

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2019

Delivered on: 30.04.2019

C O R A M

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.12141 of 2006

V.Parthasarathy

...Petitioner

Vs

1. The Government of Tamilnadu,
rep. by its Secretary to Government,
Revenue Department,
Fort St. George,
Chennai-9.

2. The Principal Commissioner and
Commissioner for Revenue Administration,
Chepauk,
Chennai-5.

3. The District Collector,
Nilgiris District,
Udhagamandalam.

4. The Personal Assistant (General)
to the District Collector,
Udhagamandalam.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the orders in [1] Pro.Na.Ka.No.A3/45264/98 dated 17.10.2000 of the fourth Respondent; [2] Pro.RC.A3.No.79100/2001 dated 26.04.2001 of the third Respondent; [3] Pro.Na.Ka.No.Ser.4(1)/67555/2001 dated 10.06.2002 of the second Respondent, quash the same and issue consequential directions to reinstate the Petitioner in service with consequential services and monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.S.Suresh, Govt. Advocate

O R D E R

This Writ Petition is filed for a Writ of Certiorari to quash the following orders:

[1] Pro.Na.Ka.No.A3/45264/98 dated 17.10.2000 of the fourth Respondent;

[2] Pro.RC.A3.No.79100/2001 dated 26.04.2001 of the third Respondent; and

[3] Pro.Na.Ka.No.Ser.4(1)/67555/2001 dated 10.06.2002 of the second Respondent;

and, consequently, reinstate the Petitioner with all attendant benefits.

2.The Petitioner was recruited as a Junior Assistant by the Tamil Nadu Public Service Commission in the Group IV Services examination and was allotted to the Revenue Departmental Unit, Nilgiris District, as per memo dated 25.12.1996 of the Tamil Nadu Public Service Commission. Subsequently, the Petitioner was posted as a Junior Assistant in the Government Tribal Welfare School, Uthagamandalam, as per the proceedings of the District Collector, Nilgiris District dated 22.01.1997. Even prior to the above, on 11.01.1997, the Petitioner applied for re-allotment to the Ramanathapuram District because his wife was serving as a secondary grade teacher in the Panchayat Union Elementary School at Ramanathapuram and also on the ground that the climatic conditions in the Nilgiris District would not suit the health condition of his aged parents. However, his request was rejected and he was called upon to join duty at the Taluk Office at Uthagamandalam on 03.04.1998. The Petitioner applied for medical leave from 1.06.1998 onwards by submitting several applications for leave. The Petitioner further states that he went to the Civil Surgeon at the Government Headquarters Hospital, Ramanathapuram, on 18.11.1999 and that a Medical Certificate was issued to the effect that the Petitioner should continue his job only if he is posted outside a hill station. In view of the fact that there was no response to the leave applications, the Petitioner submitted a petition to the Chief Minister's Special Cell, requesting for re-allotment to some other District and Department and the said request was forwarded to the Tamil Nadu Public Service Commission. On receipt of the request, the Tamil Nadu Public Service Commission informed the Petitioner, by memo dated 16.03.2000, that his request would be considered only after regularization of his service.

3.Thereafter, disciplinary proceedings were initiated against the Petitioner under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules by proceedings dated 02.05.2000. In pursuance thereof, charges were framed against the Petitioner for failure to attend duties from 01.06.1998

onwards in violation of FR 18(3) and Rule 23(a)(2) of the Tamil Nadu Leave Rules.

4.The Petitioner states that he submitted a representation denying the charges. Thereafter, an enquiry officer was appointed and the Petitioner, by letter dated 04.08.2000, stated that no enquiry was necessary because the Petitioner applied to the Tamil Nadu Public Service Commission for transfer to some other District. The Enquiry Officer submitted a report on 11.08.2000 stating that the charges against the Petitioner were proved. On receipt of the Enquiry Officer's report on 24.08.2000, the Petitioner states that he submitted a further representation dated 28.09.2000 stating that he was constrained to proceed on leave in view of his health condition not being suited to the climatic conditions in the Nilgiris District.

