

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.2341 of 2013

and

C.M.P.No.6594 of 2017

Sheik Sultan Arief

... Appellant/Petitioner

Vs

1.The Commissioner of Agriculture
Chepauk, Chennai 600 005.

2.The Joint Director of Agriculture
Cuddalore 607 001.

... Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.No.5149 of 2011 dated 16.03.2011.

prayer in wp.5149 of 2011:-

Petition filed Under Article 226 of the Constitution of India praying that in the circumstances stated therein, and in the affidavit filed therewith the high court will be pleased to issue writ of certiorarified mandamus call for the records relating to the order passed by the 1st respondent in Ka.No.2/48257/09, dated 12.6.2009 and Letter No. O.Mu.AaOA/68226/09, dated 1.2.2010 and quash the same thereby directing the respondents to send the pension proposals to the concern department for approved the pension for the service rendered in the respondent department.

For Appellant : Mr.A.R.Nixon

For Respondents: Mrs.A.Sri Jayanthi
Special Government Pleader

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The appellant was appointed as Agricultural Officer in the Department of Agriculture. His initial appointment was in the year 1967. The appellant availed leave in connection with his treatment. He was granted medical leave for the period from 08

June, * 1987 to 07 June, 1988. Since he failed to rejoin duty, the first respondent after issuing notice removed him from service by order dated 20 May, 1999. The appellant submitted a representation before the Commissioner of Agriculture for modification of the punishment on the ground that he has put in 16 years of service and in case the punishment is converted into compulsory retirement, he would be in a position to obtain pension. The representation was rejected by the Commissioner of Agriculture, by order dated 12 June, 2009. The said order was challenged before the learned Single Judge. The learned Single Judge, taking into account the unauthorised absence, opined that the authorities were correct in removing the appellant from service. The said order is under challenge at the instance of the unsuccessful writ petitioner.

2. The learned counsel for the appellant contended that the appellant was suffering from cancer and that was the reason for his absence. According to the learned counsel, one year medical leave was granted by the first respondent without pay. Since the appellant has not recovered from the illness, he could not join duty. According to the learned counsel, in case the punishment is modified into one of compulsory retirement, it would enable the appellant to seek pension.

3. We have also heard the learned Special Government Pleader on behalf of the respondents.

4. There is no dispute that only on account of the unauthorised absence, action was taken against the appellant. The appellant was removed from service by order dated 20 May, 1999. The appellant in his representation submitted to the Commissioner of Agriculture contended that he has put in 16 years of continuous service and as such, he is qualified for pension in case the punishment is modified into one of compulsory retirement. The representation was rejected primarily on the ground of delay.

5. We are informed by the learned counsel for the appellant that the appellant is yet to recover from cancer. The appellant is also in possession of the records to prove that only on account of the serious illness that he could not join duty. Since the representation was rejected only on the ground of delay, we deem it fit and proper to set aside the said order for the purpose of enabling the Government to take a decision in the matter.

6. The order dated 12 June, 2009 is set aside. We give liberty to the appellant to make a comprehensive representation to the Government along with his medical records through proper channel, so as to enable the Government to take a decision in the matter taking into account his 16 years continuous service and all other background facts. In case any such representation is given, the same shall be considered and disposed of by the Government as expeditiously as possible and in any case, within a period of four months.

The writ appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

Amended as per order dated 25/10/2018

made in CMP.NO.14159/2018 in

WA.NO.2341/2013

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Commissioner of Agriculture
Chepauk, Chennai 600 005.

2.The Joint Director of Agriculture
Cuddalore 607 001.

To be Substituted for

the order already
despatched on 27/03/2018

+1cc to Mr.A.R.NIXAN, Advocate, S.R.No. **73417**

W.A.No.2341 of 2013

GJ(CO)

TR(12/03/2018)

nr 01/11/2018

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