

Dr.E.Subbarayan, vs the State of Tamil Nadu,

Dr.E.Subbarayan, vs the State of Tamil Nadu,

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Court : Chennai

Decided On : Mar-28-2025

Judge : Honourable Mr.Justice Mummineni Sudheer Kumar

Appeal No. : WP/23319/2011

Appellant : Dr.E.Subbarayan,

Respondent : The State of Tamil Nadu,

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27.01.2025 ORDERS PRONOUNCED ON :
28.03.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

Dr.E.Subbarayan ... Petitioner Vs. 1.State of Tamil Nadu, Rep. By its Secretary to Government, Health and Family Welfare Department, Fort St. George, Chennai - 600 009. 2.Tamil Nadu Public Service Commission, Represented by its Secretary, Anna Salai, Chennai - 600 002. 3.The Public Health and Preventive Medicine, Represented by its

Director, Anna Salai, Chennai - 600 006. ... Respondents Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Ceriorarified Mandamus, calling for the records relating to the issuance of the impugned order of dismissal passed by the 1st

respondent under G.O.(D)No.1233 Health and Family Welfare (D2) Department, dated 04.10.2007, and the consequential order of confirmation of the dismissal order passed by the first respondent under appeal/review filed by the petitioner, under G.O.(D)No.107, Health and Family Welfare

(D2) Department, dated 06.02.2009 and to quash the same and directing the respondents to reinstate the petitioner in service with full backwages.

For Petitioner : Mr.N.C.Ramesh, Senior Counsel Assisted by Mr.G.Dhyaneshwar instructed by Mr.T.Sivaprakasam For Respondents : Mr.K.Tippusultan, Government Advocate for R1 & R3 Mr.R.Bharanidaran for R2

ORDER

The petitioner herein, while working as a Medical Officer Primary Health Centre, Jamuna Maruthur, Thiruvannamalai was subjected to disciplinary proceedings under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as the Rules 1955) by issuing a charge memo bearing R.No.4934/PHC3/A3/2003 dated 31.03.2004, containing three charges. The

said charges read as under: Charge No. I That the said Dr. E. Subbarayan, while functioning as Block Medical Officer, Primary Health Centre, Kedar, Villupuram District had not claim and paid the eligible salary to Dr. Rajakannan, Medical Officer Prim Health Centre, Kaanai, who was working under his control. In performance of his official duties in exercise of the powers conferred on him.

Charge No. II That the said Dr. E.Subbarayan, while functioning as Block Medical Officer, Primary Health Center, Kedar, Villupuram has not performed legitimate duty and has done misappropriation of Government money in the VARUMUN KAPPOM THITTAM" by getting signatures in the acquaintance register from the staff of Government Primary Health Centre like Karuvatchi and Anniyur, as if they have received the fee, which he has actually disbursed the fee to them.

Charge No.III That the said Dr.E.Gubbarayan, while functioning as Block Medical Officer, Primary Health Center. Kedar, Villupuram during the weekly review meeting and in course of his tenure has indulged in sexual harassment, (includes unwelcoming implication

behaviour noted below) among the female staff like Sanitary worker, Village Health Nurses, Auxiliary Midwife Including lady Doctors. a) Sexually coloured remarks. b) Asking about the female staff husbands Profession including their personnel Sexual Life. c) Commenting on the Physical nature the wearing of saris and blouse of female staff.

2. In support of the said charges, two documents were sought to

be relied upon and 10 witnesses were sought to be examined as witnesses. In response to the said charge memo, the petitioner submitted his explanation dated 05.07.2004 denying the charges while explaining the charges along with 26 documents. It was thereafter, the Director of Public Health and Preventive Medicine appointed the Deputy Director of Health Services as an Enquiry Officer to conduct enquiry into the charges levelled against the petitioner. The Enquiry Officer conducted an enquiry on different dates. However, no witness was examined during the course of enquiry, except recording the statement of the petitioner herein. However, the Enquiry Officer submitted his report to the Government and in turn the

same was forwarded to the petitioner through letter dated 23.05.2005 to submit a further representation on the findings of the Enquiry Officer. The Enquiry Officer in his report concluded that all the three charges levelled against the petitioner are proved. In response to the same, the petitioner submitted his further representation dated 26.09.2005 bringing it to the notice of the Government that no witness was examined during the course of enquiry and no opportunity was afforded to the petitioner to cross examine any of the witnesses listed in the Annexure IV to the charge memo. Thereafter, the first respondent having accepted the report of the Enquiry Officer, passed a final order through G.O.(D)No.1233, Health and Family Welfare (D2) Department, dated 04.10.2007, imposing punishment of dismissal from service,. The petitioner filed review/appeal seeking review of the said order dated 04.10.2007 before the first respondent. However, the same was rejected by the first respondent by passing an order in G.O.(D)No.107, Health and Family Welfare (D2) Department, dated 06.02.2009. It is aggrieved by the said order of dismissal dated 04.10.2007 and the order dated 06.02.2009, confirming the order of dismissal passed by

the respondent No.1, the petitioner approached this Court by filing the present Writ Petition. During the pendency of the Writ Petition, the petitioner attained the age of superannuation on 31.10.2011.

