

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8420 of 2011

and

M.P.No.1 of 2012

D.Vijayakumar

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration & Water Supply Department
Secretariat, Chennai-9.
2. The Chairman,
Standing Committee,
Central Accounts Cell,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
3. The Commissioner,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
4. The Chief Accounts Officer,
Accounts Central Cell,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.
5. The Financial Advisor,
Accounts Central Cell,
Corporation of Chennai,
Rippon Buildings,
Chennai - 3.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for all relevant records relating to the impugned removal order of the third respondent in his proceedings in ACC.No.A1/A10/4448/93 dated 04.12.1996 and the consequential proceedings in Ma.Ka.Ku.Na.Ka.No.Aa1/4144/98 dated 25.02.1999 and order made in Ma.Ka.Ku.Na.Ka.No.Aa1/3080/2006 dated 31.05.2006 of the third respondent and confirmed by the order passed by the second respondent made in Ma.Ka.Ku.Na.Ka.No.Aa1/3080/2007 dated 27.02.2008 and the consequential order passed by the first respondent made in G.O.(Pa) No.14 (Municipal Administration and Water Supply (MC3) Department dated 12.01.2011 and the quash the same as illegal, without jurisdiction and against the principles of natural justice and thereby direct the respondents to reinstate the petitioner into service with all consequential and other monetary benefits.

For Petitioner : Mr.G.Anandakumar

For Respondents : Mr.R.Vijayakumar
Additional Government Pleader [R1]
Mr.Saravanan [R2 to R5]

O R D E R

With the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2. Heard Mr.G.Anandakumar, learned counsel for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader for the first respondent and Mr.Saravanan, learned counsel appearing for respondents 2 to 5.

3. The petitioner challenges the order of dismissal passed by the third respondent, confirmed in the appeal by the second respondent and in the review by the first respondent.

4. Under normal circumstances, this Court would have not exercised the jurisdiction to sit and examine the impugned order, as if acting as second appellate authority over the decision of the respondents. However, facts of the case has persuaded this Court to take up the matter for consideration.

5. The petitioner who was appointed as Basic Health Worker in the Corporation of Chennai during the year 1973, was promoted as a Basic Health Inspector during the year 1982 and further promoted as Junior Assistant in the year 1986. As he was suffering from Hernia and undergone surgery, he applied for Unearned Leave from 20.12.1993 to 22.02.1994. The petitioner, on rejoining duty, was referred to the Medical Board and the Medical Board, by their opinion dated 07.03.1994, opined that a further period of absence with effect from 04.03.1994 for a period of fifteen days is absolutely necessary for the petitioner.

6. Subsequently, the petitioner extended his Unearned Leave from 18.03.1994 to 11.04.1994 and further extended his leave from 12.04.2014 to 11.05.1994, 12.05.1994 to 10.07.1994 and 11.07.1994 to 10.08.1994. It is stated that the petitioner had enclosed the relevant medical certificates issued by the Civil Assistant Surgeon, Government General Hospital along with his leave application.

7. The petitioner was directed to appear before the Medical Board for evaluation of his health condition. However, he failed to appear. This resulted in the issuance of Charge Memo dated 16.08.1994 containing four articles of charges pertaining to (i) disobedience of the office instruction with regard to appearance before the Medical Board, (ii) failure to discharge his official duties (iii) frequently applying for leave without valid reasons and (iv) sending belated leave letters. The petitioner had failed to submit his explanation to the charges.

8. Once again the petitioner was directed to appear before the Medical Board and he was informed by the fourth respondent by communication dated 10.01.1995 that if he fail to appear before the Medical Board, disciplinary action will be taken against him. The petitioner had pleaded that due to mental ill-health, he did not appear before the Medical Board. This resulted in issuance of another Charge Memo dated 04.04.1995.

9. The petitioner did not submit his explanation and the fourth respondent proceeded to appoint an Enquiry Officer and intimated the petitioner to attend the domestic enquiry. The petitioner did not attend the domestic enquiry nor submitted any representation stating that he was unable to attend the domestic enquiry, on account of his ill-health, which according to the petitioner is a mental disease.

10. Due to non-appearance, the Enquiry Officer proceeded ex-parte against the petitioner and submitted his finding, holding that the charges framed against the petitioner are proved. Ultimately, by order dated 04.12.1996, the petitioner was removed from service.

11. On receipt of the order of removal, the petitioner's wife is said to have submitted a representation on 15.12.1996 stating that her husband is suffering from mental disease and he is under intensive treatment and he is unable to sit and stand due to his ill-health. Therefore, she requested the respondent/Corporation of Chennai, to reinstate her husband's service. It is stated that no reply was received from the second respondent and therefore, the petitioner's wife has submitted a petition before the Hon'ble Mayor of the respondent/Corporation of Chennai on 17.11.1998.

12. Pursuant thereto, the third respondent vide communication dated 25.02.1999, informed the petitioner that the request made by the petitioner's wife is not feasible of compliance.

13. It is stated that the petitioner on coming to know about the said order dated 25.02.1999, he went into further depression. Request was made to reconsider the punishment and a representation was also submitted to the Hon'ble Chief Minister's Special Cell.

