

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2018
Pronounced on : 17.09.2018

CORAM
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.23129 of 2008

K.S.Geetha

.... petitioner

Vs.

1.The Collector,
Thiruvallur,
Thiruvallur District.

2.The Commissioner,
Villivakkam Panchayat Union,
at Ambattur, Thiruvallur District.

.. Respondents

This Writ Petition filed has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in 10237/07/P(F)2 dated 12.09.2007 and to quash the same and to direct the respondents to reinstate the petitioner in service with all attendant benefits.

For petitioner : Mr.K.P.Magesh Kumar for
Mr.P.Rajendran

For Respondents:Mr.K.S.Suresh Government Advocate for R1

O R D E R

This writ petition has been filed to call for the records relating to the impugned order of the first respondent in 10237/07/P (F)2 dated 12.09.2007 and to quash the same and to direct the respondents to reinstate the the petitioner in service with all attendant benefits.

2.The petitioner was appointed as an Noon Meal Organiser on 15.04.1984 and was working as Noon Meal Organiser at Adi Dravidar Welfare School, Arakkambakkam, Villivakkam Panchayat Union.

3.The petitioner applied for medical leave on 01.07.2006 to undergo surgery for hysterectomy. The petitioner thereafter sent second leave letter dated 22.08.2006 for further.

4.A memo dated 25.08.2006 appears to have been sent to the petitioner in her absence to her office address stating that NMP staff are not entitled for medical leave facilities as per Leave Rules and therefore she should join duly forthwith.

5.The petitioner however by letter dated 28.08.2006 requested for being allowed to join duty after treatment. On 01.09.2006, the petitioner also sent a leave letter by RPAD along with a copy of the medical certificate of Dr.R.Arthi. The tapal section of the respondent later received the same on 29.09.2006.

6.By another memo dated 29.09.2006, the petitioner was once again informed that there was no rule permitting medical leave to NMP staff and therefore if the petitioner failed to appear, recommendation would be sent to the collector to take suitable action against her.

7.The petitioner appears to have submitted a representation including the fitness certificate dated 16.03.2007 with a request to join duty from 01.04.2007. The Block Development Officer requested the first respondent to issue appropriate order for permitting the petitioner to rejoin the duty.

8.The said request was forwarded by the Block Development Officer (Block Panchayat), Villivakkam Panchayat Union to the first respondent (Noon Meal Section), Thiruvallur District vide communication dated 23.03.2007 bearing reference in Na.Ka.No.1125/07/A5.

9.A show cause notice dated 19.04.2007 was issued by the second respondent to the petitioner and called for an explanation from the petitioner as to why action should not be taken against her.

10.The second respondent thereafter issued a charge memo bearing reference in Na.Ka.No.1125/07/A5 dated 07.06.2007 and called for an explanation from the petitioner for not attending the duty/work since 01.07.2006 "without proper application" and for not submitting leave letter and the medical certificate. The details of the charge memo are as follows:-

- (i)Not attending the office from 01.07.2006 without any proper application.
- (ii)Without any covering letter for her leave request, only Xerox copy of the Medical Certificate (MC) has been enclosed and the certificates are without any official seal of the Doctor.
- (iii) In the Medical Certificate (MC) wherein the date was not written by the Doctor who issued the same.
- (iv) To show cause why she should not be removed from service for being absent from duty for 9 months without any proper leave application.

11.The petitioner replied to the said charge memo on 18.06.2007. However, the first respondent issued the impugned order dated 12.09.2007 bearing reference in 10237/07/P(F)2 and terminated the petitioner from service on the ground that the medical certificate submitted by the petitioner was bogus/fake.

12.The petitioner submits that dismissal from service is illegal, arbitrary and violation of principal of natural justice. The petitioner has questioned the basis of the conclusion arrived in the impugned order. Aggrieved by the impugned order of the first respondent the petitioner has filed the present writ petition.

13.The learned counsel for the respondents have filed their counter and justified the impugned order passed by the first respondent.

14.In the counter, the first respondent has submitted that though the medical certificate dated 16.03.2007 indicates that the petitioner had been taking treatment at Teja Hospital, Ambattur, however the petitioner in her written explanation in writing vide letter dated 18.07.2007 stated that she stayed in Hyderabad with her brother for her treatment while the medical certificate reflects that she had taken treatment in a private hospital at Ambattur, Chennai and thus contradicting to her oral statement. It was under these circumstances, the first respondent has taken a decision to dismiss the petitioner from service though the doctor who issued the above medical certificate reiterated vide letter dated 18.03.2008 that the medial certificates was issued by her only and that it was genuine.

15.The basis for dismissing the petitioner from service appears to be the perceived difference in explanation that the petitioner had undergone treatment in Secundrabad though the medical certificate is from Teja Hospital, Ambattur. It has been concluded that the petitioner has produced a bogus medical certificate to explain her absence from duty. There is however no basis to come to the above conclusion that the medical certificate was bogus.

