

M.Sowmiya Sundari vs The State Of Tamil Nadu on 18 March, 2022

Author: N.Sathish Kumar

Bench: N.Sathish Kumar

W.P.Nos.18749

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
14~09~2023

Delivered on
21~09~2023

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.18749 & 30285 of 2022 &
W.M.P.Nos.18129, 18130, 29720, 29722 of 2022

M.Sowmiya Sundari

... Petitioner in

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George, Chennai – 600 009.
2. The Commissioner of Food Safety,
O/o.The Commissioner of Food Safety and
Drug Administration, DMS Compound,
Teynampet, Chennai – 600 006.

... Respondents in

PRAYER in W.P.No.18749 of 2022: Writ Petition filed, under the Article 2 of Constitution of India, to issue a Writ of Certiorarified Mandamus to the records relating to the impugned Order issued by the second responde R.No.33/2022/S1/FSD dated 18.03.2022 and to quash the same and consequently directing the respondents to allow the petitioner to contin post of Designated Officer based on the Order of appointment in

<https://www.mhc.tn.gov.in/judis>
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R.No.961/2017/S1/FSSA dated 21.09.2017 as Designated Officer under secti 36 of Food Safety Standards Act, 2006, with all consequential and other

attendant service benefits.

PRAYER in W.P.No.30285 of 2022: Writ Petition filed, under the Article 2 of Constitution of India, to issue a Writ of Certiorari to call for the relating to the impugned charge memo issued by the 2nd respondent in Mem R.No.33/ 2022/ S1/ FSD dated 18.03.2022 and to quash the same.

For petitioner : Mr.G.Sankaran, Sr. Counsel
in both WPs for Mr.S.Nedunchezhiyan

For Respondents : Mr.P.Kumaresan,
in both WPs Additional Advocate General
Asst. by Mr.P.Baladandayutham,
Special Government Pleader

COMMON ORDER

The impugned Order dated 18.03.2022 reverting the petitioner from the Food Safety Department to her parent Department was put in challenge in the Writ Petition in W.P.No.18749 of 2022.

2. The Writ Petition in W.P.No.30285 of 2022 has been filed challenging the charge memo dated 18.03.2022 issued against the petitioner. <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022

3. It is the case of the petitioner that she was appointed as a designated officer under section 36 of Food Safety and Standards Act, 2006 as per Order of appointment of the second respondent in R.No.961/2017/FSSA, dated 21.09.2017. She has also completed in-service training and has become regular member of service. She was also given additional charge of Ariyalur District in the year 2018 and she has performed well both in Perambalur District and Ariyalur District in implementing provisions of Food Safety and Standards Act 2006. She has also been transferred in general transfer in the year 2021 from Perambalur District to Thiruvavur District on 26.02.2021. She has joined as Designated Officer of 26.02.2021 and after joining she has taken effective steps for implementation of provision of the Food Safety and Standards Act 2006. However, notice has been issued on 02.08.2021 stating that there is poor performance, besides complaints have been received, therefore she had been relieved from Food Safety Department. It is the contention of the learned Senior Counsel appearing for the petitioner that since the petitioner is a designated Food Safety Officer, she cannot be completely relieved from the said Department and hence, the impugned order has been questioned.

4. Counter has been filed by the respondents to the effect that the Food Safety Rules 2011 have been framed and the Food Safety and Standards Act <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 2006 came into force after Government Order in G.O.No.347 dated 22.12.2011 for creating new Department called Tamilnadu Food Safety and Drug Administration and 32 posts of

designated Officers have been sanctioned in all the Revenue Districts. Accordingly, the Medical Officers / Health Officers under the control of Public Health Department have been drawn on deputation and appointed as Designated Officers on temporary basis. Since the petitioner has been appointed as a designated officer and she has not shown any involvement in implementation of various activities, explanation has been sought on 02.08.2021. Therefore, she has been relieved and hence, the relieving Order cannot be questioned.

5. The learned Senior Counsel appearing for the petitioner fairly submitted that he is not challenging the relieving Order in toto and he has confined his submissions with regard to the reasons in the Order indicating the petitioner and it will have adverse impact in her service records.

6. The Writ Petition in W.P.No.30285 of 2022 has been filed challenging the charge memo for certain poor performance of the petitioner in the month of December 2021 and she has secured only 67 marks out of 100 marks and 22 marks out of 32 marks. Further, the charge is to the effect that she has not <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 attended the office in the third floor and she has signed files sitting in her car and she has not regularly attended the office. The charge memo also indicate that the petitioner has not shown the performance. Hence, it is the contention of the learned Additional Advocate General that the charge memo cannot be challenged.

