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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 18.01.2018

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.31 of 2018

and

C.M.P. (MD) No.181 of 2018

and

W.P (MD) 20327/2013

- 1.The Principal Secretary to Government,
Animal Husbandary,
Dairying and Fisheries (AH1) Department,
Secretariat, Chennai-9.
 - 2.The Commissioner and Director of
Animal Husbandary and Veterinary Services,
Chennai-6.
 - 3.The Deputy Registrar,
Dairying Department,
District Collector Office Campus,
Tirunelveli.
 - 4.The Assistant Director,
Assistant Husbandary Department,
Tenkasi, Tirunelveli District.
- ... Appellants/Respondents
- Vs.
- Dr.I.K.S.Vignesh ... Respondent/ Petitioner

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, against the order dated 01.12.2016 passed in W.P(MD)No.20327 of 2013 on the file of this Court.

Prayer in WP(MD). 20327/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records in pursuant to the final order passed by 1st Respondent state wide impugned Government Order in G.O. (P) No. 235 (veterinary, Dairying and Fisheries Department) dated 07.11.2013 and quash the same and consequently direct the Respondents to reinstate the petitioner with all monitory and service benefits.



For Appellants : Mr.D.Muruganantham
Additional Government Pleader
For Respondent : Mr.D.Sasikumar for
Caveator

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JUDGMENT

[Judgment of the Court was delivered by N.KIRUBAKARAN , J.]

This appeal has been preferred by the Government against the order passed by the learned Single Judge setting aside the order of dismissal of the petitioner from service for unauthorized absence of 642 days continuously from 22.08.2003 to 27.05.2005 and remanding the matter to the first appellant to pass fresh order imposing any minor punishment.

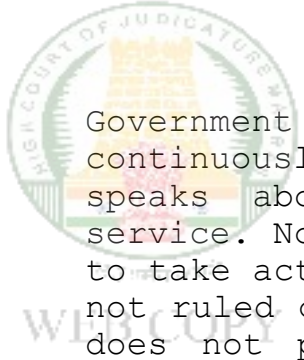
2.Heard Mr.D.Muruganantham, learned Additional Government Pleader appearing for the appellants and Mr.D.Sasikumar, learned counsel appearing for the respondent.

3.The facts of the case are as follows;

The respondent is the Writ Petitioner, who was working as Veterinary Assistant Surgeon having been appointed in the year 1989 and his service was regularized on 23.09.1989. The respondent was issued with a charge memo on 04.07.2005 alleging that the respondent was absented from duty in an unauthorized manner from 22.08.2003 to 27.05.2005 and thereby, he disobeyed the orders of his superior. An explanation was given by the respondent and not satisfied with the explanation, the second appellant appointed an Enquiry Officer to conduct an enquiry and he completed his enquiry and filed his report in the year 2006 to the second respondent. In the Enquiry Report, the Enquiry Officer came to the conclusion that the charges levelled against the respondent were proved and thereafter, the second appellant issued second show cause notice dated 07.05.2007, which elicited a response from the respondent. After that, the second appellant passed a final order dated 07.11.2013, dismissing the respondent from service. The said order was challenged before the learned Single Judge in W.P.(MD).No.20327 of 2013. The learned Single Judge, taking note of unamended Rule of 18(3) of Fundamental Rules prior to Rule 18.08.2000, which mandates removal of service of the Government Servants, if any of the Government Servant dose not resume duty after remaining on leave for a continuous period of six months or one year and amended new Rule 18(3) of Fundamental Rules, which mandates for disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules and since the misconduct of unauthorized absence occurred after the amendment dated 18.08.2000 of Fundamental Rules, the learned Single Judge came to the conclusion that the appellants ought to have imposed the punishment other than capital punishment for such misconduct as contemplated in the Tamil Nadu Civil Services (Conduct and Appeal) Rules.

