandi Dorai
For Respondents : Mr.P.T.Thiraviam
Government Advocate

ORDER

The petitioner is a retired Joint Director of Health Services, Thanjavur. While he was serving as the joint Director of Health Services at Kumbakonam, he was entrusted with a sum of Rs.173.20 Lakhs, for the purpose of providing medical facilities and for purchasing medical equipment for Mahamaham Festival at Kumbakonam, vide G.O.(D) No.365, Health and Family Welfare (P2) Department, dated 08.12.2015. The Local Fund Audit has conducted an audit on the accounts relating to the purchase for Mahamagam festival 2016 and submitted a report that there was an ineligible expenditure to the tune of Rs.14,42,736/- and recommended for a disciplinary proceedings, as against some

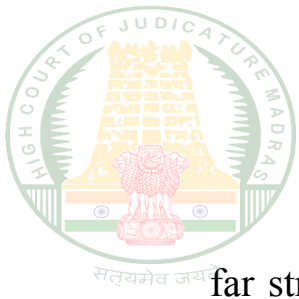


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officers including this petitioner. A charge memo, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued as against this petitioner, by the Director of Medical and Rural Health Services in Ref.No.33649/SC1/3/2018, dated 18.06.2018. After the enquiry and on proved charges, the petitioner was imposed with a punishment of "Pension cut of Rs.2,000/- per month for a period of one year and a recovery of a sum of Rs.4,56,223/-, for the loss incurred to the Government, vide G.O.(D) No.253, Health and Family Welfare Department, dated 17.02.2021. Challenging the order of punishment dated, 17.02.2021, the petitioner has filed this writ petition in the year 2022.

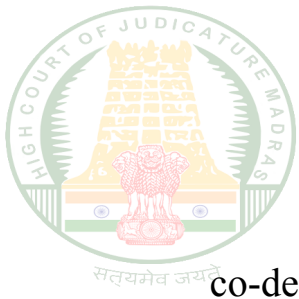
2.The learned Counsel appearing for the petitioner submits that the charges are vague and could not be answered by the petitioner. There was no specific charges to the effect that the petitioner has violated any particular rule and it was not specifically stated what duty was allotted to him and which was not performed. The mere averment to the effect that unauthorized expenditure is a



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far stretch charge and could not be answered by the petitioner. The petitioner has handled a public gathering of more than a million person in Kumbakonam, which required elaborate planning and decision making. According to the petitioner, he had saved money by restricting his expenditure under some heads of account and spend it on other heads of account and overall, there was no unauthorized expenditure by the petitioner. The learned counsel for the petitioner further submits that the petitioner has saved a sum of Rs.3,466/- out of the allotted amount. The amount spent by the petitioner is only through IDV account, in the name of Mahamaham festival 2016, which was not even audited and therefore, it is premature to say that the petitioner has made unauthorized expenditure. The learned counsel further submits that the petitioner had sought for oral enquiry, which was neither allowed nor rejected. Therefore, the impugned order of punishment is without application of mind. He further submits that not only the petitioner, five others have been fixed with responsibility and they have also been issued with a charge memo. The punishment imposed as against the



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co-delinquent officer in G.O.(D)No.354, Health and Family Welfare (K2) Department, dated 17.03.2020 was set aside by this Court, in WP(MD) No.7121 of 2020 on 22.06.2022 that the Government has not appreciated the further representation of the delinquent officer in a proper manner and therefore, this petitioner is also entitled for the same relief, which has been granted in favour of the Co-delinquent officer. The learned Counsel further submits that it is not a case of misappropriation and the order of punishment imposed as against this petitioner is disproportionate to the charges levelled as against him.

3.The learned Government Advocate appearing for the respondents submits that a sum of Rs.273.20/- Lakhs was allocated to the Office of the Joint Director of Health Services, Kumbakonam, for the Mahamaham Festival 2016, out of which, a sum of Rs.173.20 Lakh was sanctioned in respect of medical facilities and medical equipment vide G.O(D) No.365, Health and Family Welfare (P2) Department, dated 08.12.2015. Certain irregularities have been



