

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T. RAJA

W. P. No. 8714 OF 2006
(O.A. No. 1175 of 2004)

S. Pragasam

.. Petitioner

Vs.

1. The Superintendent of Police
Central Prison
Tiruchirapalli.
2. The Deputy Inspector General of Prisons
Prisons Department
Trichy Range, Tiruchirapalli.
3. The Additional Director General
of Prisons,
Prisons Department
Chennai

.. Respondents

PRAYER: This Writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.1175 of 2004 from the file of the Tamil Nadu Administrative Tribunal praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to Order No. 30803/Po.2/2002 dated 27.04.2002 passed by the first respondent; Order No.3554/Mu/2002 dated 05.08.2002 passed by the second respondent and Order No. 48373/EW2/02 dated 24.10.2002 passed by the third respondent and quash the same and to reinstate the petitioner in service with all consequential benefits including arrears of pay and allowances and also to award costs and to pass further orders.

For Petitioner : Ms. Y. Kavitha
for M/s. P.V.S. Giridhar Associates
For Respondents : Mr. R. Govindasamy, AGP

O R D E R

Aggrieved by the impugned order of compulsory retirement issued by the first respondent in Order No. 30803/ Po.2/ 2002 dated 27.04.2002, after being confirmed by the second and third respondents

by their orders in Order No.3554/Mu/2002 dated 05.08.2002 and No. 48373/EW2/02 dated 24.10.2002 respectively, the petitioner filed O.A. No. 1175 of 2004 before learned Tamil Nadu Administrative Tribunal on the ground that the impugned orders have been passed in violation of principles of natural justice and that they are tainted with malafide, in order to victimise the petitioner for having complained to the higher authorities against the irregularities and corruption in the prison, where he was posted. On expiry of leave it was the first respondent, who directed the petitioner to file a petition for extension of leave, ought to have communicated the grounds for rejecting the leave or atleast the reason for refusal of extension of leave. After some time, the matter stood transferred to this Court and was re-numbered as W.P. No.8714 of 2006.

2. Ms. Y. Kavitha, learned counsel appearing for the petitioner submitted that when the petitioner was posted at Central Prison, Trichy as a Warder, he found that there were rampant corruption particularly in the distribution of foods in the Sub Jail, where he was posted. Therefore, he brought to the notice of the authorities in the Jail Administration but no action was taken. On the other hand, the petitioner was warned stating that if he persisted with such complaints, he would be facing dire consequences. Based on this situation, the petitioner wrote Articles in several Tamil Dailies about the irregularities, corruption and violations in the sub-jails. Since he also submitted various representations against the higher authorities for their silence over all these irregularities and violations, the threats faced by the petitioner got intensified. Continuing her argument, she further pointed out paragraph 76 of the Prison Manual, impressing upon the Court that the Warder is inter alia entrusted with the duty to see that each prisoner gets proper amount of food and that the care and welfare of the prisoners are ensured. Therefore, the petitioner being posted as Warder, tried his best to fulfill his duties as a Warder but in turn got penalised for the same. In view of the fact that he was unable to get any response, he was constrained to apply for long leave from 16.10.2000 to 17.10.2001 through his leave application dated 12.10.2000. The first respondent, the Superintendent of Police, Central Prison, Trichy also accepting his request sanctioned the same.

3. Learned counsel further contended that, on expiry of the leave sanctioned he sent a telegram dated 17.10.2001 to the first respondent seeking extension of leave for one more year. The first respondent, on receipt of the same, by letter dated 31.10.2001, directed the petitioner to submit a proper application for extension of leave. Accordingly, he also sent an application dated 07.12.2001 seeking extension of leave clearly mentioning that there was a threat to his life. Therefore, the petitioner was under the legitimate expectation that the leave would be sanctioned. But, to his shock and surprise the first respondent, issued a charge memo dated

