

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1759 of 2017
and C.M.P.No.22309 of 2017

1.State of Tamil Nadu
rep.by Secretary to Government,
Animal Husbandry and Fisheries (AH) Department,
Fort St.George, Chennai-600 009.

2.The Director
Veterinary Services,
Chennai-600006. ... Appellants

-vs-

Dr.Ali Asker Riaz ... Respondent

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.32079 of 2004 dated 18.03.2013.

WP.Prayer in 32079 of 2004: Writ petition praying to issue a Writ of Certiorarified mandamus by calling for the records of the 1st Respondent passed in his proceedings G.O.(D).No.72 Animal Husbandry and fisheries Department dated 17/04/03 and quash the same and further direct the respondents give all monetary and service benefits.

For Appellants :: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondent :: Mr.K.Venkataramani, Sr.Counsel
for Mr.M.Muthappan

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The respondent herein joined the services of the second appellant as Veterinary Assistant Surgeon and subsequently he was working as Extension Officer in the Animal Husbandry, Puzhal

Panchayat Union. In December 1995, the first appellant issued a notification for inclusion of Selection Grade Assistant Surgeon in the panel for regular appointment, by promotion as Assistant Director of Animal Husbandry. On 06.01.1996, the respondent was included in the promotion list in the panel for regular appointment by promotion as Assistant Director of Animal Husbandry. While so, he was issued with 17(b) charge memo dated 15.12.1997 for his unauthorised absence from 04.09.1993. Since the respondent was not communicated the G.O.Ms.No.1046 P&AR (A.V.111) Department, dated 13.11.1987 and also G.O.Ms.No.477 P & AR Spl. Dept. dated 21.10.1990, mainly on the basis of which charges have been framed, he requested the second appellant to give a copy of Government Order so as to enable him to submit his detailed reply. For that the second appellant directed the respondent to go over to the office of the Deputy Director of Animal Husbandry and to peruse the documents and to give the detailed explanation to the charge memo. Since the said Government Orders were not available, he once again requested the second appellant to issue copies of the said G.Os. But the second appellant before submitting his explanation, by proceedings dated 15.11.1998, has appointed an Enquiry Officer to hold the enquiry. According to the respondent, the above attitude of the second appellant clearly indicates to victimise the respondent in all means. Once again the respondent requested the second appellant to allow him to join duty. While so, the second appellant by his proceedings dated 27.04.2000 placed the respondent under suspension and thereafter, passed another order dated 28.04.2000 not permitting the respondent to retire from service on his attaining the age of superannuation on 30.04.2000. The above said orders placing the respondent under suspension as well as not permitting him to retire from service, are not only illegal but contrary to the rules and regulations since the second appellant has not obtained prior permission from the Government, according to the respondent. Thereafter, the appellants without even conducting the enquiry as per rules, removed the respondent herein from service by order dated 17.04.2003. Hence, a writ petition was filed before this Court in W.P.No.32079 of 2004 to quash the said proceedings and for a direction to give all monetary and service benefits to the respondent herein.

2. In the counter filed by the appellants before the Writ Court it has been averred that the respondent has obtained no objection certificate to undertake a tour to America for a period of 3 months from 15.07.1993 to 15.10.1993 to see his relative there. But he has not returned to duty. So, charges were framed against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The question of communicating the G.Os., to the delinquent does not arise. The respondent being a State Level Officer, should have been

acquainted with the existing rules and ignorance of rules cannot be an excuse. Even though the respondent was provided with an opportunity to peruse the records, he failed to turn up or submit his reply. Hence, the enquiry officer was appointed. In spite of many opportunities given to the respondent, he neither submitted his reply nor appeared for the enquiry. In spite of many reminders, the respondent was absent from 04.07.1993 for duty and he never turned up for enquiry. At the verge of his superannuation i.e. 30.04.2000, he sent a letter to rejoin duty. Since the charges under Rule 17(b) have been pending against him, he was placed under suspension as per G.O.(2D) No.20, Animal Husbandry and Fisheries (AH1) Department, dated 27.04.2000 and not permitted to retire on the date of superannuation as per proceedings dated 28.04.2000, as per the directions of the Government in Letter dated 28.04.2000. Thereafter, he was dismissed from service as per G.O.(D) No.72, Animal Husbandry and Fisheries (AH1) Department, dated 17.04.2003. The respondent never turned for duty on the expiry of the permitted leave and was an absentee for years together shows his wanton disobedience of the Government Order. There is no question of victimisation at all in this case and as he himself absent from 04.07.1993 on his own accord there is no question of ultra vires as alleged by the respondent.

3.Considering the facts and circumstances of the case, the learned single Judge has observed that after taking into account the date of unauthorised absence of the respondent from 04.09.1993 as crucial date, the respondent is entitled for the terminal benefits as available to him prior to 04.09.1993. Accordingly, the learned single Judge has passed the impugned order setting aside the proceedings dismissing the respondent from service and also modifying the same to one of compulsory retirement as on 03.09.1993 and also holding that the respondent is entitled for the terminal benefits for the period up to 03.09.1993 from the date of his joining.

