



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.04.2017
PRONOUNCED ON: 01.06.2017
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.[MD].No.7000 of 2014

D.Murali : Petitioner

Vs.

1. The Registrar General,
Madras High Court,
Chennai - 104.
2. The Principal District Judge,
District Court, Thanjavur.
3. The District Munsif -cum- Judicial Magistrate,
Orathanadu, Thanjavur District. : Respondents

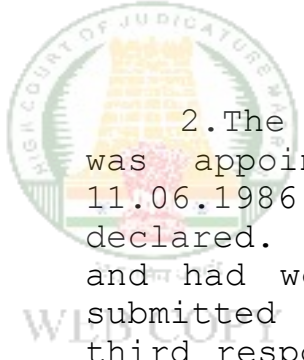
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the second respondent in order A.No.137/2010/A1 dated 27.04.2011 and quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant and monetary benefits.

For Petitioner : Mr.M.Saravanakumar
For Respondents : Mr.D.Sivaraman

O R D E R

[Order of the Court was made by **P.VELMURUGAN, J.**]

This Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the second respondent in order A.No.137/2010/A1 dated 27.04.2011 and quash the same and consequently direct the respondents to reinstate the petitioner in service with all attendant and monetary benefits.



2.The case of the writ petitioner is that the writ petitioner was appointed as a Record Clerk in Judicial Department on 11.06.1986 and his service was regularised and probation was also declared. He was promoted as Junior Assistant in the year 2005 and had worked in various places. While so, on 12.03.2010, he submitted a leave application due to Cervical Disc Bulge, to the third respondent viz, the District Munsif cum Judicial Magistrate, Orathanadu, Thanjavur District and the same was received by the third respondent on 17.03.2010. Subsequently, he submitted an extraordinary leave letter on 17.03.2010 for a further period of 15 days. However, On 26.03.2010, the third respondent issued a show cause notice, calling upon his explanation as to why disciplinary action should not be taken against him under the Rules for his continuous availing of leave without permission, for which, he submitted his explanation on 06.04.2010. Subsequently, on the same day, he submitted another leave letter to the third respondent, requesting to permit him to avail loss of pay leave from 22.03.2010 to 20.04.2010. The third respondent, in turn, on 26.04.2010, recommended the Principal District Judge, Thanjavur to take disciplinary action against the writ petitioner stating that he was availing leave without submitting leave letter.

3.Further, the third respondent issued a suspension order vide proceedings, dated 18.05.2010 and consequently issued a charge memo under Rule 17 (b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, on 30.07.2010, calling for explanation within a period of seven days, charging that the writ petitioner had availed leave from 08.03.2010 without submitting leave letter. Further, once again the third respondent issued another show cause notice vide proceedings, dated 16.08.2010, calling for explanation within a period of 10 days.

4.Further, the writ petitioner approached the third respondent to explain his illness and he was not heard by the third respondent. Subsequently, the Principal District Judge, Thanjavur, had appointed the third respondent as Enquiry Officer vide proceedings in A.No.137/ 2010/A1, dated 22.09.2010 to enquire the charges framed against him and subsequently, the third respondent conducted an enquiry and submitted his report to the second respondent, viz,. The Principal District Judge, Thanjavur on 25.10.2010 and on receipt of the same, the Principal District Judge, Thanjavur, issued a show cause notice, dated 02.11.2010, calling for the writ petitioner's explanation within a period of 15 days and the writ petitioner submitted his explanation on 01.12.2010, explaining his illness and requesting to treat the leave period as loss of pay and to drop the proceedings. However, to his shock and surprise, he was removed from service vide proceedings of the Principal District Judge, Thanjavur, dated 27.04.2011. Therefore, the Writ Petitioner is before this Court.



5.The second respondent filed his counter affidavit stating that, the petitioner is an habitual unauthorised absentee and the entire proceedings have been conducted properly by observing the principles of natural justice and the service rules and the delinquent had been given full opportunity to put forth his case. The writ petitioner had not raised any objection about the appointment of the enquiry officer during the enquiry, where, he had every chance of raising his objection.

6.The learned counsel for the petitioner would submit that the officer who had framed the charges and suspended the writ petitioner, himself was appointed as Enquiry Officer and the Enquiry Officer had given findings with an ulterior motive to penalise the writ petitioner in some way or other and hence, the enquiry itself is vitiated. It is further submitted that as per the settled proposition of law, no man shall be a judge for his own cause. Only due to the sickness he availed the leave. If at all, the officer was not convinced with the reasons for availing the leave, he ought to have referred the writ petitioner to the Medical Board. However, in this case the petitioner was not referred to the Medical Board. Even the explanation, representation and documentary evidence submitted by the writ petitioner, had not been considered either by the Enquiry Officer or by the Appointing Authority. Therefore, the main intention of the Enquiry Officer was to penalise the writ petitioner and the entire action taken by the respondents are violation of principles of natural justice and the impugned order of removal of service is liable to be set aside.

