



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 01.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

WEB COPY

W.P. (MD) .No.20327 of 2013

and

M.P (MD) No.1 of 2013

Dr.I.K.S.Vignesh

.. Petitioner

.Vs.

1.The Principal Secretary to Government,
Animal Husbandry Dairying
Fisheries (AH1) Department,
Secretariat, Chennai - 9.

2.The Commissioner and Director of
Animal Husbandry and Veterinary Services,
Chennai - 6.

3.The Deputy Registrar,
Dairying Department,
District Collector Office Campus,
Tirunelveli.

4.The Assistant Director,
Assistant Husbandry Department,
Tenkasi, Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the final order passed by 1st respondent State vide impugned Government Order in G.O.(P)No.235 (Veterinary, Dairying and Fisheries Department) dated 07.11.2013 and quash the same and consequently direct the respondents to reinstate the petitioner with all monitory and service benefits.

For Petitioner

: Mr.D.Sasikumar

For Respondents

: Mr.K.Guru

Additional Government Pleader

ORDER

The petitioner filed this Writ Petition to call for the records in pursuant to the final order passed by 1st Respondent state vide Impugned Government Order in G.O.(D) No.235



(Veterinary, Dairying and Fisheries Department) dated 07.11.2013 and quash the same and consequently direct the Respondents to reinstate the petitioner with all monetary and service benefits.

2. The case of the petitioner is that he was working as Veterinary Assistant Surgeon and he was issued with charge memo by the 2nd Respondent vide his proceedings dated 04.07.2005 alleging that he was absented from duty in an unauthorized manner from 22.08.2003 and thereby he disobeyed orders of his superior. Refuting the charges leveled against the petitioner, he offered his explanation. In pursuance of said explanation, the 2nd Respondent has appointed an enquiry officer to conduct an enquiry and he completed his enquiry and filed report to the 2nd Respondent in the year 2006. The 2nd Respondent issued second show cause notice dated 01.05.2007 and in response, the petitioner submitted his explanation to the Respondent as soon as he received a show cause notice, the 2nd Respondent herein passed a final order vide impugned G.O.(D) No.235 (Veterinary, Dairying and Fisheries Department dated 07.11.2013 by dismissing him from service.

3. Reputing the allegations made in the Writ Petition, the 1st Respondent has filed a counter affidavit. In which the 1st Respondent that the petitioner was transferred to Pappankulam in Ambasamuthiram Division, where he worked in that station from 24.06.1998 to 19.07.1999 and again he was transferred to Senkottai, rider pest vigilance unit. He joined duty on 13.10.1999 and he was relieved from the station on 22.08.2003. But he joined in the new station only on 28.10.2005 after the lapse of 2 years 20 months and 6 days. Further it was contended that the petitioner was applied leave for one day through telegram on 22.08.2003 and again applied for 4 days through his telegram dated 23.08.2003, except the above two telegrams, the petitioner has not submitted any leave letter or medical certificates to his superior. In his counter affidavit, the 1st Respondent further contended that the petitioner has sent his explanation on 21.08.2005 and an enquiry officer was appointed. The enquiry officer has submitted his report by concluding that the two charges leveled against the petitioner was proved. Hence an additional explanation was sought from the petitioner vide Government Letter dated 25.04.2007 and in response the petitioner sent his additional explanation on 24.10.2007. Since two charges were proved against the petitioner, as per Tamilnadu Civil Services (Discipline and Appeal) Rule, for his authorized absence of two years 2 months and six days, he was awarded with punishment of dismissal from service.

4. I heard Mr.D.Sasikumar, learned counsel appearing for the



petitioner and Mr.K.Guru, learned Additional Government Pleader appearing for the respondents and the entire materials available on records are perused.

5.The learned counsel for the petitioner would submit that the enquiry officer has not conducted an enquiry in fair and proper manner, instead of conducting an enquiry by examining witnesses, he simply obtained a statement by asking him to fill up questionnaire and based on which he came to a conclusion. Further he would submit that there is an unwarranted delay in passing final order. Though the Respondent started an enquiry by issuing charge memo in the year 2005, the 1st Respondent passed final order after lapse of nearly 7 years and he did not assign any reason for inordinate delay of 7 years. The counsel for petitioner would further submit that prior to 08.08.2000, if the charge of unauthorized absence is proved in domestic enquiry, the punishment of removal was a codified under rule 18(3) of Fundamental Rule. The said rule has been amended to the effect that if charge of unauthorized absence is proved, the delinquent shall be punished under Rule of T.N. Government Servant Conduct (Discipline and Appeal) Rule. In the said amended rule, no codified punishment is prescribed as in the old rule. Therefore punishment of dismissal from service is disproportionate to charges leveled against the petitioner. Though the above ground was taken in the writ petition in Ground No.6, the 1st Respondent has not chosen to deny the Ground No.6 and he has not met the above legal ground. It clearly indicates that the punishment awarded by the 1st Respondent is too harsh and against the established procedure of law. The learned counsel would further submit that assuming the charge of unauthorized absence is proved, awarding a capital punishment is disproportionate to charges leveled against the writ petitioner. In support of his contention, he relied upon following judgments:

- (i) **Krushnakant B. Parmar v. Union of India and another** reported in **2012 Legal Eagle (S.C) 103**
- (ii) **Chhel Singh v. M.G.B. Gramin Bank, and others** reported in **2014 Legal Eagle (SC) 512.**
- (iii) **The Assistant Director of Survey v. K.C.Bhaskaran** Writ Appeal No.481 of 2016 and C.M.P.No.6637 of 2016 Judgment dated 15.04.2016.

