

**(2010) 10 MAD CK 0212**

**Madras High Court (Madurai Bench)**

**Case No:** Writ Petition (MD) No. 2344 of 2008 and M.P. (MD) No. 1 of 2008

K. Selvaraj

APPELLANT

Vs

The Secretary, Health and Family  
Welfare Department, The  
Director of Public Health and  
Preventive Medicine and The  
Deputy Director of Health  
Services

RESPONDENT

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**Date of Decision:** Oct. 27, 2010

**Acts Referred:**

- Army Act, 1950 - Section 39, 57

**Hon'ble Judges:** K. Chandru, J

**Bench:** Single Bench

**Advocate:** B. Pugalendhi, for the Appellant; R. Janakiramulu, Special Government Pleader,  
for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioner has filed the present Writ Petition seeking to challenge the order of the Government in G.O.(D.) No. 651, Health and Family Welfare (D1) Department, dated 15.05.2007. By the impugned order, the petitioner was dismissed from service.

2. When the Writ Petition came up for hearing on 14.03.2008, notice of motion was ordered.

3. The brief facts leading to the dismissal of petitioner was as follows:

The petitioner was serving in the Indian Army on Short Service Commission (SSC). He had a tenure for a period of five years having joined the Army Medical Corps with effect from 04.09.1997. Even before his Commission in the Army, he had applied for the post under the Tamil Nadu Medical Services. He also wrote the written test on 16.03.1997 and attended an interview on 25.04.1997. The petitioner was informed that he was not selected for the post of Assistant Surgeon, as the selection was made on the basis of zonal wise vacancies.

4. When the petitioner came back on his annual leave from his Commission in the Army, he came to know that the selections made by the Tamil Nadu Public Service Commission for the post of Assistant Surgeon under the Tamil Nadu Medical Services were cancelled by the High Court on a Writ Petition filed by certain candidates. The reserved list of candidates drawn earlier on the basis of zonal wise and speciality wise were combined into a common reserved list on the basis of the order of seniority. The petitioner was selected as an Assistant Surgeon under the speciality category. On being selected, he was given an appointment order dated 24.02.1999 and was posted to work at the Primary Health Centre at Ariyapatti Village, Pudukkottai District. He was also directed to join the said post within 30 days from the date of receipt of the proceedings.

5. The petitioner did not inform the Army authorities about his intention to take up the post under the Tamil Nadu Medical Services. He claimed that he sent a resignation to his Commanding Officer on 22.03.1999. Without waiting for any relief, he joined the Tamil Nadu Medical Services and reported for duty at the Primary Health Centre at Ariyapatti on 23.03.1999. The Commanding Officer at DOGRA sent a telex message on 01.04.1999 and informed the petitioner that he should immediately report back for his duty. In that information, he was told that he cannot overstay and that his resignation was not in order and that the Commanding Officer is not an authority to accept such resignation.

6. In the meanwhile, the petitioner abandoned his duty at the Primary Health Centre at Ariyapatti. He sent a leave application applying for leave from 01.04.1999 to 15.04.1999 and thereafter, remained unauthorisedly absent. Apparently, on being directed by the Army authorities, he joined duty in the Indian Army on 21.04.1999. It was also brought to the notice of the Government that he was earlier reprimanded by the Indian Army for his act of taking up service in a Civilian post even while his Commission was still pending. But, however, when the respondents department came to know about the petitioner's unauthorised absence and the fact of his re-joining duty in the Indian Army, they framed a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charges relates to not only his unauthorised absence but also his joining in the Medical Service suppressing his Commission in the Indian Army.

7. The petitioner, instead of sending a reply to the charge memo, started sending a letter for sympathetic consideration of his re-entry into the Tamil Nadu Medical

Services. The ground raised by him was that after his Short Service Commission, he was released from the Indian Army on 08.10.2002 and was relinquished from the office service on 10.11.2002. He also claimed that he has received several awards and commendable during his service in the Indian Army. Therefore, his case should be considered sympathetically. Finally, he submitted an explanation dated 22.01.2003 to the charge memo.

8. In his explanation dated 22.01.2003, in paragraph Nos.2 and 3, it was stated as follows:

2....

2(i)....

(ii). ...I am to state that I have joined the Tamil Nadu Medical Service by submitting the formal resignation to my employment in Indian Army vide my application dt. 22.03.99 (Copy enclosed) explaining the ground therein, which is normally accepted by the authority. Moreover at that time I was under the impression/presumption that by submitting the formal resignation to the current employer I can take over second job immediately. Hence, mentioning the fact of my employment in Indian Army was not considered necessary at that time.

3. At last I beg to add that my firm belief about myself joining Tamil Nadu Medical Service could be the best solution for improving my family circumstances particularly my mother's chronic mental illness. Namely, Bipolar Affective Disorder and ignorant drastic steps taken of my own knowledge which had created the unexpected complications to both the services has been explained to you in detailed manner.

9. Not satisfied with his explanation, the Deputy Director of Health Service, Aranthangi was appointed as Enquiry Officer to go into the charges. The Enquiry Officer, in his report dated 21.11.2003, found the petitioner guilty of the charges. The petitioner was asked to submit his explanation on the enquiry report. The petitioner offered his remarks on the enquiry report by his explanation dated 20.01.2005. During that period, the petitioner was given re- posting in the Primary Health Centre, Ariyapatti and a proposal was also sent to the second respondent to recall the service during the period of absence, viz., from 01.04.2009 to 23.01.2005 (period of five years). In the meanwhile, the State Government consulted the Tamil Nadu Public Service Commission and after getting a report dated 02.01.2007, passed the impugned Government Order in G.O.(D). No. 651, Health and Family Welfare (D1) Department dated 15.05.2007. In that, the Tamil Nadu Public Service Commission found that the Act played by the petitioner cannot be condoned and that it is the grave mistake and, therefore, it was decided to dismiss the petitioner from service. As against the said dismissal, the Writ Petition came to be filed.

10. Mr. B. Pugalendhi, learned Counsel appearing for the petitioner stated that the petitioner has bona fide committed the mistake and he should not be punished. He has done the commendable service in the Indian Army and he was waiting for his resignation to be accepted. Now, that the period in his Short Service Commission with the Army is over and there is no impediment for him to serve the Tamil Nadu Medical Services.

11. This argument overlooks the fact that u/s 39 of the Army Act, 1950, if a person is absent from the Indian Army, he can be convicted by a Court-martial, imposing an imprisonment for a period of more than three years. Even for making false declaration by an Army personnel, he shall be punished u/s 57 of the Army Act, 1950. The motive of the petitioner is very clear. He had a short service commission for a period of five years from 1997 to 2002. During the middle of the commission, he could not have got out from the Army, except after obtaining the prior permission from the higher authorities. But, when there was a windfall inform of an employment under the Tamil Nadu Medical Service during the middle of his tenure in the Indian Army, he did not want to give up that offer. Hence, he reported for duty for a short period. After applying leave for a period of two weeks, he left the Tamil Nadu Medical Services to rejoin duty in the Army.

12. It is not clear as to what was his explanation to the Army authorities when he returned back to duty. While keeping a lien on the employment under the Tamil Nadu Medical Services, he wanted to complete his army service. After getting a relief, he wanted to join the Tamil Nadu Medical Services once again. Therefore, the petitioner has been cheating two different authorities in a clever manner. The punishment given to the petitioner cannot be said to be either invalid or disproportionate to the gravity of the misconduct committed by him. After all, under the Tamil Nadu Medical Services, he only served for two weeks. Therefore, the question of disproportionality of the punishment will not arise. Hence, the Writ Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.