4.Challenging the said order, the State has come up with this appeal.

5.The learned Special Government Pleader appearing for the appellants has submitted that the learned single Judge ought to have considered the fact that the respondent had obtained No Objection Certificate to undertake a tour to America for a period of three months from 15.07.1993 to 15.10.1993 to see his relative, but he has not returned to duty though he should have joined duty on the expiry of three months time. Further, he submitted only due to the dereliction of duty on the part of the respondent herein, charges have been framed for the default committed and he was removed from service, after careful examination of the charges and facts and hence the order of

dismissal imposed by the authorities, ought not to have been interfered with by the learned single Judge. Stating so, he prayed for allowing this appeal.

6.Per contra, the learned counsel for the respondent has submitted that the learned single Judge has passed the impugned order after carefully considering the facts and circumstances of the case and hence the same does not require any interference.

7.Heard the learned counsel on either side and perused the materials available on record.

8.It appears that having availed leave on loss of pay on private affairs for a period of three months, the respondent did not return to duty and thereafter departmental enquiry has been initiated and he was removed from service. The learned single Judge has modified the order passed by the Department to one of compulsory retirement. It is the submission of the learned counsel for the respondent that the respondent was not provided with proper opportunity to put forth his case, but on the other hand, it is the stand of the Department that only after properly considering the facts and circumstances, the order of dismissal was passed in accordance with law.

9.Except the charge of unauthorised absence, there is no allegation levelled against the respondent. The learned single Judge has thought it fit not to confirm the termination of the respondent from service, but to order compulsory retirement with a direction to pay the monetary benefits to him for the period he worked.

10.Considering the facts and circumstances of the case, this Court deems it fit to fix the last date of his service as 03.09.1993, since he took unauthorised leave from 04.09.1993, but without compulsory retirement. Thus, the appellants are directed to calculate his service period from the date of his joining, till 03.09.1993. Thus, the order passed by the learned single Judge is set aside only in respect of compulsory retirement and the order entitling the respondent for the terminal benefits for the period upto 03.09.1993, is confirmed. However, since the respondent has left the employment in the middle, 15% of the pensionary benefits shall be withheld.

11.The writ appeal is disposed of accordingly. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

KM

To

1.The Secretary to Government,
Government of Tamil Nadu,
Animal Husbandry and Fisheries (AH) Department,
Fort St.George, Chennai-600 009.

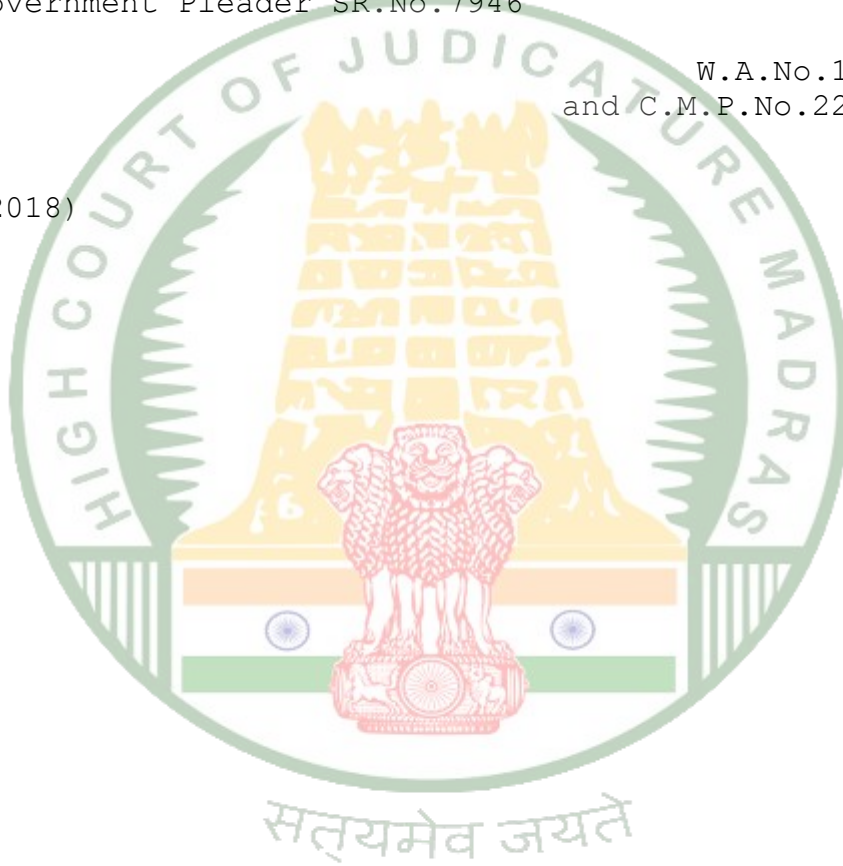
2.The Director
Veterinary Services,
Chennai-600006.

+lcc to Mr.Muthappan, Advocate SR.No.7776

+lcc to Government Pleader SR.No.7946

W.A.No.1759 of 2017
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MG (CO)
GN (15/02/2018)



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