

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM

THE HON'BLE MR. JUSTICE M.S. RAMESH

W.P.No.20031 of 2012

&

M.P.No.2 of 2012

S.Ganesan

...Petitioner

Vs.

1. The Secretary to Government
Forest Department,
Government of Tamil Nadu,
Forest St. George,
Chepauk, Chennai - 600 009.

2. The Principal Chief Conservator of Forest,
No.1, Jeenis Road, Panagal Buildings,
Saidapet, Chennai - 600 015.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for records of the second respondent SE.MU.Order No.M3/28406/99, dated 29.08.2002 in confirming the order passed by the second respondent in SE.MU.Order No.M3/28406/99, dated 23.04.2002 and quash the same and direct the second respondent to reinstate petitioner in service as Record Clerk.

For Petitioner : Mr.T.Dharani

For Respondents: Mr.N.Inbanathan
Standing Counsel

ORDER

The petitioner was originally appointed as Office Watcher on 25.09.1985. Subsequently, he was appointed as Office Assistant and then as Record Clerk on 03.12.1993. According to the second respondent the petitioner was on medical leave from 20.04.1999 to 31.12.1999 without producing medical certificate and leave without pay, as there was no leave to his credit. Hence the second respondent had issued charge memo dated 11.09.2000, to the petitioner for the charges of neglect of

duty; unauthorized absence from 01.01.2000; disobedience of orders of the superiors, etc. Though the enquiry was conducted on various dates, the petitioner had appeared only on 22.11.2001, on which date, the petitioner had informed the second respondent that he will produce the medical certificate for his absence. However, when he failed to produce such a certificate or respond to the repeated instructions of the respondent, he was dismissed from service by the second respondent ie., the Chief Conservator of Forest, through an order dated 23.04.2002. As against the same the petitioner had preferred an appeal before the second respondent which was also rejected. Challenging the dismissal, the present writ petition has been filed.

2. Mr.N.Inbanathan, learned Standing Counsel for the respondents would submit that the petitioner is a habitual absentee. During his service from 19.09.1986 to 04.03.1999, the petitioner has availed 721 days of leave under various heads. The learned standing counsel would submit that though the enquiry was conducted in a proper manner after giving due opportunity to the petitioner, the petitioner was absent on various occasions during the enquiry and has not submitted any explanation to the enquiry report which was served on him. In view of the same, the impugned order came to be rightly passed.

3. I have given careful consideration to the submissions made by the respective counsels.

4. On a perusal of the impugned order, it is seen that while taking the petitioner's previous conduct into account, the Original Authority as well as the Appellate Authority had taken into account the various leave availed by the petitioner during his service. Admittedly, the leave availed by the petitioner prior to the impugned cause of action was not unauthorized leave, but leave for which permission was granted by the respondent. The impugned cause of action, for which the petitioner was dismissed from service, was unauthorized absence between 20.04.1999 and 31.12.1999. Even this unauthorized absence was on medical ground and leave without pay.

5. This Court does not appreciate the manner in which the petitioner has been continuously taking leave during his service. At the same time, this Court cannot ignore the fact that all the leave which was taken by the petitioner was with the permission of the respondents and not an unauthorized leave. For the present cause of action when the petitioner was on leave, he had sought time to produce the medical certificate during the enquiry which he failed to produce. The second respondent in his counter affidavit has stated that the petitioner has no real interest to join duty. If the intention

of the petitioner was not to join the duty, the present writ petition would not have been filed. Above all the Original Authority was informed about the leave availed by him with the permission of the respondents and thereby the major punishment of dismissal from service was imposed. In my view, this punishment is disproportionate to the charges leveled against the petitioner and shocking the conscience of this Court.

6. Normally, it would be appropriate that whenever it is found that the punishment is disproportionate to the charges, the respondents should be directed to impose a lesser punishment. Nevertheless, at this juncture, the learned counsel for the petitioner would submit that this Court may consider for a direction to the respondents to reinstate the petitioner without any back wages or other service benefits. In my opinion, the reinstatement of the petitioner without back wages would not cause any serious prejudice to the respondents. Admittedly, the petitioner has already put in 17 years of service till the date of dismissal. Directing the respondents to reinstate the petitioner without any benefits would meet the ends of justice.

7. Accordingly, the impugned orders passed by the second respondent, dated 23.04.2002 and 29.08.2002 are quashed and the second respondent is directed to reinstate the petitioner without any monetary benefits within a period of six weeks from the date of the receipt of a copy of this Order.

8. With the above directions, the writ petition is allowed. No costs. Consequently Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

rts
To

1. The Secretary to Government
Forest Department,
Government of Tamil Nadu,
Forest St. George,
Chepauk, Chennai - 600 009.

WEB COPY

2. The Principal Chief Conservator of Forest,
No.1, Jeenis Road, Panagal Buildings,
Saidapet, Chennai - 600 015.

+1cc to the Special Government Pleader sr.69745

+1cc to Mrs.T.Dharani, Advocate Sr.69554

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srg 19/01/2017



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