28.12.2001 alleging that he has violated Rule 18(2), (3) and (4) of Fundamental Rules as amended by G.O. Ms. No. 477 dated 21.11.1990, citing one of the reason that he did not resume his duty on the expiry of the sanctioned leave. Immediately thereafter, the petitioner submitted his reply on 12.01.2002 to the charge memo denying the charge. The first respondent was also requested to keep the disciplinary proceedings in abeyance, till the disposal of his complaint dated 10.12.2001 regarding the irregularities and violations in prisons, to the State Human Rights Commission. But the first respondent, rejected his representation and proceeded to conduct an ex-parte enquiry. Finally, after completing the enquiry, the enquiry officer submitted his report on 02.04.2002 holding the charge of unauthorised absence as proved, against the petitioner. Based on the report of the enquiry officer, the first respondent imposed the penalty of compulsory retirement, by order dated 27.04.2002.

4. Aggrieved by the same, the petitioner preferred an appeal on 04.07.2002 to the second respondent, the Deputy Inspector General of Prisons, Tiruchirapalli. But the same was rejected on the ground that the appeal was not filed within the stipulated time of 60 days. Thereafter, the petitioner filed one another appeal on 10.09.2002 to the third respondent, the Additional Director General of Prisons, Chennai, who also rejected the same on 24.10.2002 without any proper application of mind. Attacking the reasoning and the aforementioned documents, learned counsel appearing for the petitioner submitted that the entire action taken by the respondents are tainted with malafide since they are keen to victimize the petitioner for his action of remaining honest and law abiding officer and seeking for intervention of the higher authorities to end the irregularities, corruption and violations in the Prison, where he was posted. Instead of taking action on his representations, that was submitted with a view to ensure that the Jail is a correctional institution as conceived in law, the respondents have initiated disciplinary action against the petitioner and have deliberately failed to take any disciplinary action in respect of the complaints of the petitioner with regard to the corruption and violations in Prisons. He further added that had the respondents conducted any enquiry, it would have exposed the truth in the petitioner's complaint.

5. Taking support from the Fundamental Rules 81, it is further argued that as per F.R. 81(d), the petitioner is entitled to take 28 months leave. Therefore, when the petitioner has enjoyed one year leave on loss of pay and has applied for another one year leave, the respondents are bound to consider the leave application by applying Fundamental Rules 81(d), which says that,

" 81.(d) The maximum period of continuous absence from duty on leave granted otherwise than on medical certificate is twenty-eight months. This period shall in no circumstance, be exceeded by a Government servant who is on leave preparatory to retirement."

As per Rule, the petitioner applied for extension of leave for one more year. Instead of rejecting the application, with a direction to join duty they should not have initiated disciplinary proceedings on the ground of unauthorised absence. When the petitioner has proceeded only with regard to rules and regulations, holding an exparte enquiry and passing a capital punishment of compulsory retirement from service, without even rejecting his request for leave, without reference to F.R. 81(d), the impugned orders passed by the respondents are liable to be set aside.

6. A detailed reply affidavit has been filed by the respondents. Mr. R. Govindasamy, learned Additional Government Pleader appearing for the respondents would submit that while the petitioner was working in the Central Prison, Trichy, submitted a petition on 12.10.2000 requesting Extra Ordinary Leave for one year from 16.10.2000 due to mental agony. The first respondent, Superintendent of Central Prison, Trichy, sanctioned Extra Ordinary Leave without Medical Certificate for 365 days, namely, one year with effect from 16.10.2000 to 15.10.2001, considering his mental tension. Subsequently, on expiry of the said leave, he had to join duty on 16.10.2001. But, he did not join duty on 16.10.2001. Instead, he has sent a telegram to the first respondent seeking extension of leave for one more year on 17.10.2001. On receipt of the telegram seeking one more year of leave on loss of pay, the first respondent directed the petitioner to submit proper application for extension of leave. Accordingly, the petitioner also sent a petition on 07.12.2001 seeking leave for another one year as there was a threat for his life. But, there was no genuine reasons mentioned as stipulated in F.R. No. 18(3) and (4). Therefore, as per Rule 18 of Fundamental Rule, which says that, except leave on medical certificate or study leave, under Rule 84, no Government servant, who has completed five years of service, shall be granted leave of any kind for a continuous period exceeding one year at any one time, his request was rejected.