7.The learned Panel Advocate, appearing for the respondents would submit that the petitioner was an habitual unauthorised absentee and this is not the first time he availed the leave without prior permission and also without submitting the leave letter. The enquiry officer followed all the procedures, principles of natural justice and meticulously followed the Tamil Nadu Judicial Ministerial Service Rules and the Tamil Nadu Civil Services (Discipline and Appeal) Rules in the departmental proceedings. The petitioner had submitted his belated leave application without any supporting documents. He has not given any explanation to the first show cause and hence, the second show cause notice was issued and he has submitted his explanation without any proof of documents. Therefore, the explanation was rejected and enquiry was conducted and after concluding that the charges levelled against the petitioner were proved, report was submitted and the impugned order was passed and the Appointing Authority has perfectly, passed the order and no reason to interfere with the same and prayed for the dismissal of the writ petition. Therefore, there is no violation of principles of natural justice.

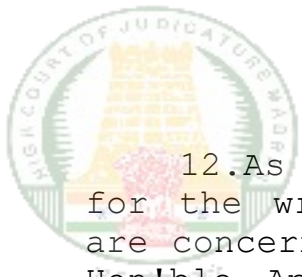


8. Heard Mr.M.Saravanakumar, learned Counsel appearing for petitioner and Mr.D. Sivaraman, learned Panel Advocate appearing for the respondents.

9. The fact of the case is that the petitioner submitted a leave application on 12.03.2010, stating that he was suffering from cervical disc bulge. Thereafter, he further submitted an extraordinary leave letter on 17.03.2010 for a further period of 15 days. The third respondent issued a show cause notice on 26.03.2010, calling upon his explanation. This petitioner submitted his explanation on 06.04.2010 alongwith a leave letter to permit him to avail loss of pay leave from 23.03.2010 to 20.04.2010. The third respondent issued charge memo on 13.07.2010 and again on 16.08.2010, directing him to submit his explanation on or before 30.08.2010. Even though the petitioner approached the third respondent, he was not heard and the second respondent appointed the third respondent as enquiry officer for conducting enquiry. In the enquiry, the charges levelled against the petitioner were proved and he was removed from service. Therefore, the petitioner is before this Court.

10. The contention of the petitioner is that the officer who framed charges against him was appointed as an enquiry officer, which vitiated the entire proceedings and the same is in violation of principles of natural justice. It is seen from the records that the charges levelled against the petitioner is that he was unauthorisedly absent without getting prior permission or submitting any leave letter, which has to be decided only based on the available records and there is no proof to show that the enquiry officer has vengeance with the writ petitioner and based on the available records only the disciplinary authority has appointed the third respondent as enquiry officer. The enquiry officer has also followed the due procedures and conducted the enquiry and submitted a report. The petitioner has participated in the enquiry and he was given full opportunity. If the grievance of the petitioner was that the officer who framed charges himself was appointed as an enquiry officer, the petitioner very well could have raised objection for the same. But he had not done so. The objection now raised by the petitioner is an after thought. Therefore, the said contention is not all acceptable.

11. Yet another contention put forth by the petitioner is that due to sickness only, he availed leave from 08.03.2010 and he has submitted his leave letter on 17.03.2010, requesting to grant him E.L. For 15 days from 08.03.2010, however, the same was rejected. Further, he has given a leave letter for an extraordinary leave for 30 days from 22.03.2010 to 20.04.2010, which was also rejected and hence, the officer has acted with an ulterior motive and issued charge memo, suspended the petitioner and conducted enquiry and submitted a report, as a result of which only, the petitioner was removed from service.



12. As far as the contentions put forth by the learned counsel for the writ petitioner with reference to the procedural lapses are concerned, it is worthwhile to refer to the latest decision of Hon'ble Apex Court in the case of, **the Secretary Ministry of Defence and Others Vs Prabhaskh Chandra Mirdha [2012 (11) SCC 565]** and the relevant portion of the decision is extracted here under;

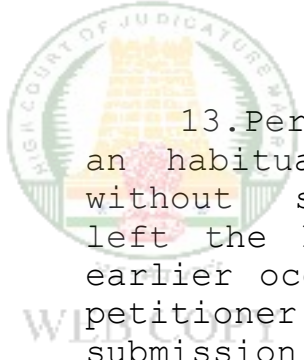
"4. The legal proposition has been laid down by this Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.

