

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.No.803 of 2017
and
CMP.No.11167 of 2017

University of Madras
represented by its Registrar
Chepauk, Chennai - 600 005. .. Appellant

-vs-

S.Kuppuraj .. Respondent

Appeal under Clause 15 of the Letters Patent, against the order dated 17.06.2014 passed by the learned Single Judge of this Court in W.P.No.9228 of 2005.

WP.No.9228 of 2005:Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records culminatin in offical communication bearing no. VC/REGR/CC(P)/ASO2/2005/33 dated 09.03.2005 issued by the respondent and quash the same and direct the respondent to reinstate the petitioner from 1.2.2004 as leave on private affairs without pay and allowances

For Appellant :: Mr.G.Thilakavathi, SC
for Mr.P.Aishwarya

For Respondent :: Ms.S.Namasivayam

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Being aggrieved by the order passed by the learned Single Judge of this Court in the writ petition filed by the respondent herein, the appellant -University is before this Court with the present writ appeal.

2.For the sake of convenience, the parties are referred to as per their rank in the writ petition.

3.The facts leading to filing of this writ appeal, are as follows:

The petitioner joined the service of the University as Electrician-cum-Lift operator in the year 1985. He has been discharging his duties with utmost satisfaction of his superiors. On 31.12.2003, he applied for leave on private affairs for 5 months from February 2004 to June 2004 to attend the coaching classes for the Post Graduate course of Engineering. While so, he was issued an order dated 07.01.2004, transferring him from Internet centre, Chepauk Campus to IDE admission in the place of one Rajagopalan, who was transferred to Internet Centre, Chepauk Campus in the place of the petitioner. In compliance with the same, the petitioner was relieved from Internet Centre and he duly joined duty in IDE Admission Section in the place of Rajagopalan on 12.01.2004 and thereafter, proceeded on leave from 12.01.2004 in anticipation of sanction of leave. Subsequently, he was issued an official memo dated 05.02.2004 stating that he has not taken over the charges from A.Rajagopalan, ATO (Spl.Grade), even though he joined duty on 12.01.2004 and therefore, he was asked to offer his explanation within three days on receipt of the communication. The petitioner submitted his explanation dated 14.02.2004. He also sent another communication dated 28.2.2004 informing that anticipating the sanction of the leave applied for, he joined the coaching classes for ME/M.Tech Entrance Exam and requesting dropping the proposed disciplinary action and sanction the leave to enable him to pursue his course. After exchange of telegrams, the respondent sent official memorandum dated 23.04.2004, informing that the leave was not sanctioned, as the petitioner is not entitled to get any study leave and directing him to report for duty on or before 28.04.2004, failing which, suitable disciplinary proceedings will be initiated against him, on receipt of which, the petitioner requested the respondent to grant leave on private affairs without interruption so as to enable him to undergo the educational program. However, the respondent issued charge memo dated 24.6.2004, to which, the petitioner duly submitted his explanation. Not satisfying the same, enquiry was conducted and Enquiry report was submitted, to which, the petitioner submitted his explanation. The disciplinary authority, having accepted the Enquiry officer's report and having not accepted the explanation offered by the petitioner, passed the impugned order dated 09.03.2005, imposing punishment of removal from service. Aggrieved against the same, the petitioner has preferred the writ petition. After hearing both sides and on consideration of the records, the learned Single Judge has disposed of the writ petition by modifying the punishment of removal into one that of reinstatement in service with other attendant benefits, but without backwages, by the order impugned herein. Hence, this writ appeal by the University.

4.Learned senior counsel for the appellant - University contended that the writ petitioner being an employee of the University, would have availed leave only subject to prior permission of the higher authority and the reason assigned by him to avail the leave in his application to undergo coaching and training programme for entrance examination for study of M.E/M.Tech course, would have not been permissible as the post held by him does not entitle him to any study leave, as such, the impugned order is contrary to the law and facts and has been made without proper appreciation of the findings of the Enquiry Officer. Learned senior counsel further contended that availing leave without any authorization absolutely unmindful of dislocation of official work on the part of the writ petitioner, made himself liable for the initiation of the disciplinary proceedings and thereafter, removal from service. However, without considering the same, the learned Single Judge modified the punishment of dismissal into one that of reinstatement in service with other attendant benefit, which warrants interference by this Court.

5.Per contra, learned counsel for the respondent/ writ petitioner submitted that the absence of the petitioner was, though unauthorised, neither wilful nor wanton, but for some good purpose. Learned counsel further submitted that considering the facts that the petitioner is coming from a poor economic and educational background; he rendered unblemished service without any dislocation to the work entrusted to him; and the stringent efforts taken by the petitioner to acquire higher educational qualification and taking note of the fact that the conduct of the University in not considering the petitioner's leave application in time and also considering the reason for which, the petitioner was absent for duty, the learned Single Judge has held that the punishment of removal from service imposed on the petitioner was too harsh, excessive and shockingly disproportionate to the charges levelled against him and hence, has modified the same into one that of reinstatement in service with other attendant benefits, but without backwages. Thus, learned counsel submitted that the order impugned herein does not require any interference by this Court.