7. It was further contended that in view of the above, he was issued with a charge memo under Section 17(b) of the Tamil Nadu Civil Services (D&A) Rules for violation of Rule 18(2), (3) & (4) of Fundamental Rules, as amended in G.O. Ms. No.477 P & A.R (FR Special) Department dated 21.11.1990. But the petitioner, on receipt of the charge memo did not submit his explanation. On the other hand, he submitted a petition on 12.01.2002 to the first respondent requesting to keep the disciplinary proceedings in abeyance, till the disposal

of his complaint dated 10.12.2001 regarding the irregularities and violations in Prisons, made to the State Human Rights Commission. After examining his representation, the first respondent informed him that his request cannot be complied with and he was further directed to submit his explanation within 7 days from the date of receipt of the Memo in 30803/G2/2001 dated 29.01.2002. However, the petitioner did not attend the enquiry. It was adjourned to a further date and notice of enquiry was also served upon him for a subsequent hearing. Again he did not come to attend the enquiry. The enquiry officer finding no response from him, left with no other option, proceeded with the enquiry, after setting the petitioner ex-parte. Two witnesses were examined, through their evidences, finally the enquiry officer recorded his finding that the charges have been proved against him. Copy of the minutes were also sent to him as final report. Even after receipt of the final report, he has not put forth any points to the minutes. On the other hand, he only stated the alleged irregularities, blamed the Prison's higher officials and made allegations against them. Therefore, a final order was passed by the first respondent, on the basis of the findings of the enquiry officer and awarded the punishment of compulsory retirement by order dated 27.04.2002.

8. Learned Additional Government Pleader further stated that the petitioner submitted an appeal petition on 04.07.2002 to the second respondent and the same was also examined. As he has not preferred the appeal within the stipulated time of 60 days, the same was rejected. Thereafter, he has preferred a further appeal to the third respondent on 10.09.2002 and the same was also rejected by order dated 24.10.2002, holding that his further appeal was devoid of any merits. Concluding his argument, he stated that as per Rule 18 (3) of Fundamental Rules, when a Government servant does not resume duty after remaining on leave for a continuous period of six months or one year, as the case may be, under sub rules (1) and (2) or remains absent from duty after the expiry of his leave otherwise than on foreign service or on account of suspension, for any period which together with the period of leave granted to him, exceeds the limit, he shall, unless the Governor in view of the exceptional circumstances of the case otherwise determines, be removed from service following the procedure laid down in the Tamil Nadu Civil Services (CCA) Rules. As claimed by the petitioner, his case is not covered by Fundamental Rules 81. On the other hand, his case having been properly indicated in the charge memo issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules clearly mentioning that his case is covered under FR 18(1), (2) and (3), the petitioner misplacing his argument, had tried to take support from wrong provision namely, 81(a) and (d), which have no relevance to his case, accordingly he prayed for dismissal of this petition.

9. As the disciplinary authority, after giving repeated notices to the petitioner to appear before the enquiry officer, finding his non-appearance, has come to the conclusion that he has no reply and finally had passed an order of compulsory retirement. Therefore, he cannot have any grievance. When the petitioner has been repeatedly asking for long leave, for years, the disciplinary authority has come to the conclusion that he has lost interest in continuing in the Prison Department. Therefore, they have passed the order of compulsory retirement, as the same has also been confirmed by both the appellate authorities, there is no merit in the Writ Petition and hence the same is liable to be dismissed.

