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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) No.1184 of 2016
& C.M.P(MD)No.7666 of 2016

1.The Principal Secretary to Government,
Home Department, Fort St. George,
Chennai.

2.Superintendent of Police,
Tirunelveli,
Tirunelveli District.

...Appellants/Respondents

-Vs-.

1.K.P.S.Jeyachandran,
S/o.K.P.Samy Ambalam,
Deputy Superintendent of Police,
Prohibition and Enforcement Wing,
Tirunelveli District.

..Respondent/Petitioner

2.K.Ramanujam,
Chief Information Commissioner,
Tamil Nadu, Chennai.

..Respondent/3rd Respondent

Appeal filed under Clause 15 of Letters Patent praying to allow and the Writ Appeal by setting aside the order dated 29.04.2016 made in W.P.(MD) No.14557 of 2015.

Prayer in WP(MD). 14557/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records of the 2nd Respondent herein relating to the charge memo P.R.No.39/2015 under rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules 1955 dated 11.3.2015 and quash the same.

For Appellants : Mr.B.Pugalendhi
Additional Advocate General
assisted by S.Chandrasekar
Government Advocate

For Respondent 1 : Mr.Veera Kathiravan
Senior Counsel
for K.Muthu Ganesa Pandian

JUDGMENT

(Judgment of the Court was delivered
by NOOTY.RAMAMOZHANA RAO,J)

WEB COPY This Writ Appeal is preferred by the State Government and the Superintendent of Police, Tirunelveli District, calling in question the correctness of the order and judgment rendered by the learned Single Judge in W.P.(MD)No.14557 of 2015, instituted by the first respondent herein.

2.The first respondent/writ petitioner was working at the relevant point of time as a Deputy Superintendent of Police. A charge memorandum has been drawn against him on 11th March 2015, proposing to conduct a detailed enquiry thereinto. The charge memorandum contained five different limbs which are as under:

(i) Highly reprehensible conduct in not having obtained any prior permission from superior officer before entering on medical leave from 25.08.2014.

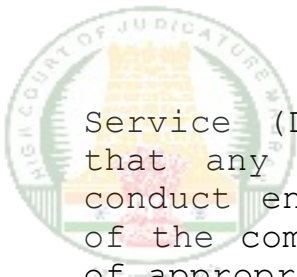
(ii)Highly reprehensible conduct in having left the headquarters without any permission from superior officers.

(iii)Highly reprehensible conduct in having failed to furnish the leave address while sending medical certificates by post to the Superintendent of Police, Tirunelveli District.

(iv)Highly reprehensible conduct in having failed to attend Medical Board as instructed and disobeyed the instructions of the superiors.

(v)Highly reprehensible conduct in having regularly obtained medical certificate from the medical officer in Trichy while living in Madurai and extended medical leave without appearing before the Medical Board with a view to evade his duty.

3.A perusal of these charges would disclose that the conduct of the writ petitioner in not reporting before the Medical Board and instead, availing leave on medical grounds by furnishing one certificate after another is what is essentially found fault with. Though we entertained a doubt as to whether the Superintendent of Police of the District is the competent authority to draw a charge memorandum against an officer of the rank of Deputy Superintendent of Police, learned Additional Advocate General has pointedly drawn our attention to the proviso incorporated under Sub Rule (2) of Rule 12 of the Tamil Nadu Civil



Service (Discipline and Appeal) Rules, which clearly bring out that any immediate superior agency can frame the charges and conduct enquiry and thereafter, remit the file for consideration of the competent / appointing authority for purpose of imposition of appropriate and suitable punishment for the proven misconduct.

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4. It is one thing to say that a particular authority has the competence to draw a memorandum of charges against a public servant and it would be altogether a different thing that such charges are really warranted to be drawn at the first instance.

5. The charges reveal a kind of mistrust the Superintendent of Police has laid against the writ petitioner. Otherwise, the very first charge, particularly, in the language in which it is couched would not have been framed. We remind ourselves that it may not, at all times, be possible to intimate in advance the leave of absence by a public servant. A variety of circumstances or contingencies may develop so suddenly, they may successfully prevent the public servant from seeking leave of absence well in advance. Therefore, it all depends on the facts and circumstances of each case as to whether there are *bona fides* and very good reasons behind public servant in not intimating the leave of absence at the earliest point of time, is what matters.

6. In the instant case, while the writ petitioner was performing duties, he was going thereabout checking every motor vehicle passing by on the road, and hence, he got into a truck's cabin for the purpose of ascertaining that no contraband is carried therein. In the process of alighting from the truck, his left leg appears to have hit on an iron rod and consequently, he has fallen from the cabin of the truck. It is the case of the writ petitioner that he has been immediately removed to a private nursing home at Tenkasi, a closeby town. The writ petitioner was suspected to have suffered a ligament tear. It is his further case that several complications have cropped up one after the other and as a consequences of which, he could not appear before the Medical Board, as soon as such a request is made. But he did appear before the Medical Board, however, later on and after examining the writ petitioner, the Medical Board tendered its opinion ratifying the entire period of leave availed by the writ petitioner on medical grounds. That signifies that it is the medical condition of the writ petitioner that prevented him to appear before the Medical Board earlier and it also justifies his availing leave on medical grounds for the entire period. In this set of circumstances, we feel that though the writ petitioner could not have been disabled completely from going about the task of intimating the immediate superior officer, in a more appropriate manner and also promptly, but nonetheless, for such an error of judgment in failing to do so cannot be treated as a grave misconduct on the part of a Government servant. For that reason alone, we are of the opinion that the discretion exercised by the



learned Single Judge does not warrant interference at our hands. Accordingly, the Writ Appeal fails and it is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1 The Chief Information Commissioner,
Chennai, Tamil Nadu.

2.The Principal Secretary to Government,
Home Department, Fort St.George,
Chennai.

3.The Superintendent of Police,
Tirunelveli, Tirunelveli District.

+1cc to M/s.K.Muthuganesa Pandian, Advocate in SR.47126

+1cc to the Special Government Pleader, in SR.47407

Writ Appeal (MD) No.1184 of 2016
24.08.2016

srm

PBK/GSV-PM/SAR-I 26/08/2016 ::4P-6C::