IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.5851 of 2007
(O.A.No.6311 of 2002)

B.Rajendran .. Petitioner

-vs-

1. The Government of Tamil Nadu
   represented by the Secretary to the Government
   Revenue Department
   Fort St.George
   Chennai-9

2. The Principal Commissioner and Commissioner
   of Revenue Administration
   Chennai-5

3. The District Revenue Officer
   Pudukkottai
   Pudukkottai District .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent in G.O.(1D) No.170 (Per 6 (2) Revenue Department dated 2.5.2002 confirming the order passed by the second respondent in Roc.No.L2/24615/96 dated 7.10.1996 and the order passed by the third respondent in Na.Ka.No.A6/7898/92 dated 9.1.1996 and quash the same and direct the respondents to reinstate the petitioner in service with all attendant benefits.

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For Petitioner :: Mr.P.Rajendran

For Respondents :: Mr.R.Govindasamy
Additional Government Pleader

ORDER

Mr.B.Rajendran, who was working as Assistant at the Taluk office, Gandharvakottai, Pudukkottai District, was issued with a charge memo dated 11.11.92 by the District Revenue Officer, Pudukkottai under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules containing eight charges relating to his absence from duty. Finally, as he was removed from service, challenging the order of removal passed by the third respondent and confirmed by the second respondent and re-confirmed by the first respondent, he filed O.A.No.6311 of 2002 before the Tamil Nadu Administrative Tribunal, Chennai. The said original application came on transfer and renumbered as the present writ petition.

2. Mr.P.Rajendran, learned counsel for the petitioner, assailing the impugned order of removal from service, submitted that the petitioner was suffering from mental illness and he was also taking treatment under a psychiatrist. In view of his mental illness for a long time, he was unable to attend duty. Therefore, he applied for leave on loss of pay for the period from 23.6.78 to 17.8.80, 1.1.85 to 18.12.85, 1.12.88 to 11.7.89. As the mental illness continued, the petitioner again applied for leave on loss of pay from 3.8.89 to 19.11.89. When the charge memo was issued on 11.11.92 by the District Revenue Officer, he has further submitted that due to his mental illness, he was not in a position to submit his explanation to the charges. Therefore, the Personal Assistant to District Supply Officer, Pudukkottai, who was appointed as an enquiry officer, on his appointment, sent the enquiry notices to the petitioner. Since the petitioner was under treatment for mental illness, letters were sent to the enquiry officer requesting for adjournment of the enquiry. But his prayer was not considered and an ex parte enquiry was held. Thereafter, the enquiry report was not even furnished to him. That shows that the petitioner was not given an opportunity to submit his further explanation on the findings of the enquiry officer. Therefore, without giving any opportunity to the petitioner, the third respondent issued the impugned order dated 9.1.96 imposing the punishment of removal from service under Fundamental Rule 18(3). Aggrieved by the said order of removal passed under F.R.18(3), the petitioner preferred an appeal to the Principal Commissioner and Commissioner for Revenue Administration, Chennai on 12.3.96. But the second respondent, rejecting his appeal, confirmed the order of removal. Having been aggrieved by the two orders, he preferred a review petition before the first respondent. Sadly the review petition was also rejected in G.O.(1D) No.170, (Per 6 (2), Revenue Department dated 2.5.2002.

3. Continuing his arguments, he placed before this Court three submissions. Firstly, it was argued that when the petitioner was suffering from mental illness, he was unable to attend office. Therefore, he applied for leave on loss of pay for the period from 23.6.78 to 17.8.80, 1.1.85 to 18.12.85, 1.12.88 to 11.7.89 and 3.8.89 to 19.11.89. Subsequently, when the enquiry officer submitted his report, he was not furnished with the copy of the said report to

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submit his further explanation on the findings of the enquiry officer. Therefore, the ex parte enquiry held against the petitioner was not fair and proper. On this score, the impugned order of removal is liable to be set aside. Secondly, it was argued that in any event, the impugned order of removal passed under Fundamental Rule 18 (3) is not legally maintainable, since the validity of the said rule was challenged and the same was struck down by the Tribunal by order dated 21.10.99, since the said rule contemplated only one punishment of removal from service. While considering the validity of the said rule, the Tribunal has come to the conclusion that the only punishment of removal from service contemplated under F.R.18(3) is unlawful. During that period, when the Tribunal passed the order holding the said rule as invalid on 21.10.99, the petitioner's review petition was pending with the first respondent, as the same was disposed of only on 2.5.2002 by the impugned order. Therefore, the benefit of the order passed by the Tribunal on 21.10.99 should have been given to the petitioner. As it has not been done, suitable directions should be given to the respondents to reconsider the case of the petitioner by passing a fresh order. Thirdly, it was argued that although the petitioner repeatedly took the plea that he was not served with the copy of the report of the enquiry officer resulting in failure of a fair and reasonable opportunity and the striking down of F.R.18(3) by the Tribunal on 21.10.99, the first respondent has completely overlooked the legal plea. Therefore, for all the aforesaid reasons, the impugned orders passed by the respondent Nos.3, 2 & 1 are liable to be set aside.