10. The petitioner while serving as a Warder in the Central Prison, Trichy submitted an application on 12.10.2000 requesting Extra Ordinary Leave for one year with effect from 16.10.2000 to 15.10.2001, due to mental agony. The first respondent, Superintendent of Police, Central Prisons, Trichy considering his mental agony sanctioned Extra Ordinary Leave without medical certificate for 365 days, namely, one year with effect from 16.10.2000 to 15.10.2001. On expiry of the said long leave, he had to join duty on 16.10.2001, but he has not joined duty on 16.10.2001. Again he sent a telegram on 17.10.2001 to the first respondent seeking extension of leave for one more year. Nodoubt, the first respondent directed him to submit proper application for extension of leave and accordingly, the petitioner also sent a petition on 07.12.2001 seeking leave for another one year citing that there was a threat for his life. But the said petition did not contain any reason as stipulated in Fundamental Rules 18(3) & (4). It is necessary to extract Rules 18(3) and (4) :

" 18(3) - When a Government servant (Permanent or Approved Probationer) does not resume duty after remaining on leave for a continuous period of six months or one year, as the case may be, under sub-rules (1) or (2), or remains absent from duty after the expiry of his leave otherwise than on foreign service; or on account of suspension or on account of leave for employment abroad under section II-A of the Tamil Nadu Leave Rules, 1933 for any period which, together with the period of leave granted to him, exceeds the limit, he shall be liable for disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules.

(4) There shall be an interval of a period of three years between two spells of the maximum leave so granted."

A reading of Rule 18(3) clearly shows that when a Government servant whether Permanent or Approved Probationer, does not resume duty after remaining on leave for a continuous period of six months or one year, under sub-rules (1) or (2) or remains absent from duty after the expiry of his leave, is liable for disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules. A reading of Rule 18(4) also shows that there shall be an interval of a period of three years between two spells of the maximum leave so granted.

11. In the present case, admittedly, the petitioner having availed Extra Ordinary Leave without medical certificate for 365 days from 16.10.2000 to 15.10.2001, has not submitted his application along with medical certificate. Therefore, for his absence a charge memo was served under Section 17(b) of the Tamil Nadu Civil Services (D & A) Rules, for violation of Rule 18 (2), (3) and (4) of Fundamental Rules as amended in G.O. Ms. No. 477 P & A.R (FR Special) Department dated 21.11.1990. But, he has sent a petition on 12.01.2002 to the first respondent to keep the disciplinary proceedings in abeyance, till the disposal of his complaint dated 10.12.2001, dealing with the irregularities and violations in the prisons submitted to the State Human Rights Commission. The first respondent after examining the said request, informed him to submit his explanation by letter dated 29.01.2002. Ironically again the petitioner for the reasons best known to him, did not even come forward to explain his case. Hence, the enquiry officer, served notices upon him and proceeded ex-parte, as there was no response from him. The enquiry officer also examined two witnesses. In spite of repeated directions by the Enquiry Officer, as the petitioner did not attend the oral enquiry, he has completed the enquiry and finally submitted his report. Immediately, the disciplinary authority also furnished a copy of the report to the petitioner, calling upon him to submit a detailed written representation. The petitioner submitted a final representation stating only of the alleged irregularities and throwing some blame on the prison higher officials.

12. Therefore, when the petitioner has failed to submit his explanation to the charge memo and also to the report of the enquiry officer, the first respondent, having given all opportunities, has come to the conclusion to award the punishment of compulsory retirement by order dated 27.04.2002. Thereafter, the petitioner filed an appeal before the second respondent. However, the same was rejected. As against which, another appeal was filed before the first respondent, who has also rejected his further appeal and confirmed the same.