3. Heard Mr.N.C.Ramesh, learned Senior Counsel for the

petitioner and Mr.K.Tippusultan, learned Government Advocate, appearing for respondents 1 and 3 and Mr.R.Bharanidaran, learned counsel appearing for the respondent No.2

4. Though this matter has been argued at length by the learned

Senior Counsel appearing for the petitioner and the learned Government Advocate, this Court, having considered the elaborate submissions made on either side and also on perusal of the entire material on record, is of

the considered view that no elaborate adjudication of the matter is needed, as this Court has arrived at a conclusion that the entire enquiry was conducted in a perfunctory and haphazard manner and in violation of the mandatory provision contained in Rule 17(b) of the Rules 1955. The reasons for such

conclusion are as under:

4.1. The disciplinary authority while passing the impugned order

dated 04.10.2007 has not made any independent assessment of the matter except proceeding to act upon the report of the Enquiry Officer accepting the same as it is. While passing the order on the review/appeal filed by the petitioner also the first respondent has not made any independent assessment of the matter on merits. Thus, it is evident that the whole basis for imposing punishment of dismissal from service on the petitioner is solely the report of the Enquiry Officer. Therefore, it is necessary to examine whether the report of the Enquiry Officer holding that all the charges levelled against the petitioner as proved is sustainable or not.

5. As already noted above, though 10 witnesses are proposed to be

examined during the course of enquiry and their names were also furnished along with the charge memo itself in Annexure IV, admittedly no witness was examined during the course of enquiry. The Enquiry Officer also, while recording the findings on each of the charges, has not referred to any of the documents that are placed on record on behalf of the Department or on behalf of the petitioner, but recorded the findings without any basis,

however, basing upon assumptions and presumptions and such findings can at best be said to be the opinion of the Enquiry Officer. The job of the

Enquiry Officer is not to express his opinion, but to render the findings basing upon the material placed before him and the evidence adduced before him by either parties. In the instant case, the same is blatantly lacking, thereby vitiating the entire process of enquiry. If the Enquiry Officer is appointed only for the purpose of expressing his opinion basing upon the stand of the delinquent officer, there is no necessity of conducting an enquiry at all under Rule 17(b) of the Rules 1955.

6. Rule 17(b) of Rules 1955 provides for conducting an oral

enquiry in the matter of grave misconduct proposing to impose major penalty. Rule 17(b) also provides for a detailed procedure. In terms of the said Rule, even if the delinquent officer does not seek oral enquiry, it is obligatory on the part of the Enquiry Officer to conduct an oral enquiry, examine the relevant witnesses, afford an opportunity of cross examination to the delinquent, take the documents presented on record and then recorded his findings by considering the oral and documentary evidence placed

before him. In the instant case, all such mandatory procedure was not followed and the same is conspicuously apparent on the face of the report of the Enquiry Officer. On this ground alone, the report of the Enquiry Officer and the entire process of enquiry and the consequential impugned orders are bound to be declared as illegal and arbitrary.

7. Be that as it may, this Court is inclined to examine the charges that are levelled against the petitioner and the sustainability of the

conclusion arrived at by the Enquiry Officer in respect of the each of the

charges. This Court is conscious of the scope of interference by this Court in the matter of disciplinary proceedings and that this Court cannot

re- appreciate the matter as an appellate authority as a matter of course. But considering the facts and circumstances of the case on hand and long lapse of time, especially the fact that the petitioner attained the age of superannuation as early as in the year 2011, this Court deems it appropriate to examine the matter little deep in the interest of justice.

8. The charge No.I against the petitioner is that the petitioner

while functioning as Block Medical Officer, Primary Health Centre, Kedar, Villupuram District had not claimed and paid the eligible salary to Dr.Rajakannan, Medical Officer Primary Health Centre, Kaanai, who was working under the control of the petitioner. Thus, it is alleged that the petitioner failed to discharge his official duties. As against the said charge, the petitioner had taken a specific stand that the said Dr.Rajakannan was irregular in attending the duties and on many occasions, he has applied leave for which he is not entitled to and it is for want of regularisation of the said absence period, the salary of the said Doctor could not be claimed immediately.