16.The first respondent has further submitted that the impugned order passed by his predecessor was on the basis of contradiction in the private medical certificate which was found to be bogus and that the petitioner had taken nine months leave which could not be granted as per Government Rules without obtaining prior permission.

17.The first respondent has further stated that in the original medical certificate there was no date and there is variation in the fitness certificate issued by Dr.N.Sarojini, Director of TEJA Hospital and that of other medical certificate filed for extension of leave.

18.The second respondent in paragraph 3 of the counter affidavit has captured the sequence leading to leave letter dated 01.07.2006 requesting for grant of medical leave from 01.07.2006 to 31.07.2006 and the letter being received only on 23.08.2006 and that the petitioner sent another leave letter dated 22.08.2006 requesting to leave from 23.08.2006 to 25.08.2006 due to her illness and that a memo bearing reference dated 25.08.2006 in Rc.No.1627/2005/A5 was sent to the petitioner's office address stating that Noon Meal Organisers are not entitled to medical leave facility as per the Government Rules and action would be taken against the petitioner.

19.On going through the records of the case, the facts and circumstances narrated in the affidavit and the counters filed by the respondents, it is noticed that the impugned order dated 12.09.2007 terminating the petitioner from service is without following the principals of natural justice and contrary facts on record that the petitioner has not applied for leave. The impugned order has been passed without calling the petitioner to give any explanation.

20.As per the counter filed by the 2nd respondent it is clear that the petitioner had indeed applied for leave. The impugned order dated 12.09.2007 passed by the first respondent is thus non-speaking and proceeds on an ipsi dixit of the officer that the medical certificate given by the petitioner was bogus. Further, the basis on the above conclusion was arrived has not been substantiated by any evidence in the

impugned order.

21.As per the decision of this Court in G.Periannan Vs. The Government of Tamil Nadu, Rep. by the Secretary to Government, Social Welfare and Nutritious Meal Department, Fort St.George, Madars-9 and others 2007 (3) CTC 806 it has been held that Noon Meal Organisers post is a civil post and therefore, persons like petitioner are entitled to protection under Article 311(2) of the constitution of India.

22.It clearly states that no person who is a member of the civil service of the Union or a State or holds a civil post under the Union or a State shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

23.Further denial of medical leave to undergo medical treatment militates against Article 14, 19(1)(9) and Article 21 of the Constitution of India in as much as such denial is not only arbitrary and discriminatory but also denies right to life and dignity to an employee who may develop medical conditions due to age and working conditions. Had the respondent caused a proper verification, by sending the petitioner to medical examination, they could have verified whether the petitioner was stating truth or was merely resorting falsehood by filing false medical certificate.

24.Authorities of the State above cannot abandon objectivity while taking disciplinary action against errant employees even if they have a lurking suspicion that the employee was not telling truth. Unless, suspicions are corroborated with objective evidence on record, no adverse orders by way dismissal from service can be justified.

25.The impugned order merely states that the medical certificate provided by the petitioner also was bogus. The petitioner has not been given an opportunity to explain as to why the certificate was neither fabricated nor bogus. Before dismissing the petitioner before service, if there was any doubt, the claim of the petitioner could have been verified by sending the petitioner to a Government hospital.

26.It is a clear case where the respondents have acted in capricious manner. The basis for terminating the petitioner from service has been made on a ipsi dixit of the first respondent that the petitioner had produced bogus medical

27.The first respondent has also not given any explanation as to how the above conclusion has been arrived. Further the proceedings had been conducted without affording opportunity to the petitioner and therefore the impugned order warrants interference under Article 226 of the Constitution of India.

28.In the case of Basker Vs. The Deputy Commissioner of Police, Armed Reserve, Coimbatore City and others vide its order dated 23.03.2018 in W.P.No.22611 of 2011, the Court held that the punishment in the form of dismissal from service was disproportionate to the charge levelled and was shocking to the conscience of the Court. The Court following a series of other orders of the Court held that the denial of back wages for the entire period of non employment would be sufficient punishment since, the punishment of removal from service was imposed as early as 18.02.2009.

29.In view of the above observations, this writ petition is partly allowed with a direction to the respondents to reinstate the petitioner with all attendant benefits with one month from the date of receipt of a copy of this order except backwages during period of dismissal from service till the date of reinstatement. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1.The Collector,
Thiruvallur,
Thiruvallur District.

2.The Commissioner,
Villivakkam Panchayat Union,
at Ambattur, Thiruvallur District.

+1cc to Mr.P.Rajendran, Advocate Sr.No.64669
+1cc to Government Pleader SR.No.64593

BR(CO)
sm:5.10.2018

W.P.No.23129 of 2008