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found by the Local fund Audit, during the audit relating to the purchase made for Mahamagam festival 2016 and found that there was ineligible expenditure for a sum of Rs.14,42,736/- and submitted a report, vide Letter Ref.No.15816/Natha3/2017, dated 10.01.2018. Therefore, a disciplinary proceedings has been initiated as against six officers, including this petitioner. As such the petitioner was issued with a charge memo in Ref.No. 33649/SC1/3/2018, dated 18.06.2018, by the Director of Medical and Rural Health Services; the petitioner has submitted his defence statement on 24.08.2018; The Additional Director of Medical and Rural Health Services (Inspection) was appointed as an enquiry officer; the enquiry officer has filed his report that the charges levelled as against this petitioner were proved; the petitioner has attained the age of superannuation on 31.03.2019 and he was allowed to retire pending disciplinary proceedings, and the proceedings to be continued, under Rule 9 of the Tamil Nadu Pension Rules, 1978; since the charges are found proved, the first respondent in his letter No.18206/K2/2019-02, Health and Family

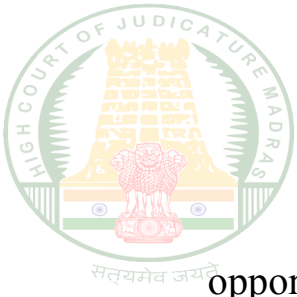


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Welfare Department, dated 03.06.2019, communicated a copy of the enquiry report to the petitioner; the petitioner has submitted his further representation on the findings of the enquiry officer; after considering the enquiry report and the petitioner's representation, the first respondent has decided to impose a punishment of cut in pension and for an order of recovery; a show cause notice in Letter No.18206/K2/2019-17, Health and Family Welfare Department, dated 17.03.2020 has been issued to the petitioner; the first respondent had consulted the Tamil Nadu Public Service Commission for its views on the proven charges as against this petitioner and finally, an order of punishment of "Pension cut of Rs.2,000/- per month for a period of one year and a recovery of Rs.4,56,223/- for the loss incurred by the Government Exchequer" has been imposed on the petitioner, vide G.O.(D) No.253, Health and Family Welfare Department, dated 17.02.2021.

4. According to the learned Government Advocate, there is no procedural lapses in conducting the enquiry, sufficient



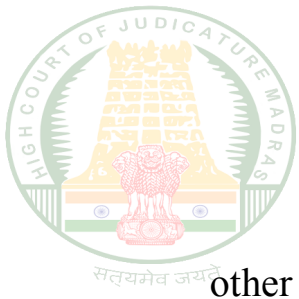
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opportunity was provided to this petitioner and the punishment was imposed on the petitioner, after consulting with the Tamil Nadu Public Service Commission. Therefore, the petitioner's contention that he was not provided with sufficient opportunity is not sustainable. The learned Government Advocate further submits that the order of punishment referred by the learned counsel for the petitioner in G.O.(D)No.354, Health and Family Welfare (K2) Department, dated 17.03.2020 imposed as against the co-delinquent and the findings of this Court cannot be a ground for taking a decision on the punishment imposed as against this petitioner.

5.This Court Considered the rival submissions made and also perused the materials placed on record.

6.The petitioner, a retired Joint Director of Health Services, Thanjavur has approached this Court with a grievance that that while he was serving as a Joint Director of Health Services at Kumbakonam, he was facing departmental proceedings along with



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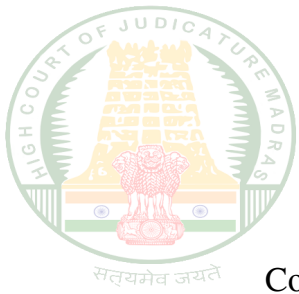
other officers, under Rule 17(b) of the Tamil Nadu Civil Services (Disciple and Appeal) Rules that the petitioner has spent a sum of Rs.14,42,736/-, out of the allotted amount of Rs.173.20 Lakhs, for Mahamagam festival 2016 at Kumbakonam. After conducting an enquiry by providing sufficient opportunity to this petitioner, he was imposed with a punishment of "Pension cut of Rs.2,000/- per month for a period of one year and a recovery of a sum of Rs.4,56,223/-, for the loss incurred to the Government, vide G.O.(D) No.253, Health and Family Welfare Department, dated 17.02.2021. The charges are extracted as under:-

Charge -1

During Mahamaham festival 2016 in Kumbakonam Municipality, the non-classified Medical equipment has been procured for Rs. 11,92,269/- out of the allotted amount for the purpose of conducting Medical work in violation of the Government regulations. This is ineligible expenditure. Therefore, Dr.I.Sivasubramania Jayasekar, Joint Director of Health Services, Thanjavur has violated Rule 20(1) of the Tamil Nadu Government servants conduct Rules, 1973.