4. A detailed reply has been filed by the respondents. Mr.R.Govindasamy, learned Additional Government Pleader appearing for the respondents, urging this Court to dismiss the writ petition, giving his reply to all the three submissions made by the learned counsel for the petitioner, firstly pleaded that the petitioner was repeatedly absenting himself from duty for the period from 23.6.78 to 17.8.80, while he was posted in the office of the Revenue Divisional Officer, Aranthangi. Again he absented from duty from 14.3.85 to 18.12.85 when he was serving in the office of the Assistant Commissioner (Excise), Gandharvakottai. On the third occasion also, he remained absent from 1.12.88 to 12.7.89 when he was serving in the Taluk Office, Thirumayyam. Even on the fourth occasion also, he remained absent from 3.8.89 to 13.2.91 from the Taluk Office, Thirumayyam. Again he remained absent from duty from 1.3.2001 indefinitely from the Taluk Office, Aranthangi. Adding further, he has also submitted that out of the total service of 14 years put in by the petitioner, he was unauthorisedly absent from duty for more than six years. Therefore, when the petitioner continuously stayed away from duty, he was issued with the charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules in Rc.No.7898 dated 11.11.92. After receipt of the said charge memo, the petitioner did not even submit his explanation. That apart, he has

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also not informed about his whereabouts to the office for a long period. Although he had furnished his residential address in the application requesting for posting order, he was not found at that address. Finally, finding no response whatsoever, the Personal Assistant to District Supply Officer, Pudukkottai, was appointed as the enquiry officer, who had also sent enquiry notices to the petitioner. But, as no reply was forthcoming, as a result, he completed the ex parte enquiry and submitted his report. A copy of the enquiry report was also served on the petitioner on 14.2.95 with a request to submit his further explanation, if any, thereon. Therefore, the contention of the petitioner that he was not served with the copy of the enquiry report is absolutely unfounded and the same should be rejected.

5. Secondly, it was further contended that when the disciplinary authority, even after furnishing a copy of the enquiry report to the petitioner on 14.2.95, failed to submit his explanation, taking note of the refusal to submit his first explanation to the charge memo dated 11.11.92 and also the failure to submit his further representation to the enquiry officer's report and also his further failure to participate in the enquiry, passed the order of removal from service under F.R.18(3). Subsequently, the petitioner preferred an appeal to the Principal Commissioner and Commissioner of Revenue Administration on 12.3.96 and the second respondent, finding no merits in the appeal, keeping in mind that he was absenting from duty for quite a long time, rejected his appeal by order dated 7.10.96. As against the same, the petitioner preferred a review petition before the first respondent, who also rejected the same in G.O.(1D) No.170, Revenue (Per 6(2) Department dated 2.5.2002. When the order of removal was passed by the third respondent on 9.1.96, the same was confirmed by the second respondent in the appeal order dated 7.10.96. Subsequently, the Tribunal also, while considering the validity of F.R.18(3), struck down the same on 21.10.99. In the meanwhile, as the petitioner remained unauthorisedly absent from duty of six years in his total Government service of 14 years, it is not the case where the petitioner's request for reconsidering his case in the light of the order passed by the Tribunal on 21.10.99 can be considered. Even after the G.O.Ms.No.154, Personnel and Administrative Reforms Department dated 8.8.2000 was passed in the light of the order passed by the Tribunal, the respondents would not be in a position to reconsider his reinstatement, since he himself admitted that due to his mental illness he was unable to attend the office for six years when he had put in a total service of 14 years. Concluding his arguments, the learned Additional Government Pleader submitted that when the respondents 2 & 1 have considered the petitioner's appeal and review petition in terms of Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, although the respondents 2 & 1 have mentioned in the order of rejection that he remained unauthorisedly

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absent on different occasions for nearly one year, the fact remains that the petitioner remained unauthorisedly absent for about six long years out of the total 14 years of his Government service. Therefore, no leniency can be shown to the petitioner when he had not been in a position to contribute anything.

