

(2009) 11 MAD CK 0105
In the Madras High Court
Case No : Writ Petition No. 10273 of 2009

Dr. A. Suresh

APPELLANT

Vs

The Director General, ESI Corporation

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Citation : (2009) 11 MAD CK 0105

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Rajakumari, for the Appellant; G. Bharadwaj, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Ms. G. Rajakumari, learned Counsel for the petitioner and Mr. G. Bharadwaj, learned Counsel for the respondent.

2. The petitioner though made an innocuous prayer for a direction to the respondent to consider his representation dated 20.4.2009, a perusal of the record shows that it is not so innocuous. In the representation dated 20.4.2009 addressed to the Director General, ESI Corporation (Headquarters), New Delhi, the petitioner stated that though he was removed from service in the very same Corporation in ESI Chennai, such an order of removal from service cannot be a future disqualification. Therefore, he wanted his earlier representation to be disposed of, wherein he asked for a posting order in the post of Specialist Grade II (Junior Scale) in ESI Corporation under the speciality of Pulmonary Medicine.

3. It is the case of the petitioner that he had applied for the said post. Interviews were held at Regional Office, ESI Corporation at Chennai from 5.11.2008 to 7.11.2008. Finally the petitioner was selected as seen from the notification issued in the Newspaper Deccan Chronicle dated 19.11.2008, wherein, the petitioner's name was shown in Serial No. 12. Therefore, on the strength of his selection, the petitioner seeks for a posting order. However, by an order dated 27.8.2008 of the Director General, the petitioner was removed from service. The

removal was made as a penalty for his absence from duty from 3.4.2006 for a period of two years. It was stated by the respondent that an unauthorised absence from duty is a serious misconduct and therefore the penalty of removal was passed against him.

4. Preceding the said order, the charge memo was issued. A preliminary enquiry was conducted. In that preliminary enquiry, the petitioner had admitted the charge. Notwithstanding the admission, the enquiry was conducted. Based upon the enquiry and a further reply by the petitioner, penalty of removal was passed against him. The learned Counsel for the petitioner states that the petitioner had not filed any appeal challenging the said order of removal before any forum.

5. During the period of absence, it was found that the petitioner joined a Post-graduate course, namely Diploma in National Board in Respiratory Diseases in Christian Medical College at Vellore. He never got any prior permission nor any leave was sanctioned while he was in service. The petitioner now wanted to contend that since the order of removal cannot operate as a future disqualification, a direction should be issued to grant appropriate posting order.

6. In response to his allegation, in the counter affidavit filed by the Medical Superintendent, ESIC Hospital, K.K.Nagar, Chennai 78 in paragraph 5, it was averred as follows:

5. I state that the penalty of removal without disqualification for future employment imposed upon the petitioner merely makes him eligible to apply for future employment. But it does not confer any unfettered right on the petitioner for future employment; nor the petitioner can take it for granted that he should be given employment. The petitioner being a Doctor, the profession which is held in high esteem and respectability by the public instead of upholding the dignity and ethics of the profession has committed unethical misconduct. Thus the integrity of the petitioner has become questionable.

7. The stand taken by the respondent cannot be said to be either illegal or contrary to the rules. Though in the present case the petitioner merely wanted to have the representation disposed of, in the light of the counter affidavit filed by the respondent dated 5.11.2009, on the merits of the case, the prayer of the petitioner cannot be countenanced.

8. Even otherwise, the Supreme Court vide its judgment in S.S. Balu and Another Vs. State of Kerala and Others, has held that merely because a person's name is found in the rank list, that cannot be a ground for direction to grant appointment. It is open to the Government to fill up or not to fill up the post. In the circumstances, no writ of mandamus will lie.

9. In the light of the above, the writ petition stands dismissed. However, there will be no order as to costs.