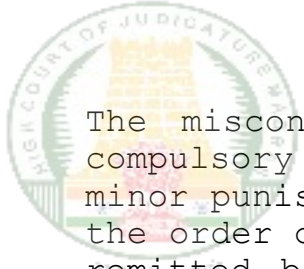
<https://hcservices.ecourts.gov.in/hcservices/>

4.No doubt, before the amendment on 18.08.2000, the Rule of 18 (3) of Fundamental Rules speaks about removal from service, if a



Government servant remains absent even after six months or one year continuously, whereas the amended Rule 18(3) of Fundamental Rules speaks about disciplinary proceedings instead of removal from service. No doubt, the discretion has to be given to the authorities to take action, even then, the punishment of removal from service is not ruled out. Even the amended New Rule 18(3) of Fundamental Rules does not prohibit passing an order of dismissing the Government Servant from service or compulsory retirement of the Government servant from service or any other punishment also. However, the learned Single Judge on the presumption that the order of dismissal from service is completely barred as per the new Rule, set aside the order of dismissal. Such interpretation is not correct. If any disciplinary proceedings are initiated, there cannot be a bar or restriction on the authorities that any order could be passed other than dismissal from service. Dismissal from service also is one of the orders which could be passed by the authorities. The amended Rule of 18(3) of Fundamental Rules does not bar completely the dismissal order, if the facts and circumstances of the case warrants.

5. This Court is of the opinion that the petitioner deliberately absented himself from 22.08.2003 to 27.05.2005 for 642 days, ie., about two years and further, absent from 16.05.1992 to 10.12.1995 for a period of 1301 days and from 16.06.1997 to 23.06.1998 for a period of 379 days. The petitioner did not get regularized the aforesaid leave period. So the total leave period of the petitioner is 2322 days, ie., more than six years, which is not regularised. The respondent is not doing any clerical work. He is a Veterinary Assistant Surgeon and he is supposed to treat the animals, which are suffering from disease. The petitioner absented himself from duty for more than six years throughout his carrier, the Government would not be able to appoint a new Surgeon, since the petitioner is continuing as a Government Servant. Because of the non-availability of medical services, the animals as well as the owners of the animals viz., agriculturists would continue to suffer. It is a public service, the petitioner cannot take it very easily. The Government cannot exercise or carry out the responsibility of its sovereign functions on its own and it could be functioned by appointing officials by paying monthly salary from the public tax money. Having obtained a job and failed report to the duty and thereby denying service to the animals would go away from the public interest. There are lakhs and lakhs of people waiting before the Employment Exchange for their turn. It may not be out of place to quote that even for a Scavenger Post in a High Court, many B.E Graduates, M.Phil Graduates, Post Graduates and M.B.B.S Graduates have applied. When such is the scarcity of the employment that to Government Employment, it is not acceptable to condone the absence of the respondent from work and to give minor punishment. This Court is not here to safeguard the erring officials and the erring officials should be given proper punishment, otherwise it is impossible for the Government to carry out its day to day official work and it would also send a wrong signal to the working officials.



The misconduct of the respondent requires at least an order of compulsory retirement instead of dismissal from service and not a minor punishment as proposed by the learned Single Judge. Therefore, the order of the learned Single Judge is set aside and the matter is remitted back to the first respondent to pass fresh order in the light of the order passed by this Court within a period of eight weeks from the date of receipt of a copy of this order.

Writ Appeal is allowed with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal Secretary to Government,
Animal Husbandary,
Dairying and Fisheries (AH1) Department,
Secretariat, Chennai-9.
- 2.The Commissioner and Director of
Animal Husbandary and Veterinary Services,
Chennai-6.
- 3.The Deputy Registrar,
Dairying Department,
District Collector Office Campus,
Tirunelveli.
- 4.The Assistant Director,
Assistant Husbandary Department,
Tenkasi, Tirunelveli District.

+1cc to Mr.D.SASIKUMAR,Advocate,SR.43048

+1cc to M/S.Special Government Pleader,SR.43160

W.A. (MD) No.31 of 2018

and

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