6.We have carefully considered the submissions made on either side and perused the materials placed before us.

7.The facts made available herein would reveal that the petitioner is hailing from economically and educationally poor family and his father was a cart puller. Though he joined the University as Electrician-cum-Lift Operator, his services were utilised more for computerization, maintenance of computers, networking and internet project and no complaint was received against him whatsoever in the manner of discharging his duties.

During the course of work, after obtaining due permission, he completed diploma course in Electrical and Electronics Engineering through part time study and subsequently, degree of B.E (Computer science) from Anna University, without any dislocation to the work entrusted to him. His aspiration to go for higher studies was encouraged by the superiors of the University. It is not in dispute that the petitioner applied for leave on private affairs for 5 months from February 2004 to June 2004 well in advance on 31.12.2003 to attend the coaching classes for the Post Graduation in Engineering (M.E/M.Tech). While so, he was transferred from Internet centre, Chepauk Campus to IDE admission in the place of one Rajagopalan. On 12.01.2004, he joined duty in IDE Admission Section and thereafter, proceeded on leave in anticipation of sanction of leave, as requested by him. It is also not in dispute that the respondent has not considered the leave application of the petitioner till 12.01.2004 and neither leave was sanctioned nor rejected. Thereafter, leave application was rejected and the petitioner was directed to report to duty immediately. Failure to comply with the same, disciplinary action was initiated against the petitioner, which ultimately ended in punishment of removal from service. The said punishment was modified by the learned Single Judge in the writ petition filed by the petitioner, into one that of reinstatement in service with other attendant benefits, however, without backwages.

8. Questioning the order modifying the punishment imposed on the petitioner, the University is before this Court. It is argued by the learned senior counsel for the appellant University that when the petitioner was transferred to the IDE Admission Section, which is an important section, at the crucial time, he has ignored the work entrusted to him and has proceeded on leave for pursuing his higher studies and thereby, caused greater inconvenience in discharging the official work, whereas, learned counsel for the writ petitioner submitted that the petitioner in anticipation of the sanction of leave, has proceeded on leave and in every communications addressed to the University, he has requested to grant leave for pursuing his higher studies and to drop the disciplinary action initiated against him. Despite the same, the request of the petitioner was declined without any valid reason and in violation of the constitutional mandate.

9. We find some force in the submissions so made on the side of the writ petitioner. When an employee at senior level, stays away from work, of-course, the department or institution is put under severe manpower strain, because it would have to burden other officers with additional duties. However, a person

entering into a Government service does not forgo his fundamental rights and Article 51A(j) of the Constitution of India enjoins upon every citizen of the country to strive towards excellence in all spheres so that the nation constantly rises to higher levels and therefore, denial of an opportunity to the petitioner to pursue his higher studies cannot be countenanced.

10. With regard to the alleged misconduct committed by the petitioner, we are of the opinion that absence from duty without any application or prior permission, may amount to unauthorised absence, but it does not always mean willful. In the present case, where the misconduct of the petitioner was unauthorised absence from duty for 5 months, but upon being charged of such misconduct, he fairly admitted his fault and explained the reason for his absence stating that he did not have any intention nor desire to disobey the order of the higher authority or violate any of the rules and regulations of the University, but the reason was to pursue his higher education. Considering the poor economic and educational background of the petitioner, the University ought to have accepted the same, but they have passed the order, imposing the punishment of removal of the petitioner from service. However, the learned Single Judge, having considered all the aspects in detail and applying the doctrine of proportionality, modified the punishment of removal from service into one that of reinstatement in service with other attendant benefits, but without backwages. The learned Single Judge further directed the University to treat the period of the petitioner's absence as leave on private affairs or any other leave to which he is eligible to, without pay and allowance. The order so passed by the learned Single Judge, in our considered view, is perfectly correct and it does not require any interference by this Court.

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11. Accordingly, the writ appeal fails and the same is dismissed. Consequently, the appellant -University is directed to comply with the order of the learned Single Judge within a period of two months from the date of receipt of a copy of this judgment. No costs. Consequently, connected Miscellaneous Petition is closed.

12.Before parting with this, we observe that higher education improves the quality of life of the employees and it will enable them to expand their knowledge and skills. That apart, it will help them to acquire specializations and excel in their professional life, that too, in an institution like University.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar University of Madras
Chepauk Chennai-5

+1 cc to M/s.P.Aishwarya Advocate sr 49259

+1 cc to M/s.S.Namachivayam Advocate sr 49640

W.A.No.803 of 2017

gmi(co)
aa18/08/2017

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