

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.10461 of 2012

R.Selvaraj

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Department of Health and Family Welfare,
Secretariat,
Chennai 600 009.

2.The Director of Medical Education,
Kilpauk,
Chennai 600 010.

3.The Dean,
Annai Gandhi Memorial Government Hospital,
Tiruchirappalli 620 017.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to his order of removal from service of the petitioner which is made in Pa-Mu-No.7801/Ni6/08 dated 03.03.2009, the order of 2nd respondent made in Na.Ka.No.24034/CMP 2(2) 09 dated 08.10.2009 and the order of 1st respondent rejecting the revision petition of the petitioner in G.O.(10th year).No.1258 dated 22.11.2011 and quash the same consequent to direct the respondents to reinstate the petitioner into service with all attendant benefits.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr.R.S.Selvam,
Government Advocate

O R D E R

This Writ Petition is filed to issue a writ of Certiorarified Mandamus, calling for the records of the 3rd respondent pertaining to his order of removal from service of

the petitioner which is made in Pa-Mu-No.7801/Ni6/08 dated 03.03.2009, the order of 2nd respondent made in Na.Ka.No.24034/CMP 2(2) 09 dated 08.10.2009 and the order of 1st respondent rejecting the revision petition of the petitioner in G.O.(10th year).No.1258 dated 22.11.2011 and quash the same consequent to direct the respondents to reinstate the petitioner into service with all attendant benefits.

2.The learned counsel for the petitioner submitted that the Writ Petition is filed by the petitioner challenging the order of dismissal passed by the 3rd respondent, confirmed by the 2nd respondent in an appeal and 1st respondent in revision. The grievances of the petitioner is that:

(i) the charge memo was not issued by the competent Authority (ii) the charges are vague.

(iii) the enquiry was conducted without giving proper opportunity to the petitioner.

(iv) the finding of the Enquiry Officer is without any basis.

(v) the respondents without properly appreciating the explanation, grounds of appeal and revision, rejected the contention of the petitioner and prayed for allowing the Writ Petition.

2.Per contra, Mr.R.S.Selvam, learned Government Advocate appearing for the respondents contended that specific charges were framed against the petitioner which are not vague. The petitioner was given ample opportunity to participate in the enquiry. At his request, the enquiry was adjourned at the first instance and subsequently, the petitioner was participating in the enquiry and made baseless allegation against the Enquiry Officer and the 3rd respondent. The Enquiry Officer after giving opportunity to the petitioner to participate in the enquiry, considering all the materials placed before him in proper perspective and following the principles of natural justice, gave a report holding that the charges leveled against the petitioner are proved. The respondents after considering the explanation and objections of the petitioner, have passed the order of dismissal and rejected the appeal and revision, by giving valid reason. The order passed by the respondents are valid and prayed for dismissal of the Writ Petition.

3.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

4.From the materials on record, it is seen that the petitioner was appointed as Telephone Attendant on 07.11.2007. According to the respondents, the petitioner has not completed one year of service and his service was not regularized. Even

before completing one year of service, the petitioner has absented himself without prior permission and taken leave often. Due to this attitude, the work of the 3rd respondent was affected. When the petitioner applied for medical leave from 21.09.2008, the petitioner was directed to appear before the Medical Board on 26.09.2008 vide letter Rc.No.7801/E4/2008 dated 23.09.2008. According to the petitioner, the letter directing him to appear before the Medical Board was not received by him. On the other hand, the respondents have contended in the counter affidavit that the said letter was sent to the petitioner by Certificate of Posting and was served on his wife through Special Messenger on 25.09.2008. These contentions in the counter affidavit were not denied by the petitioner by filing reply affidavit. From the typed set of papers filed by the petitioner, it is seen that the charge memo was signed by the Dean in-charge. When a person is authorized to act as an in-charge Dean, he has power to discharge all the duties and responsibilities of the Dean. The order of dismissal was signed by the 3rd respondent. In view of the same, the contention of the learned counsel appearing for the petitioner that competent person has not signed the charge memo is contrary to the facts.

4(i) As far as the charges are concerned, it has been specifically stated in the 1st charge that the petitioner has not completed one year of service, he is not entitled to take leave, he has unauthorizedly absented himself and disturbed the work of the 3rd respondent. The 2nd charge is that the petitioner failed to appear before the Medical Board even after directing him to appear before the Medical Board by letter, telegram and by Special Messenger, when he applied for medical leave from 21.08.2009. The 3rd charge is consequential of first two charges referred to above. There is no vagueness in the charges leveled against the petitioner. The petitioner was working as Telephone Attendant and if he unauthorizedly absented himself on various dates, the work of the 3rd respondent would definitely be affected and it will be difficult to make alternate arrangements.

4(ii) From the averments in the affidavit, it is seen that the petitioner has taken leave for number of days, from 07.11.2007 and he applied for medical leave from 01.04.2008 to 16.04.2008 and again from 21.09.2008 onwards, in addition to casual leave and other leave. In view of the same, the 3rd respondent has rightly directed the petitioner to appear before the Medical Board to ascertain whether medical leave could be granted to the petitioner for his alleged illness. The petitioner has not appeared before the Enquiry Officer even after postponing the date of enquiry at his request. In addition

to that, even after receiving the charge memo, the petitioner has not expressed his willingness to appear before the Medical Board.

5.For the above reason, the finding of the Enquiry Officer, order of dismissal and orders of respondents 2 and 1 are valid and various contentions raised by the learned counsel for the petitioner referred to above are without merits. In the result, the Writ Petition is liable to be dismissed and it is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa

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+1cc to M/s.R.Malaichamy, Advocate Sr.62717
+1cc to the Government Pleader Sr.63384

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