

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Writ Appeal No.476 of 2013
& M.P.No.1 of 2013

1. The Government of Tamil Nadu, Rep. by its Secretary,
Public Works Department,
Fort St. George, Chennai 600 009
2. The Engineer-in-Chief (WRO) and Chief Engineer (General),
Public Works Department, Chepauk, Chennai 600 005
3. The Chief Engineer (WRO), Public Works Department,
Pollachi Region,
Coimbatore - 1 ... Appellants/ Respondents

versus

K.C.Anandaraj Umapathy ... Respondent/ petitioner

Writ Appeal filed under Clause 15 of the Letters
Patent, against the order, dated 28.03.2012, passed in
W.P.No.5086 of 2011.

Prayer in W.P.No.5086 of 2011:

To Call for the records pertaining to the issue of
proceedings of 2nd respondent in Proceedings No.CII(1)/
384/2010-9 dt.23.9.10 and quash the same and consequently
to direct the first respondent to sanction Extra Ordinary
Leave without Pay and Allowances to the petitioner for the
period from 1.8.08 to 15.9.09 on the terms of Foreign
Employment within a time frame as may be fixed by this
Honourable Court.

For Appellant : Mr.Thangavadhana Balakrishnan,AGP.,
For Respondent : Mr. N.Subramaniyan

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The disciplinary proceedings initiated under Section
17 (b) of the Tamil Nadu Civil Services (Discipline and
Appeal) Rules was initiated against the respondent / writ
petitioner. After the enquiry, the disciplinary authority
has deferred with the findings of the Enquiry Officer and
that was under challenge in the writ petition. The learned

Single Judge has allowed the writ petition quashing the charges. Challenging the same, the Government is on appeal.

2. There are three charges levelled against the petitioner herein. Charge No.1 is that the writ petitioner / respondent herein has violated G.O.(D)No.373, Public Works (F1) Department, dated 26.07.2005, by staying in the foreign country even after the lapse of the prescribed period of three years, as sanctioned in the Government order, dated 26.07.2005. The petitioner has given an explanation to this charge stating that he has not violated G.O.(D) No.373, dated 26.07.2005. There was no order asking him to join duty on 01.08.2008, i.e., after the prescribed period of three years.

3. On the other hand, the petitioner relies upon condition (i) of the Government Order, which stipulated that in the event of the foreign employer requiring the services of the individual beyond the period of three years, he should inform this fact to the Government or to the Head of the Department, as soon as it comes to his notice and apply for extension of leave without pay and allowances which should not exceed five years including the leave granted.

4. From the conditions stipulated in the said Government order, three things are apparent, viz., (i) the petitioner is expected to inform the fact of his extension in the foreign Service to the Government or the Head of the Department; (ii) this information should be within the period of three years of the foreign service of the individual and (iii) it should be as soon as it comes to the notice. According to the petitioner, these three conditions have been satisfied and therefore, he is not guilty of charge No.1.

5. It is relevant to point out that the Enquiry Officer has accepted the contention of the petitioner herein and he has concluded that charge No.1 is not proved as against the writ petitioner / respondent herein. However, the disciplinary authority has deferred with the findings of the Enquiry Officer and this difference of opinion expressed is stated to be without any reasons.

6. The second charge against the respondent / petitioner is that he had been unauthorisedly absenting himself for duty with effect from 01.08.2008, the date on which he should have rejoined duty on completion of the prescribed period of three years of foreign service. It is the case of the Delinquent Officer that it is not the case

of the willful disobedience in not reporting duty and as he was in foreign service seeking extension of service for a period of three years in respect of which he has communicated all the conditions prescribed in Clause (i) of the Government Order, he cannot be guilty of willfully absenting himself in reporting for duty. This finding also has been held not proved by the Enquiry Officer. The Enquiry Officer has very fairly stated that the extension letter has been sent by the petitioner, on 18.07.2008, and the same was received by the Engineer-in-Chief, on 22.07.2008. Therefore, when the steps have been taken for extension of leave even before the expiry of the period, i.e., on or before 30.07.2008, the petitioner cannot be held guilty of not-reporting for duty, i.e., unauthorisedly. Even for this reasoning by the Enquiry Officer, the disciplinary authority has taken a very different view.

7. Charge No.3 is that the petitioner herein has failed to maintain absolute integrity and devotion to duty and thus, has violated Rule 20 of the Government Service Conduct Rules, 1973. Suffice to point out that Charge No.3 is not very specific and it is based on and in continuation of Charge Nos.1 and 2. Answer to Charge Nos.1 and 2 will be an answer to Charge No.3 also.

8. Towards the challenge made by the writ petitioner with regard to the impugned order, the learned Single Judge has held that the order of the disciplinary authority is invalid, because it is a non-speaking order and there is no application of mind and in respect of which, the learned Single Judge has given reasons.

9. The leaned Single Judge has specifically pointed out that the Superintending Engineer, by the letter, dated 29.01.2009 has recommended for the extension of leave period, in favour of the writ petitioner. The fact remains that the writ petitioner, while on foreign service, has been informed about the proceedings of the disciplinary authority and thereafter, by the letter dated 08.09.2009, the writ petitioner has been directed to report for duty immediately. This letter has been received by him, on 15.09.2009 and thereafter, he has returned for duty and joined duty on 16.09.2009, the very next day. If the petitioner wanted, he could have very well stated that the information regarding this foreign service has been already communicated to the Head of the Department in time and therefore, he is required to join duty as directed. Such a legally permissible stand has not been taken by the petitioner. As the plain obedience to the order of the Government, the petitioner has joined duty on 16.09.2009.

Thereafter, at least, the Government should have dropped the charges. But, the Government has chosen to proceed with the proceedings and has passed the impugned order. As rightly held by the learned Single Judge, the order passed is a non-speaking order, which cannot be allowed to stand. In law and on facts also, the findings of the Enquiry Officer is correct and the findings of the disciplinary authority is not correct.

10. Thus, we concur with the findings of the learned Single Judge and find no reasons to defer with the findings given by the learned Single Judge.

11. In view of the foregoing reasonings, this writ appeal filed by the Government deserves to be dismissed and it is dismissed accordingly. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

srk

To

1.The Secretary,

The Government of Tamil Nadu,
Public Works Department,
Fort St. George, Chennai 600 009

2. The Engineer-in-Chief (WRO) and Chief Engineer (General),
Public Works Department, Chepauk, Chennai 600 005

3. The Chief Engineer (WRO), Public Works Department,
Pollachi Region,
Coimbatore - 1

+1cc to Mr. N.Subramaniyan , Advocate SR.No. 40107

+1 CC TO GOVERNMENT PLEADER SR.NO. 40374

W.A.No.476 of 2013
& M.P.No.1 of 2013

ASK(26/10/2018)