7. The learned Senior Counsel appearing for the petitioner fairly submitted that he is not challenging the relieving Order. However, his only grievance is that the adverse remarks in the relieving Order has to be expunged. According to him, without any materials, such Orders have been passed. Similarly, the charge memo has been issued for the same allegations. Therefore, the petitioner has been relieved to the parent Department and charge memo cannot be continued by the borrowing department.

8. The learned Additional Advocate General submitted that the charge memo has been issued as the petitioner has not performed properly while working as Food Safety Officer.

9. In the light of the above submissions, the point arise for consideration is whether the adverse marks indicated in the relieving Order to be expunged <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 and whether the charge memo issued by the borrowing Department, even after the petitioner relieved to the parent Department can be continued. Though the petitioner was appointed as a Designated Officer by an Order in R.961/2017/FSSA dated 21.09.2017 on temporary basis, it is relevant to note that after Food Safety and Standard Act was notified, Rules also placed on the floor and the Government has sanctioned the post of the Food Safety Designated Officer to each Revenue District. However, in order to appoint the persons, the Government has also framed separate guidelines as stipulated in the Food Safety and Standards Act 2006. To fill up the post, the persons who are already in service in the Health Department have been drawn and given temporary appointment.

10. While the petitioner was working in the Health Department as an Assistant Surgeon in the Government Hospital, she has been appointed as a Designated Officer on temporary basis. It is

made clear that while drawing the persons from the parent Department, a lean and seniority of the Food Safety Officers drawn from the other Department Ordered to be preserved and maintained, with resultant benefit to them in the parent Department. This has been clarified in R.No.2413/2012/S2/FSSA, dated 01.10.2012. Therefore, the petitioner, who has been drawn from the Public Health Department and <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 posted as a Designated Officer, cannot claim that she has been directly appointed as a designated officer and she should not be relieved to the parent Department. Since, the learned Senior Counsel appearing for the petitioner has also fairly submitted that she has been relieved and the question is only with regard to adverse remarks in the relieving Order, the relieving Order indicate as if she has been relieved due to poor performance stating that she has not attended the office regularly and made inspection with Food Safety Officers. It is relevant to note that after relieved from the borrowing Department, this Court is of the view that once, the allegation has not been established, merely on the basis some complaint such adverse Orders cannot be sustained in the absence of any proof on that regard. Therefore, this Court is of the view that the adverse remarks in the the relieving Order has to be expunged.

11. With regard to the charge memo, it is relevant to note that normally the Court will be slow in interfering with the charge memo issued. However, when the charge is without any particulars and details, the Court can very well interfere. Following charges have been framed against the petitioner :

“Charge I While reviewing the performance of various activities, Dr.M.Sowmiyasundari, Designated Officer in Thiruvarur Dist., <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 she has shown poor performance in the month of June and December 2021. In the performance for the month of July, the activity report in respect of ERC and Hygiene rating furnished by her is false, it was not matching with the report of Pankshan. The district performance is reflecting the performance of State by FSSAI. Her poor performance shows her carelessness and failed devotion in official duty.

Charge – II She has not reviewed the Food Safety Officers ATP every month and their performance during monthly review meeting conducted. She was directed to submit report in this regard vide this office Lr. R.No.33/2022/S1/FSD dated 02.02.2022. But no reply has been received. This shows her insubordination and failure in official duty.

Charge – III She has not attended Designated Officer office which function at 3rd floor and instructed the office staff bring the files, signed the files sitting in her car. She has sent report without checking to Commissionerate. She has not inspected the filed with FSOs. This shows her failure to devotion in official duty. <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 Therefore, she has violated rule 20 [1] of Tamil Nadu Government Servant Conduct Rules, 1973.” The charges framed against the petitioner appear to be during the pandemic period, that there was poor performance. What was the nature of poor performance has not

been specifically mentioned in the charge memo. It is relevant to note that though charge memo is dated 18.03.2022, on the date of relieving, admittedly, the petitioner has been relieved to the parent Department.