14. It is stated that these representations were forwarded to the second respondent for consideration. However, the third respondent who was the disciplinary authority rejected the request. The petitioner approached this Court by filing W.P.No.28499 of 2007 and this Court vide order dated 03.10.2007 directed to dispose of the petitioner's appeal on merits within a period of six weeks from the date of receipt of a copy of this order. This direction was issued to the second respondent after condoning the delay in preferring an appeal.

15. Since there was no further action taken, the petitioner had submitted his representations and it is stated that instead of the Appellate Authority considering the appeal petition, once again the third respondent rejected the same by order dated 27.02.2008, thereby acting as a judge of his own cause. Further, the petitioner filed a review petition, which was also dismissed. Challenging, the order of dismissal, the petitioner is before this Court.

16. Heard the learned counsel for the parties and perused the materials placed on record.

17. From the above facts, it can be safely concluded that the petitioner did not co-operate with the departmental proceedings. The charge memo itself came to be issued only due to the fact that the petitioner did not present himself before the Medical Board, as a result of which, the disciplinary action was initiated and the Enquiry Officer was appointed and the petitioner was directed to appear for the enquiry. Failure to respond to the notice issued to the petitioner by the Enquiry Officer resulted him being set ex-parte and he was dismissed from service on 04.12.1996. It is thereafter, the petitioner's wife sent an appeal stating about the health condition of the petitioner and that he was suffering from mental disease, behaving like a child and he is under medical treatment. This fact was not placed before the authority, duly supported by any medical certificate from a Government Doctor and only one certificate has been produced by the petitioner which states that the petitioner was suffering from depression.

18. Initially, when the petitioner availed medical leave during the year 1993 to 1994, he had stated that he had underwent Hernia operation and certain medical certificates were enclosed along with his leave applications. However, there was no record to show that petitioner's mental health condition had deteriorated and owing to which, he was incapacitated and could not participate in the domestic enquiry.

19. It is seen that this plea which was raised before this Court earlier and that appears to have weighed before this Court to give a direction to the appellate authority not to insist on filing of a condone delay petition to entertain the appeal petition. However, without taking into consideration the said direction, once again the third respondent passed an order rejecting the petitioner's appeal petition. This error goes to the root of the matter inasmuch as the third respondent failed to comply with the directions issued by the Court in W.P.No.28499 of 2007 dated 03.10.2007.

20. However, it appears that the petitioner did not approach this Court but chose to file a revision petition and filed the same before the first respondent/Government. The revision petition was rejected by order dated 12.01.2011 on the sole ground that the petitioner was suffering from Hernia and therefore, he did not report for duty and there is no error in the order of dismissal passed.

21. From the above facts, it is seen that the 3rd respondent did not comply with the order and direction issued by this Court in W.P.No.28499 of 2007. However, the petitioner is also to be equally

blamed for having not appeared before the Medical Board. Since the petitioner did not appear before the Medical Board, the respondents proceeded with the disciplinary proceedings, passed an ex-parte order. Therefore, there can be no error in the procedure adopted by the respondents, since the petitioner did not co-operate with the domestic enquiry.

22. However, one factor which has to be taken into consideration is that the petitioner is said to be suffering from mental illness and his wife state that at the relevant point of time he was behaving like a child, unable to take care of himself and therefore, could not take part in the disciplinary proceedings.

23. Considering the said submissions, this Court is of the view that one more opportunity could be granted to the petitioner to establish that during the relevant point of time, he was under intensive medical treatment and unable to take care of himself and unless he proves the said statement made by him, he would not be entitled to any relief. Therefore at this stage, this Court is not inclined to interfere with the impugned order passed, however, is inclined to issue direction to the respondent/Corporation to direct the petitioner to appear before a Medical Board for assessment of his mental health condition.

24. The learned counsel appearing for the petitioner submits that the petitioner will appear before this Board and his plea may be considered by the respondent/Corporation.

25. In the light of the above, without setting aside the impugned order, there will be a direction to the respondent/Corporation to direct the petitioner to appear before a Medical Board giving reasonable time to the petitioner, with request to the Board to examine the mental health condition of the petitioner at present and the condition which would have been prevalent at the relevant point of time, as regards his plea that he is under intensive medical treatment ever since 1994. In the event, the Medical Board is of the opinion that the petitioner's stand is correct, then it is open to the petitioner to approach the respondent/Corporation to reconsider the punishment imposed on him.

26. The respondent Corporation is directed to issue appropriate communication to the petitioner to appear before the Medical Board within three weeks time from the date of receipt of copy of this order.

27. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to the Government of TamilNadu,
Municipal Administration & Water Supply Department
Secretariat, Chennai-9.
2. The Chairman,
Standing Committee,
Central Accounts Cell,
Corporation of Chennai,
Rippon Buildings, Chennai - 3.
3. The Commissioner,
Corporation of Chennai,
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Rippon Buildings, Chennai - 3.
5. The Financial Advisor,
Accounts Central Cell,
Corporation of Chennai,
Rippon Buildings, Chennai - 3.

+1cc to Mr.S.Saravanan, Advocate, S.R.No.39470

+1cc to Mr.G.Anandakumar, Advocate, S.R.No.39900

SVI (CO)
CA(18/08/2015)

W.P.No.8420 of 2011