13. In this background, the only issue is whether the petitioner is entitled to avail leave under Fundamental Rules 18 (1) (2) and (3) or 81(d). As a matter of fact, when the charge memo issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.11.1990, clearly mentions that the

departmental proceedings has been initiated as per the provisions of 18(3) of the Fundamental Rules, he cannot place reliance under rule 81. In my view, neither 81(b) nor (d) can be applied. Therefore, when the petitioner has repeatedly sought for Extra Ordinary Leave without medical certificate for 365 days from 16.10.2000 to 15.10.2001, after availing the same without any medical reason, in this case no medical certificate whatsoever has been enclosed, for one more spell of Extra Ordinary Leave, therefore, the disciplinary proceedings initiated against the petitioner cannot be found fault with. Consequently, for issuance of the charge memo, the petitioner who has been pointing out the irregularities happening in the prison, has not come forward to submit atleast a brief reply. That apart, secondly he has not even shown any interest to take part in the enquiry before the enquiry officer. Thirdly, when copy of the report of the enquiry officer was furnished to the petitioner to submit his explanation, again he has adamantly kept quiet.

14. Therefore, this Court finding that he has not given any explanation whatsoever, for extension of Extra Ordinary Leave for another one year, the respondents have rightly imposed the punishment of compulsory retirement. As there is no other harsh punishment imposed, this Court is not able to see any error in the impugned punishment awarded to the petitioner.

15. In view of the above, the writ petition fails and the same is dismissed. No order as to costs.

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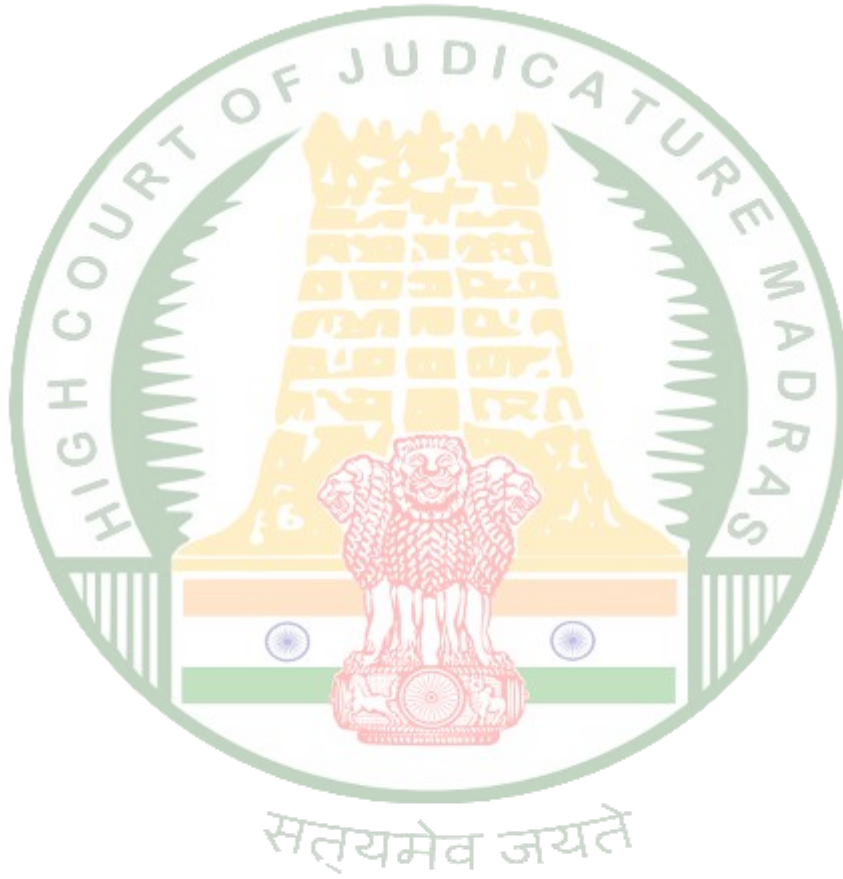
To

1. The Superintendent of Police
Central Prison
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2. The Deputy Inspector General of Prisons
Prisons Department
Trichy Range, Tiruchirapalli.
3. The Additional Director General
of Prisons,
Prisons Department
Chennai

+ 1 cc to M/s.Giridhar and Sai Associates, Advocate SR 14975

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