12. At this stage, it is relevant to extract Rule 16 of the Tamilnadu Civil Service Disciplinary Appeal Rules 1955 which reads as follows :

“16. Where a person to be punished has been lent to the punishing authority--

(i) the power to impose the penalty of compulsory retirement or removal or dismissal, shall not lie with any authority other than the lending authority ; the borrowing authority shall, in a case where it considers that the punishment of compulsory retirement, removal or dismissal should be imposed, complete the inquiry and revert the person 13 concerned to the lending authority for such action as that authority may consider necessary;

<https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 Provided that the provision in this clause requiring the reversion of the person concerned to the lending authority shall not apply where the person has been lent by one department to another and both the departments are under the same administrative authority; and (ii) unless in any case it be otherwise provided by specific orders by the Governor of Tamil Nadu, the punishing authority shall consult the lending authority before imposing any lesser penalty and in the case of suspension shall report forthwith to the lending authority the circumstances leading to the imposition of that penalty.

Explanation .- For the purpose of this rule, a clerk of the Secretariat or of the Board of Revenue or of the other Government Offices in the City of Chennai deputed to Tamil Nadu Ministerial Service for training as a Revenue Inspector or a Superintendent of the Secretariat or of the Board of Revenue or of the other Government Offices in the City of Chennai deputed to the Tamil Nadu Revenue Subordinate Service for training in the districts shall be deemed to be a person lent.”
<https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022

13. A perusal of the above Rule makes it very clear that the power to impose the penalty of compulsory retirement or removal or dismissal, shall not lie with any authority other than the lending authority; the borrowing authority shall, in a case where it considers that the punishment of compulsory retirement, removal or dismissal should be imposed, complete the inquiry and revert the person concerned to the lending authority for such action as that authority may consider necessary. Therefore, to impose any punishment, enquiry has to be conducted while the person is under the control of the borrowing authority. The borrowing authority shall complete the enquiry and thereafter, he should be referred to the lending authority for imposing the major punishment. Whereas, in this case the charges are very vague with regard to poor performance during pandemic period and it is not specific about any misconduct of the petitioner. The petitioner has already been relieved to the parent Department. Therefore, the borrowing Department, namely the Food Safety Department now cannot impose even any minor punishment.

14. It is also relevant to extract Rule 15 [a] of Tamilnadu Civil Service Disciplinary Appeal Rules 1955 which reads as follows :

“15.(a) Where, on promotion or transfer or recruitment by transfer*, a member of a service in a class, category or grade is <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 holding an appointment in another class, category or grade thereof or in another service, State or Subordinate, no penalty shall be imposed upon him in respect of his work or conduct before such promotion or transfer except by an authority competent to impose the penalty upon a member of the service in the latter class, category, grade or service as the case may be.” The above Rules makes it very clear that Where, on promotion or transfer or recruitment by transfer, a member of a service in a class, category or grade is holding an appointment in another class, category or grade thereof or in another service, State or Subordinate, no penalty shall be imposed upon him in respect of his work or conduct before such promotion or transfer except by an authority competent to impose the penalty upon a member of the service in the latter class, category, grade or service as the case may be.

15. The petitioner has already been relieved to the parent Department. Now enquiry under 17B of Tamil Nadu Government Servant Conduct Rules, 1973 cannot be continued by the borrowing authority. Rule 16 of the Tamilnadu Civil Service Disciplinary Appeal Rules 1955 also makes it clear that the enquiry has to be completed and the person has to be reverted. Whereas, in <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 the given case, the petitioner has already been relieved to the parent Department. Therefore, now the borrowing Department cannot continue any enquiry, at the most, the authorities can proceed only for any lapses by the disciplinary authority. Therefore, continuing the enquiry in the absence of the person in the borrowing Department will not serve any purpose. Further, the charge is also general in nature without any specific instances. Admittedly, all the charges relate to complete lock down period. In such view of the matter, the charge memo issued by the second respondent is liable to be quashed.

16. Accordingly, the adverse remarks against the petitioner in the impugned Order of the second respondent dated 18.03.2022 is expunged and the Writ Petition in W.P.No.18749 of 2022 is disposed of. No costs.

17. With regard to the Writ Petition in W.P.No.30285 of 2022 is concerned, the Writ Petition is allowed and the charge memo issued by the second respondent dated 18.03.2022 is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023 <https://www.mhc.tn.gov.in/judis> W.P.Nos.18749 & 30285 of 2022 Index:Yes/No Neutral Citation : Yes/No vrc To,

1. The Principal Secretary to Government, Health and Family Welfare Department, Secretariat, Fort St. George, Chennai – 600 009.

2. The Commissioner of Food Safety, O/o.The Commissioner of Food Safety and Drug Administration, DMS Compound, Teynampet, Chennai – 600 006.

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