

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1520 OF 2015

Prashant Ramdas Mahale .. Petitioner
V/s
Municipal Corporation of Greater Mumbai & Anr. .. Respondents

Mr. R.K. Mendadkar for the petitioner.
Mrs. Shobha Ajithkumar for the respondents.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 6th DECEMBER 2016

P.C.:

Heard learned counsel for the petitioner.

2. From the pleadings, in short the background in which the present petition is filed is as under:-

(i) From 1st January 2010 onward, the petitioner joined the duty after posting in the Department of Deputy City Engineer (Building & Construction). Immediately he remained absent from duty from 5th February 2010 to 15th February 2010 in the first spell and again from 20th February 2010 to 6th March 2010 in the second spell. These two periods were treated as leave without pay. Thereafter he continuously remained absent from duty from 25th March 2010 and comes up with an application on 3rd September

2010 for treating his absence as half pay leave from 25th March 2010 to 25th September 2010. However, a medical certificate dated 26th August 2010 was attached to his application. From this medical certificate issued from K.E.M. Hospital, it was noticed that the petitioner was undergoing treatment for Schizophrenia.

(ii) Subsequently the petitioner reports for duty on 4th March 2011. In terms of Municipal Service Regulation, Rule No.144, he was directed to appear before the Municipal Medical Examiner, Rajawadi Hospital for obtaining fitness certificate to resume duty.

(iii) In this certificate, though he was diagnosed with 71-99% severe disability, there was no specific remark certifying that he was fit for resumption of work. As per the fitness certificate dated 3rd August 2011, he suffers from severe disability. Again the Municipal Medical Examiner remarks on 7th September 2011 that the petitioner is suffering from psychiatric disorder like Schizophrenia and is not taking regular treatment which is necessary to manage the very illness.

(iv) Further report was sought from the Municipal Medical Examiner which was furnished on 24th March 2012. Unfortunately, there was no reference to fitness certificate issued to the petitioner from K.E.M. Hospital. In this certificate, there was observation that he could be put on suitable duty which he will be able to do. This

report clearly indicated that he was undergoing medical treatment since 1991 for Schizophrenia. In the said report also, there is recommendation for treating his absence as special leave. Whether to treat the absence as special leave or not, it is completely within the authority of the department concerned in which petitioner is working, however in accordance with the procedure contemplated.

(v) However, from 30th March 2012, the petitioner was allowed to resume duties. His entire period of absence was treated as leave without pay.

3. With the above factual position, we fail to understand how the present prayer to consider the representation dated 29th December 2011 made through the advocate of the petitioner's wife calls for any interference from us. The petitioner is posted in the Office of Chief Engineer (Building & Maintenance) with effect from 30th August 2014. Again his absence from 17th September 2014 to 21st November 2014 was sought to be treated as commuted half pay leave. When the petitioner resumed his duties from 24th November 2014, he was directed to obtain medical certificate, certifying fitness to assume duty, from the Municipal Medical Examiner.

4. When the petitioner came to report for duty on 7th January 2015, the D.M.C. (G.A.) directed that the petitioner should be allotted the work which he can perform only after obtaining

certificate from the Medical Board, i.e. B.Y.L. Nair Hospital. The matter was already referred to the concerned Medical Board. The Medical Board informed the department that the medical examination of the petitioner was scheduled on 22nd July 2015, but the petitioner did not attend for the medical examination. Again from 12th January 2015 onwards, without prior permission he remained absent. For this absence, his wife Sanjivani had submitted an application for granting leave admissible to him, to which the office of Chief Engineer has already directed her to submit application to the concerned authorities for leave if admissible to him. Again there is intimation from the Chief Engineer (Building & Maintenance) Office that he has not reported for duty.

5. From all the above material, what we notice is that there is absentia from duty on the part of the petitioner, may be the cause of his psychiatric disorder. However, the maximum concession that could be shown to him by granting all kinds of leave was shown by the department till date. Between March 2010 and February 2015, whatever amount payable to him in accordance with the procedure contemplated is paid to the petitioner. When the circumstances mentioned above exist in the manner, as stated above, the only recourse open to the petitioner is to appear before the Medical Board in order to facilitate him to get medically examined for issuing a certificate whether he is entitled to continue in the department by doing some work which is suitable to his medical condition in terms

of the statute applicable to him. If the petitioner does not offer himself for such medical examination by the Medical Board, it is the earnest duty of the family members to see that he cooperates for such medical examination by the Medical Board. Without offering himself before the Medical Board, it would be difficult for the department also to allocate any kind of work. Now it has come to a point where the respondent department has to consider whether he is fit to continue in service or not and if he deserves to be continued after obtaining medical fitness certificate, they have to allocate such work which he is capable of doing and in spite of which if he proceeds on leave without sanction, the department may have to take a final call in accordance with the procedure contemplated. However, when the situation has progressed much beyond 2011 representation, as sought in the writ petition, we are afraid we cannot allow the writ petition blindly granting reliefs as sought in the writ petition.

6. With these observations, the writ petition is disposed of.

(M.S. SONAK, J.)

CHIEF JUSTICE