Charge 2:-

During the Mahamaham festival 2016 in Kumbakonam Municipality, twenty stretchers trolleys were procured from Mark Associates



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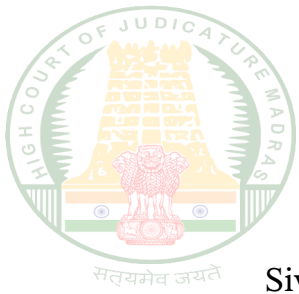
Company at a rate of Rs. 16,500/- each out of the allotted amount for the medical work. But the same ten stretcher trolleys have been procured at a rate of Rs.8,500/- each from the company of Ambathur Urban Multipurpose Industries Corporation Society. Hence, the Government has suffered a loss for Rs. 1,76,500 due to the lack of purchase of medical equipment at a low price rate. Therefore, he has violated Rule 20(1) of the Tamil Nadu Government servants conduct Rules 1973, as a result of pecuniary loss to the Government.

Charge 3:-

During the Mahamaham festival conducted in the year 2016 at Kumbakonam Municipality, the mattresses and pillows were bought from Sri Lakshmi and Co-Decoration Centre on rental basis for 10 days to the tune of Rs. 6,08,500/-. If the product was purchased on the basis of Hospital needs, then the amount may be reduced to Rs. 5,38,000/- and moreover the product may have been used permanently for Hospital purposes. But, he has taken the product on rent basis and therefore incurring a loss for Rs. 70,500/- to the Government and hence violates the Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules 1973.

Charge 4:-

On the account of Mahamaham festival conducted during the year 2016 at Kumbakonam Municipality, an amount of Rs. 86,00,000/- was allotted to Medical Facilities service, in which an amount of Rs.85,99,534/- was spent, and remaining amount of Rs. 3,466/- was not remitted into the Government account and thereby Dr.I.



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Sivasubramania Jayasekar, Joint Director of Health Services,
Kumbakonam has violated Rule 20(1) of the Tamil Nadu
Government Servants Conduct Rules, 1973.

7.The petitioner was issued with a charge memo on 18.06.2018 for the above charges and he has submitted his defence statement on 29.08.2018; he attained the age of superannuation on 31.03.2019; he was allowed to retire from service with a condition to proceed with the disciplinary proceedings under Rule 9 of Tamil Nadu Pension Rules, 1978; accordingly, disciplinary proceedings was conducted; the enquiry officer has submitted his report that all the charges levelled as against this petitioner were proved on 03.06.2019 and the same was also communicated to this petitioner for his further explanation; he has submitted his further explanation on 08.07.2019; the views of the Tamil Nadu Public Service Commission on the proposed punishment was obtained as contemplated under 18(1)(c) of Tamil Nadu Public Service Regulations, 1954; the Tamil Nadu Public Service Commission by a letter No.4138/DCD-A2/2020-1, dated 02.12.2020 offered its



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opinion that the proposed punishment be confirmed; thereafter, the punishment of "Pension cut of Rs.2,000/- per month for a period of one year and a recovery of a sum of Rs.4,56,223/- from his death cum gratuity has been ordered, for the loss incurred to the Government, vide G.O.(D) No.253, Health and Family Welfare Department, dated 17.02.2021. The petitioner has not made out any case that there was a procedural violation in conducting the disciplinary proceedings.

8.The scope of judicial review in matters relating to disciplinary proceedings is very limited. It is meant to ascertain as to whether due process was followed and whether a fair opportunity was accorded to the employee concerned. The power of Courts is limited to reviewing the decision making process, rather than the merits of the decision itself. This is to ensure fairness in treatment and not the fairness of the conclusion. The Courts should not interfere with the findings of the fact arrived at in the departmental enquiry proceedings, except in cases of mala fide or perversity.



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9.In view of the above, this Court is not inclined to interfere with the order of punishment. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.01.2025

NCC:Yes/No

Index:Yes

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To

- 1.The Secretary to Government,
Health and Family Welfare (K2) Department,
Secretariat, Fort St.George,
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- 2.The Joint Director of Health Service,
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B.PUGALENDHI, J.

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Order made in
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WMP(MD) No.12681 & 19281 of 2022

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