5. It is permissible for an authority, higher than the appointing authority to initiate the proceedings and impose punishment in case he is not the appellate authority so that the delinquent may not lose the right of appeal. In other case, the delinquent has to prove as to what prejudice has been caused to him (vide Sampuran Singh V State of Punjab [1982 (3) SCC 200], Surjit Ghosh V United Commercial Bank [1995 (2) 474, Balbir Chand V Food Corporation of India Ltd [1997 (3) SCC 371] and A. Sudhakar V. Postmaster General [2006 (4) SCC 348].

6. In Inspector General of Police V. Thvasiappan this Court reconsidered its earlier judgments on the issue and came to the conclusion that there is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority. In SAIL v. R.K. Diwakar and State of U.P. V. Chandrapal Singh, a similar view has been reiterated.

7. In Transport Commr V. A. Radha Krishna Moorthy, this Court held: (SCC p. 335 para 8).

8. In so far as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal".



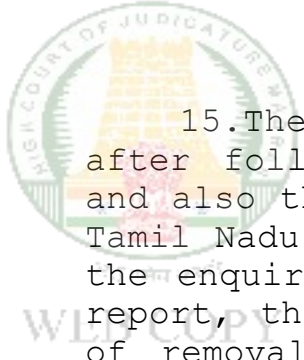
13. Perusal of the records would show that the petitioner was an habitual unauthorised absentee without prior permission or without submission of any leave application and the petitioner left the headquarters without getting prior permission. In the earlier occasions viz., in the year 2005, 2007 and 2009 also, the petitioner availed leave without prior permission or without submission of leave letter properly and hence, in the year 2005, he was imposed a punishment of withholding of annual increment for two years with cumulative effect and in the year 2007 he was awarded the punishment of "Censure" for his absence and in the year 2009, he was excused and permitted to work and the absent period was regulated as Extraordinary leave on loss of pay. In the impugned order itself, the past conduct of the delinquent has also been evaluated and the misconduct committed by the delinquent are stated as follows:

1. While the delinquent Thiru.D.Murali, was working as Junior Assistant in the court of District Munsif cum Judicial Magistrate, Papanasam had applied casual leave on 6.6.2005 and 7.6.2005 through telegram without availability of casual leave on his leave account. Consequent on the same, charges have been framed and same was admitted by the delinquent. Finally, he was imposed of withholding of Annual increment for two years with cumulative effect as per the order No.7/2007, dated 14.03.2007 of District Munsif cum Judicial Magistrate, Papanasam.

2. Another one incident had happened while the delinquent was working as Junior Assistant in the Court of the District Munsif cum Judicial Magistrate, Orathanadu. He had absented from attending duty from 5.6.2007 without getting any prior intimation. Consequent on the same, charge have been framed and the same was admitted by the delinquent. The delinquent was awarded of "Censure" for his absence.

3. Yet another same kind of misconduct committed by the delinquent, while he was working as Junior Assistant in the same court where he is working at present. At that time he had absented from attending duty from 16.4.2009 to 18.08.2009 for about four months. Explanation was called for from him for the above lapse. The delinquent had admitted the misconduct. Consequent on the same he was excused and permitted to continue to work and the absent period was regulated as Extraordinary leave on loss of pay.

14. Perusal of the same would show that the petitioner was an habitual unauthorised absentee. Availing leave is not a matter of right. Thus considering the antecedents of the petitioner and the evidence on record, proportionately, he was imposed a punishment of removal of service.



15. Therefore, we are of the view that the enquiry officer, after following the procedures of principles of natural justice and also the Tamil Nadu Judicial Ministerial Service Rules and the Tamil Nadu Civil Services (Discipline and Appeal) Rules, conducted the enquiry and submitted a report and on the basis of the said report, the disciplinary authority has correctly passed the order of removal from service against the petitioner, which does not need any interference of this Court. In view of all the above, we do not find any merit at all in the Writ Petition. The Writ Petition fails and the same is, accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Registrar General,
Madras High Court,
Chennai - 104.
2. The Principal District Judge,
District Court, Thanjavur.
3. The District Munsif -cum- Judicial Magistrate,
Orathanadu, Thanjavur District.

+1 CC to M/s.D.SIVARAMAN, Advocate, SR No. 58034.

+1 CC to M/s.M.SARAVANAKUMAR, Advocate, SR No. 58006

Arul/dsk

PSM/JC/SAR4/07.06.2017/7P/6C

**ORDER MADE
IN**

**W.P. [MD] .No.7000 of 2014
01.06.2017**