
(2014) 12 MAD CK 0391

In the Madras High Court

Case No : Writ Petition No. 16566 of 2007 (O.A. No. 594 of 2004)

K.A. Kanthasamy

APPELLANT

Vs

The State Government

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Citation : (2014) 12 MAD CK 0391

Hon'ble Judges : D. Hari Paranthaman, J

Bench : Single Bench

Judgement

D. Hari Paranthaman, J.—The petitioner filed O.A. No.594 of 2004. On abolition of the Tribunal, the matter stood transferred to this Court and re-numbered as W.P. No.16566 of 2007.

2. The petitioner is a M.S. Graduate (General) and he joined duty in the Government Hospital on 11.04.1979. The petitioner was working as a Senior Assistant Surgeon in the Government Hospital at Krishnagiri. On 05.06.1996, when he was on night duty, a patient by name Mrs. Saravana was admitted in the hospital for labour pain and at 5.00 a.m., as a duty Doctor, the petitioner sent a memo to Dr.Baby, Gynecologist to attend the said patient. According to the petitioner, the said Gynecologist, Dr.Baby came to the hospital and attended the patient. The duty of the petitioner was over at 7.30 a.m. Later, he came to know that the said patient died on 8.30 a.m.

3. Subsequently, a charge memo, dated 22.05.1997, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued to the petitioner, alleging that he was negligent in his duties as a Duty Doctor.

4. The charge as contained in the charge memo is extracted hereunder:-

"That Dr.K.A. Kandasamy, while working as Assistant Surgeon in Government Hospital, Krishnagiri, a case by name Tmt.Saravana has admitted at the wee hours on 6.6.96 for confinement. After the preliminary examination the

Synthocin drip was started by the Call Duty Obstetrician. Subsequently it was not monitored which resulted to the traumatic delivery. Even minimum tests like blood grouping, bleeding time and clotting time were not done and recorded for a clinically complicated case. No follow up notes were written by the Duty Medical Officer and the delivery was conducted only by the Staff Nurse. Being the Duty Medical officer incharge of the Hospital upto 7.30 a.m., and more over the patient was put on DIL at 7 a.m., no emergency treatment was given to rescue the patient. This utter carelessness and negligence in doing his legitimate duties resulted in loss of the precious life of Tmt.Saravana."

5. The petitioner submitted his explanation denying the charge. It is stated by the petitioner that as a Duty Doctor, he took all steps and on his initiatives, the Gynecologist Dr.Baby attended the patient initially. According to the petitioner, the Gynecologist did not follow up and went to her residence entrusting the work to a Staff Nurse, who did some procedures resulting in the death of the patient. Therefore, according to the petitioner, he was not responsible for the death of the patient. If at all anybody is responsible, it was the Gynecologist Dr.Baby and the Duty Nurse, who acted as per the direction of the Gynecologist. He would further state that it was not brought to his notice about the absence of the Gynecologist, particularly, when the Gynecologist left on her own entrusting the work to the staff nurse.

6. Thereafter, an enquiry was conducted. Based on the findings of the Enquiry Officer, the petitioner was imposed with the punishment of stoppage of increment for two years without cumulative effect by G.O.D. No.360 Health and Family Welfare (K1) Department, dated 16.03.2001. As against the said order, the petitioner preferred a review petition and the same was also dismissed vide G.O. (D)No.642 Health and Family Welfare Department, dated 08.05.2003. Challenging the said orders, the petitioner has filed this Original Application.

7. A counter affidavit was filed seeking to sustain the impugned orders.

8. Heard both sides.

9. The learned counsel for the petitioner would submit that no witnesses were examined in the departmental enquiry. Even the cross-examination of the delinquent Doctor supports his defence only. In these circumstances, I directed the learned Additional Government Pleader to produce the files relating to the disciplinary proceedings.

10. Accordingly, the entire files were produced before this Court. A perusal of the files would go to show that the submission made by the learned counsel for the petitioner is true.

11. In the discreet enquiry, witnesses were examined and the report of the discreet enquiry concludes that the Duty Doctor is also responsible. But the reading of the entire lengthy discreet enquiry report reveals that the Duty Doctor is not at all responsible. The discreet enquiry report, which runs to 6 pages,

reveals that the Duty Doctor cannot be blamed for the unfortunate incident that took away the life of Mrs. Saravana. The said report really finds fault with the Gynecologist and the Duty Nurse. In fact, the concerned Gynecologist and the Staff Nurse, who were responsible for the incident were imposed only with the punishment of stoppage of increment for two years without cumulative effect.

12. In view of the fact that no witnesses were examined in the enquiry before the delinquent officer, I am of the view that the punishment imposed on the petitioner is liable to be quashed, as the same is in violation of Section 17(b) of the Rules. Rule 17(b) mandates that witness shall be examined in the presence of the delinquent. In fact in the charge memo, it is stated that no witness need to be examined as per Annexure 4 to the Charge Memo. Without any witness being examined, the Enquiry officer and the Disciplinary Authority cannot come to the conclusion that the petitioner committed mistake. Hence, the impugned orders are liable to be set aside.

13. It is submitted by the learned counsel for the petitioner that in view of the pendency of the disciplinary proceedings, the petitioner was denied promotion as Joint Director and the same was also admitted by the respondents in their counter affidavit. In this context, it is necessary to extract the following passage found in paragraph 24 of the counter affidavit:-

"24. It is submitted that though the applicant was eligible for promotion as Joint Director and seniority list Civil Medical List is 4370 as per the 1985 list and he was eligible for promotion during the year 1998 itself, his name was not considered for promotion because of the pendency of the disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as on that date."

14. Since I have held that the punishment imposed on the petitioner is illegal, I am of the view that the petitioner is entitled for promotion as Joint Director from 28.12.1998 with all benefits. It is stated the petitioner retired from service on 31.07.2004 without promotion.

15. For all foregoing reasons, the writ petition stands allowed and the impugned orders are set aside. The respondents are directed to give promotion to the petitioner to the post of Joint Director from 28.12.1998 and his pension shall also be revised based on the pay applicable to the post of Joint Director. The respondents are directed to pay the arrears of pay pursuant to the promotion as Joint Director as well as the arrears of pensionary benefits, within a period of eight weeks from the date of receipt of a copy of this order. No costs.