



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.5334 of 2011

V.Subramanian

... Petitioner

Vs.

1.The Union of India,
rep. by the Commander,
Chief Staff Office (P& A),
Head Quarters Southern Naval Command,
Kochi.

2.The Union of India,
rep. by the Lieutenant Commander,
Civilian Estate Officer,
INS Agrani, Red Fields,
Coimbatore - 641 018.

3.The Registrar,
Central Administrative Tribunal,
Madras Bench.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Original Application 754/2001 dated 11.02.2002 on the file of Central Administrative Tribunal confirming the order of the 1st Respondent in terminating the petitioner from service by order dated 23.02.2001, quash the same and consequently direct the 1st Respondent to appoint the petitioner in service with continuity of service and backwages and other monetary benefits.

For Petitioner : Mr.F.Deepak

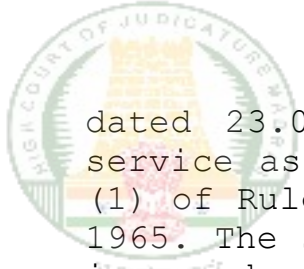
For Respondents 1 & 2 : Mr.R.Murugappan

For 3rd Respondent : No appearance

ORDER

(Order of the Court was made by **M. SATHYANARAYANAN, J.**)

The Writ Petitioner is the original applicant before the Central Administrative Tribunal, Madras Bench and he filed O.A.No.754 of 2001, challenging the order of the first respondent



dated 23.03.2001, in and by which, he was terminated from his service as a Watchman (Temporary) by invoking proviso to sub rule (1) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965. The said application after contest came to be dismissed vide impugned order dated 11.02.2002. The petitioner challenging the legality of the said order has filed the present Writ Petition on 27.04.2011 and it was admitted on 29.04.2011.

2.Mr.F.Deepak, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents filed in support of the writ petition and would submit that though the impugned orders says that it is an order of termination simplicitor, but it is not so for the reason that on the alleged ground of negligence of duty a show cause notice was issued by the second respondent on 07.02.2001, which was also followed by another show cause notice dated 14.02.2001 and yet another show cause notice dated 22.02.2001 and it was followed by the impugned order of termination dated 23.03.2001 and since the reason for fishing the order of termination is negligence of duty on probation as a temporary night watchman, it should be taken as stigmatic. In that event, the first respondent ought to have issued show cause notice, calling for his explanation and if not satisfied should have proceeded with departmentally and in order to cut over the same the first respondent has issued the illegal order of termination simplicitor and the Central Administrative Tribunal without properly considering the factual and legal position has dismissed his Original Application. Challenging the said order, the petitioner prays for interference.

3.Per contra, the learned counsel for the respondents 1 and 2 would submit that the writ petitioner was appointed as temporary watchman with effect from 01.09.1999 and he came to be terminated vide impugned order dated 23.03.2001, which is nothing but an order of termination simplicitor. It is further submitted by the learned counsel for the respondents 1 and 2 that the petitioner was unauthorisedly absented from duty for a long period and taking into account a decision has been taken to invoke the aforesaid provision and accordingly an order of termination simplicitor came to be passed and it was put to challenge by filing Original Application in O.S.No.754 of 2001 on the file of the Central Administrative Tribunal, Madras Bench, which came to be dismissed on 11.02.2002 and after nearly 9 years the writ petitioner has chosen to file the present writ petition on 27.04.2011, challenging the legality of the order and the same is unsustainable. Lastly, the learned counsel appearing for the respondents 1 and 2 would also contend that since the order is termination simplicitor there is no necessity to issue show cause notice and initiate departmental proceedings and that apart he is <https://hcservicescourts.gov.in/hcservices/> as after a delay of 9 years he filed the Writ Petition and hence, prays for dismissal of the Writ Petition.



4.This Court considered the rival submissions and perused the materials placed before it.

5.The facts leading to the filing of this Writ Petition has been narrated in detail in the impugned order dated 11.02.2002 in O.A.No.754 of 2001 by the Central Administrative Tribunal, Madras Bench and therefore, it is unnecessary to reiterate the facts.

6.The primordial question arises for consideration is whether the impugned termination issued by the first respondent is stigmatic.

7.The Tribunal has taken into consideration of the fact that the writ petitioner was appointed as temporary watchman vide order dated 31.08.1991 and in the said order it has been clearly stated that he will be on probation for a period of two years from 01.09.1991 and in the event of unsatisfactory performance, the services are liable to be terminated without any notice during or at the end of the probation including extended period, if any. The first respondent having found that he has un-authorisedly absented himself and his services were also unsatisfactory, thought it fit to terminate him from service. The Tribunal also found that by invoking sub rule (1) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965, the services of the writ petitioner came to be terminated during the period of probation. The Tribunal has also taken note of the decision of the Hon'ble Supreme Court of India in **Pavanendra Narayan Verma vs. Sanjay Gandhi PGI, of Medical Sciences and another [2002(1) SCC 520]** and in **Samsher Singh vs. State of Panjab [1974-2-SCC 831]**, wherein such termination order came up for consideration and found that the impugned termination is only termination simplicitor without any stigma attached. The order of appointment as well as the aforesaid Rule also enables the first respondent to pass such an order. Citing the said reasons, the Tribunal has dismissed the Writ Petition.

8.This Court has gone through the typed set of documents filed in support of the writ petition and is of the considered view that even in the order of appointment it has been specifically stated that the petitioner will be on probation for a period of two years and his services are liable to be terminated without any notice during or at the end of the probation and that apart sub rule (1) of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 also gives powers to the respondents to do so and accordingly passed the impugned order of termination. The Tribunal has also taken note of the decisions of the Hon'ble Supreme Court of India and factually found that the order passed by the first respondent is only order of termination simplicitor and it is not attached with any stigma whatsoever. Therefore, there is no error or infirmity appears on record in the impugned



order passed by the Tribunal, in and by which, the Original Application filed by the petitioner came to be dismissed.

9. It is also to be noted at this juncture that the Central Administrative Tribunal, Madras Bench has dismissed the original application as early as on 11.02.2002 and challenging the said order the petitioner has filed the writ petition only on 27.04.2011 nearly after 9 years. Even by applying Section 21 of the Administrative Tribunals Act, 1980, the writ petition is clearly barred by limitation and that apart the writ petitioner is also guilty of delay of laches in approaching this Court by filing this writ petition.

10. Therefore, in the light of the reasons cited above, the Writ Petition deserves dismissal and accordingly dismissed and the order dated 11.02.2002 made in C.A.No.754 of 2001 of the Central Administrative Tribunal, Madras Bench stands confirmed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Commander,
Chief Staff Office (P& A),
Head Quarters Southern Naval Command,
Kochi.
 2. The Lieutenant Commander,
Civilian Estate Officer,
INS Agrani, Red Fields,
Coimbatore - 641 018.
 3. The Registrar,
Central Administrative Tribunal,
Madras Bench.
- +1cc to Mr. R.Murugappan, Advocate SR.No.52077

SJ

VB/SV/MMS/SAR3/13/03/2018/4P/5C