9. The Enquiry Officer while recording his conclusions and

findings has not disputed about the absence of the said Dr.Rajakannan, but observed that the petitioner could have claimed for the salary for the period during which the said Dr.Rajakannan attended his duties. But, the Enquiry Officer failed to take into consideration the stand of the petitioner that the

salary could not be claimed for want of regularisation of the absence period. Admittedly, the said salary was paid to the said Rajakannan for which he is otherwise entitled to on 31.01.2003 as is evident from the findings recorded by the Enquiry Officer himself. Thus, when the petitioner tried to explain the charge levelled against him, the Enquiry Officer instead of considering the said explanation offered by the petitioner and the sustainability or un- sustainability of the said explanation, proceeded to conclude that the petitioner failed to claim and

pay the eligible salary to Dr.Rajakannan and violated the duties and responsibilities of Medical Officer. In the absence of any findings that the petitioner has deliberately and intentionally failed to claim the salary of the said Dr.Rajakannan, especially in the context of the fact that the petitioner has offered an explanation for not claiming the salary at the relevant time, the finding of the Enquiry Officer holding that the charge against the petitioner as proved is perverse. Even assuming that the said charge levelled against the petitioner is proved, the same under no circumstances would result in imposition of punishment of dismissal from service.

10. Then coming to the charge No.II, it is on the ground that the

petitioner while functioning as Block Medical Officer, Primary Health Centre, Kedar, Villupuram District has not performed his legitimate duty and has done misappropriation of Government money on the Varumun Kappom Thittam by getting signature in the acquittance register from the staff of the Government Primary Health Centre like Kanai, Karuvatchi and Anniyur, as if they have received the fee, which he has not actually not disbursed the fee to them.

11. In response to the said charge, the petitioner while denying the

said charge, submitted that the entire amount payable towards Varumun Kappom Thittam has been disbursed to the staff through Mr.P.Govindasamy, Health Inspector PHC and also submitted that the necessary acquittance have been obtained from all staffs to whom the payment was made. As against the specific stand taken by the petitioner, the Enquiry Officer held the charge as proved on the ground that had the amounts were paid to the respective staff, there would have not been

complaints from all the quarters. In support of the stand of the petitioner, the petitioner has also submitted the acquittance register acknowledging

the receipt of the money by the concerned staff. The same is also evident from the findings of the Enquiry Officer on charge No.II. But the Enquiry Officer discarded the said acquittance register only on the ground that there would not have been complaints from all the quarters, if really the said amount was paid by the petitioner. The acquittance register is the one that would show the receipt of the amount by the respective staff. Though it is stated that there were several complaints from all quarters, no such complaint is placed on record nor copies of the same were furnished to the petitioner. Admittedly none of the staff, who alleged to have made complaints, were examined during the course of enquiry. In the absence of any evidence in support of the allegation made in charge No.II, the conclusion arrived by the Enquiry Officer on a presumption that there would not have been complaints from all quarters, if the amount is paid, is totally absurd. In this context, it is necessary to notice that the Enquiry Officer have discarded the crucial evidence viz., the acquittance register without assigning sufficient

reasons but proceeded to conclude that the charge is proved on mere assumption as noted herein above.

12. Further, it is also necessary to notice that the petitioner has

taken a specific stand that the entire amount was disbursed through one Mr.Govindasmy, Health Inspector of PHC, but for the reasons best known, the Enquiry Officer has not made any attempt to enquire with the said Health Inspector, who is admittedly working in the Department, nor assigned any reason to discard the said stand and to disagree with the stand of the petitioner in this regard. Thus, the conclusion arrived at by the Enquiry Officer on charge No.II is also based on no evidence and in ignorance of the relevant evidence/material placed before him by the petitioner, rendering the conclusion as perverse.

13. Charge No.III levelled against the petitioner is that the

petitioner while functioning as Block Medical Officer, Primary Health Centre, Kedar, Villupuram District, during the weekly review meeting and in the course of his tenure has indulged in sexual harassment among the

female staff like Sanitary Workers, Village Health Nurses, Auxiliary Midwife including the lady Doctors. The allegation in the charge against the petitioner is that he has made sexually colour remarks, asked about the details of the husband of the female staff, their profession, including their personal sexual life, commenting on physical nature, wearing saris and blouse of female staff in violation of Rule 20B of the Tamil Nadu Government Servant Conduct Rules.