6. Heard the learned counsel for the parties.

7. The petitioner, who joined the service as an Assistant in the Taluk office, Gandharvakkottai, was unable to attend duty for the period from 23.6.78 to 17.8.80, 1.1.85 to 18.12.85, 1.12.88 to 11.7.89 and 3.8.89 to 19.11.89 on the premise that he was suffering from mental illness. It appears that he has also applied for leave on loss of pay for the said period. Considering his long absence, the Personal Assistant to District Revenue Officer, Pudukkottai issued a charge memo on 11.11.92 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules containing eight charges in respect of his absence. Ironically, the petitioner was not able to respond by submitting his explanation. Although he has sent adjournment letters to the enquiry officer requesting for adjournment of the enquiry, it is not known why the petitioner has not sent his detailed explanation along with the medical certificate showing his mental illness. Secondly, the enquiry officer, who has also issued notices, finding no response, completed the ex parte enquiry and submitted his report holding all the charges proved. After the report of the enquiry officer was received, a copy of the same was also furnished to the petitioner on 14.2.95. No doubt the petitioner denied the receipt of the enquiry report. But the respondents in the counter affidavit have stated that when the petitioner furnished his residential address in the application requesting posting order, it was found that he was not present in the said address as well. Besides, when the petitioner admittedly sent adjournment letters to the enquiry officer requesting for adjournment of the enquiry, this Court finds it difficult to accept how the notices sent by the enquiry officer had not been received by him so as to send at least his short reply. Therefore, the contentions raised by the petitioner that he was not issued with the copy of the report of the enquiry officer, is far from acceptance. Thirdly, as mentioned above, when the charge memo dated 11.11.92 was issued containing eight charges, he neither submitted his explanation, although he had sent a request letter to postpone the enquiry, nor came forward to submit a written representation to the report of the enquiry officer. Therefore, the third respondent, finding the report of the enquiry officer not being rebutted by the petitioner, keeping in mind his long absence, came forward to pass the impugned order of removal from service under F.R.18(3). Thereafter, the petitioner preferred an appeal to the second respondent-Principal Commissioner and Commissioner of Revenue Administration on 12.3.96, subsequently, the same was rejected by order dated 7.10.96. Again being aggrieved

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by the said order, he preferred a review petition before the first respondent on 13.1.97 and the same was also rejected in G.O.(1D) No.170, Revenue (Per 6(2) Department dated 2.5.2002.

8. While finding fault with the impugned orders passed by the respondents 2 & 1, Mr.P.Rajendran, learned counsel for the petitioner submitted that when the first respondent rejected the review petition, the order passed by the Tribunal holding F.R.18(3) as invalid should have been accepted by the first respondent and a fresh order ought to have been passed without relying on the Fundamental Rule 18(3), as it was not in existence then. Therefore, as per law, the impugned order passed by the first respondent, being a nullity, is liable to be set aside. No doubt, the said argument, although being attractive, cannot be accepted. The reason is that when the original authority-third respondent passed the order of removal on 9.1.96 under F.R.18(3), there was no order passed by the Tribunal holding the said rule as invalid. Again when the appeal was also rejected on 7.10.96, F.R.18(3) remained valid. Only during the pendency of the review petition, the Tribunal set aside the said rule. Therefore, this Court, considering the absence of the petitioner for six long years, finds that no useful purpose would be served in remanding the matter, as the said exercise would only be an empty formality.

9. The further contention of the learned counsel for the petitioner that when the Tribunal has given a finding that the said order striking down F.R.18(3) would be applicable to all pending proceedings, the first respondent ought not to have passed the impugned order, also does not appeal to this Court, for the simple reason that when the Government had passed the G.O.Ms.No.154, Personnel and Administrative Reforms Department dated 8.8.2000 accepting the order of the Tribunal dated 21.10.99 holding the F.R.18 (3) as invalid by incorporating several other punishments, namely, dismissal, removal etc., the petitioner had not subsequently filed any written representation or brought to the notice of the first respondent about the order passed by the Tribunal holding the F.R.18 (3) as invalid. First of all, the petitioner remained unauthorisedly absent from duty, on the premise that he was suffering from mental illness for a period of about six long years out of the total 14 years of his permanent service. It is not his case that he has got a medical certificate showing his fitness to join duty. Secondly, at this distance of time, even if the matter is remanded, the petitioner cannot escape from the punishment of either dismissal, removal or termination, in the light of the order passed by the Tribunal holding F.R.18(3) as invalid. Thirdly, when the petitioner's case is bereft of any merits, namely, not sending any explanation to the show cause, not joining duty after receipt of the order of desertion and not taking part in the enquiry, considering all these things, this Court is not inclined to show any indulgence to him. It is also a well

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settled legal position that a person seeking relief under the extraordinary jurisdiction of this Court under Article 226 must come to the Court with clean hands. As mentioned above, when the petitioner has neither bothered to send his explanation nor took part in the enquiry or joined duty on receipt of the order of desertion cannot, as a matter of right, seek any remedy, as this Court can always deny any relief to such a person. In view of the above, since several other punishments are available to the first respondent, this Court is not inclined to remand the matter.

10. For all the foregoing reasons, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

ss
To

1. The Secretary to Government
   Revenue Department
   Fort St.George
   Chennai 600 009
2. The Principal Commissioner and Commissioner
   of Revenue Administration
   Chennai 600 005

3. The District Revenue Officer
   Pudukkottai
   Pudukkottai District

1 cc to Government Pleader SR.No.10860
1 cc to Mr.P.Rajendran ,Advocate, SR.No.10904

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