In all the above judgments, the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court held that mere unauthorized absence does not amount to misconduct unless it is proved that the unauthorized absence is willful.

6.Other Judgments relied upon by the counsel for petitioner is

<https://hcservices.ecourts.gov.in/hcservices/>

(iv) **Tamilnadu State Transport v. The Joint Commissioner of Labour** in W.P.No.244 of 2006 Judgment dated



24.09.2010.

(v) **S. Shanmugarajan v. The Commandant** in W.P.No.1861 of 2013 Judgment dated 05.09.2013.

In the above judgments, it was held that for the charge of unauthorized absence, awarding capital punishment such as removal and dismissal from service is disproportionate to the charges. Such a punishment is not only highly excessive and disproportionate to the charges but also which was not permissible to be imposed as per service rules.

7. On the other hand, the learned Additional Government Pleader would contend by relying the counter affidavit filed by 1st Respondent that since the two charges were framed against the petitioner according to Tamilnadu Civil Services (Discipline and Appeal) Rules for his unauthorized absence of two years 2 months and 6 days, final order vide G.O.(D)No.235, Animal Husbandry Dairying and Fisheries (AH1) Department dated 07.11.2013 was passed against the petitioner after getting due consent from the Tamilnadu Public Service Commission. Further he would content that the mere unauthorized absence from duty owing to plausible reasons can be condoned, but the petitioner is a responsible officer and was recruited to render service to poor and farmers in rural areas. He has not conducted himself responsibly and has abdicated the faith and loyalty reposed by the Government on him.

8. The learned Additional Government Pleader would further submit by referring averments made in Para No.13 of 1st Respondent's Counter Affidavit that the leave application and relevant records submitted by the petitioner is full of discrepancy. The petitioner was willingly abstaining from duty which is a gross act of disobedience and insubordination. In term of above submissions, the counsel for Respondents has justified the Impugned Government Order dismissing the petitioner from service.

9. After having heard the submissions of both side counsels and gone through the relevant records and judgments referred to above, this Court is of the view that though the petitioner's counsel has refuted the charges in toto, his contention that the charge of unauthorized absent has not been proved cannot be accepted. Because the record shows that writ petitioner was absented from duty for long time and an explanation offered by the petitioner is not convincing. However this Court find some force in other two legal submissions made on the side of the petitioner that the codified punishment of removal under old rule 18(3) of fundamental rule was amended, as it was struck down by the tribunal and as such the punishment imposed on the petitioner is highly excessive and disproportionate to the charges leveled against him. The old

and amended rule of 18(3) of Fundamental Rules are extracted hereunder.

Old Rule of 18(3) of Fundamental Rules Prior to 18.08.2000

"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, Sub Rule (i) and (2) of Fundamental Rule 18 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 Tamilnadu leave rules for any period which together with the persons 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 in the Tamilnadu Civil Services (Conduct and Appeal) Rule.

Amended New Rule 18(3) of Fundamental Rules

"when a government servant (permanent or approved probationer) does not resume duty after remaining on leave for a continuous period of six month or one year, as the case may be, under Sub Rule (1) or (2) or remains absent from duty after 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 Tamilnadu 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 Tamilnadu Civil Service Discipline and Appeal Rules.

If the above old rule and amended rule are gone through carefully, it can be seen that there is no codified punishment in the amended rule for unauthorized absence as prescribed earlier in the old rule. Further it is pertinent to note that the Government of Tamilnadu has admitted in G.O.Ms.No.154 dated 08.08.2000 in Para No.5, through which amendment to Rule 18(3) of fundamental rules was carried out, wherein the State Government averred that there is no penal provision in the Central Fundamental Rules as well as in Central Civil Service leave rules for remaining absent beyond the permissible limit. No penal provision is also incorporated in other service rules of this state for violation of such rules.

10. Therefore, having taken such a stand and brought an amendment to Rule 18(3) of Fundamental Rules, the same Government cannot take a different stand by inflicting a punishment of dismissal from service for unauthorized absence. Hence I am of the view that as per the above rule, the Respondent can award punishment other than capital punishment for such misconduct as contemplated in the Tamilnadu Civil Services (Conduct and Appeal) rules. I am therefore, of the opinion that inflicting punishment of dismissal from service on the Writ Petitioner is ultra vires to



rule 18(3) of Fundamental Rules.

11. Further as held by this Hon'ble Court in the judgments referred to above, for unauthorized absence, imposing punishment of dismissal from service is disproportionate to the charges leveled against the petitioner and it is in fact shocking the conscience of the Court.

12. In view of forgoing reasons, I have no hesitation to set aside the impugned Order imposing the punishment of dismissal from service and accordingly it is set aside and the writ petition is allowed and the matter is remitted back to the 1st Respondent to pass a fresh order imposing any minor punishment within a period of eight weeks from the date of receipt of copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD II)

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Animal Husbandry Dairying
Fisheries (AH1) Department,
Secretariat, Chennai - 9.

2. The Commissioner and Director of
Animal Husbandry and Veterinary Services,
Chennai - 6.

3. The Deputy Registrar,
Dairying Department,
District Collector Office Campus,
Tirunelveli.

4. The Assistant Director,
Assistant Husbandry Department,
Tenkasi, Tirunelveli District.

+1cc to Mr.D.Sasikumar, Advocate, SR.78408

+1cc to M/S.Special Government Pleader, SR. 79033

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