14. The petitioner in response to this charge besides emphatically

denying the charge also specifically contended that he being a strict officer used to make comment on the nature of work done by the respective staff and because of the same, they have been developed grudge and gave a colour of sexual harassment to the same. As a matter of fact, in the explanation submitted by the petitioner in response to the charge memo, the petitioner has furnished the details of the action taken by him against each of the staff whose names are mentioned in Annexure IV to the charge memo. It is also the specific case of the petitioner that out of 10 persons, whose

names are furnished in Annexure IV, except the one shown at Serial No.9, all other staff are not working under the petitioner. However, the Enquiry Officer refused to accept the explanation submitted by the petitioner and proceeded to conclude that the said charge No.III as proved only basing upon assumptions and presumptions. As seen from the findings of the Enquiry Officer, the basis for the Enquiry Officer to hold this charge as proved is that, had the petitioner not given sexually coloured remarks about the female staff and Medical Officer including their personal sexual life and the physical nature and wearing of dresses,

so much complaints would not have been made. Further held that normally modesty would not have permitted the women staff to reveal in open about the misbehaviour i.e. making sexually coloured remarks about them. But as the sexual harassment have become unbearable and crossed the limits, they have come out and complained against the delinquent Officer.

15. The Enquiry Officer, while concluding as above, has held that the charge levelled against the petitioner as proved. As already noted

above, though 10 witnesses were listed in Annexure IV to the charge memo, none of the witness were examined. From the charge or from the Enquiry Officer's report, it is not known who made complaint against the petitioner of sexual harassment. When actually, such harassment took place is also not mentioned either in the charge or in the report of the Enquiry officer. In the absence of any particulars about the date on which such harassment took place, against whom such harassment took place etc., it is highly impossible for any delinquent to answer the charge. In the instance case, no such particulars are available either in the charge memo or in the report of the Enquiry Officer. None of the complaints alleged to have been made by the female staff are placed on record nor furnished to the petitioner. In the absence of the alleged complaints made against the petitioner of sexual harassment being brought on record and in the absence of examining any of the persons who suffered such harassment in the hands of the petitioner, it is un-understandable as to how the Enquiry Officer can hold the said charge as proved. The very purpose of conducting an enquiry as contemplated under Rule 17(b) of the Rule 1955 is with a view to establish the charges with

admissible and sufficient evidence by duly affording an opportunity to the delinquent employee. If the findings on the charges are to be arrived at basing upon assumptions and presumptions, the very purpose of conducting an enquiry under Rule 17(b) of Rules 1955 would get

frustrated. Thus, the findings that were recorded by the Enquiry Officer on the Charge No.III is also apparently basing on assumptions and presumptions.

16. No doubt, the Enquiry Officer in his report took note of the

list of exhibits produced in proof of the article of charge numbering 7 and the list of exhibits produced by the petitioner in his defence numbering 26. But, the Enquiry Officer failed to refer to any of the documents presented on either side nor considered the said documents. Mere listing of the documents produced on either side in the report of the Enquiry Officer does not amount to consideration of the said documents. It is only in case the enquiry officer deal with each of the documents and record his findings either for accepting the same or for discarding the same, it cannot be said that the Enquiry Officer has taken into consideration the said material. From the perusal of the report of the Enquiry Officer, it is evident that the

Enquiry Officer has not taken into consideration any of the documents that are placed on record by either side. Therefore, for this reason also, the entire report of the Enquiry Officer stand vitiated.

17. Further, it is also necessary to notice that the disciplinary

proceedings, that were initiated against the petitioner by issuing charge memo dated 31.03.2004, were continued till the year 2011 i.e., for the 7 long years, causing great prejudice to the petitioner. Absolutely, there is no explanation that is coming forth for such ab-normal delay. In the light of the above analysis of the report of the Enquiry Officer, this Court is unhesitant to conclude that all the conclusions arrived by the Enquiry Officer are perverse and consequently, the impugned orders passed by the respondent basing upon the said enquiry report also stand vitiated.

18. In the light of the above, both the impugned orders cannot be sustained and they are accordingly quashed. The petitioner while seeking quashing of the impugned order also sought for reinstatement into service

with all monetary benefits. But, considering the fact that the petitioner has already attained the age of superannuation as early as on 31.10.2011, the question of reinstatement into service does not arise. As the impugned orders are quashed by this Court, the petitioner is entitled for all consequential benefits. Accordingly, this Writ Petition is allowed by directing the respondents to treat the petitioner as continued in service till 31.10.2011, the date on which the petitioner attained the age of superannuation and pay all the consequential benefits including the monetary benefits to the petitioner as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

28.03.2025 NCC : Yes/No Index : Yes/No Internet : Yes vsm To

1.The Secretary to Government, State of Tamil Nadu, Health and Family Welfare Department, Fort St. George, Chennai - 600 009. 2.Tamil Nadu Public Service Commission, Represented by its Secretary, Anna Salai, Chennai - 600 002. 3.The Public Health and Preventive Medicine, Represented by its Director, Anna Salai, Chennai - 600 006.

MUMMINENI SUDHEER KUMAR, J.

vsm Pre-delivery Order made in 28.03.2025

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