5.Thereafter, the Personal Assistant (General) to the District Collector (Revenue), Uthagamandalam, by proceedings dated 17.10.2000, imposed the major punishment of 'removal from service of the Petitioner'. The Petitioner submitted an appeal to the District Collector, Uthagamandalam and the said appeal was rejected by order dated 26.04.2001. The revision petition against the said order was also rejected by proceedings dated 10.06.2002. The order of dismissal and subsequent orders in appeal and revision are impugned in this writ petition.

6.The case of the Respondents is that the Petitioner was recruited as a temporary employee by the Tamil Nadu Public Service Commission by letter dated 17.12.1996 and allotted to the Nilgiris District. After joining duty in Nilgiris District on 03.04.1998, the Petitioner requested medical leave by letter dated 04.08.1998 up to 31.12.1998. On expiry of leave on 31.12.1998, the Petitioner did not re-join duty and, instead, sent another representation dated 25.01.1999 stating that he is not able to continue in Nilgiris District. In response to the Petitioner's request for re-allotment, the Tamil Nadu Public Service Commission, by memo dated 16.03.2000, categorically informed the Petitioner that the request for re-allotment would be considered only after getting necessary orders from the Government relaxing the age requirements and after regularization of the services of the Petitioner. The Respondents further state that the Petitioner had initially cited the teaching job of his wife and the health condition of his parents as the reason for not wanting to work in the Nilgiris District. After joining duty, he changed the story and cited his own health condition and absconded from duty. The Respondents further state that after initiation of disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in his explanation to the charges, the Petitioner stated that he is unable to join duty in

the Nilgiris District and that he would join duty only after re-allotment to some other district by the Tamil Nadu Public Service Commission. The Respondents further state that the Petitioner was provided with an opportunity of personal hearing before the Enquiry Officer on 07.08.2000 but he failed to appear for personal hearing. It is further stated that even after receipt of the Enquiry Officer's report on 24.08.2000, the Petitioner did not offer any explanation. Therefore, the Respondents state that the Petitioner absconded from duty without the consent of the Respondents and that the order dismissing the Petitioner from service is valid.

7. At the hearing, the learned counsel for the Petitioner advanced three arguments. The first contention of the learned counsel for the Petitioner was that the Petitioner submitted several applications for leave, which were supported by medical certificates, but the Respondents did not act on the said applications for leave by either accepting or rejecting the same. Consequently, he submitted that it cannot be said that the Petitioner absconded from duty or that his absence was unauthorized. In this regard, he further submitted that the Respondents could have directed the Petitioner to appear before the Medical Board if the Respondents wanted to verify the veracity of the Petitioner's requests for leave or the medical certificates appended to the leave letters. The next contention of the learned counsel for the Petitioner was that the order of dismissal was entirely based on FR 18(3) as it stood before the amendment. In specific, the learned counsel for the Petitioner pointed out that FR 18(3) earlier made it mandatory for the employer to dismiss an employee for unauthorized absence that exceeds a continuous period of six months or one year, as the case may be, in respect of employees who were in employment for less than five years or more than five years, respectively. He further submitted that the said provision was subsequently amended but the Respondents proceeded to impose the punishment of dismissal from service. The learned counsel for the Petitioner finally submitted that the misconduct of the Petitioner is not one involving moral turpitude and, therefore, the punishment is disproportionate. In this regard, he further submitted that the Petitioner had not received salary from the date of dismissal from service and that the denial of salary and other benefits is a reasonable and adequate punishment for the misconduct. In order to substantiate his submission, the learned counsel for the Petitioner referred to the judgment of this Court in G. Anandan v. State of Tamil Nadu, 2012 (5) MLJ 751, wherein it was held that the unauthorized absence for a period of about 21 days does not warrant the punishment of removal from service and that only a minor punishment should have been imposed. Accordingly, the Court directed reinstatement without back wages. The learned counsel also referred to the judgment of the Hon'ble Division Bench of this Court in

S.Shanmugarajan v. State of Tamilnadu in W.A.No.1608 of 2011, wherein the Hon'ble Division Bench of this Court held that "Merely one incident of absence and that too because of bad health and valid and justified grounds/ reasons cannot become the basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 and is liable to be set aside".

8. In response, the learned Government Advocate appearing for the Respondents submitted that the Petitioner was recruited on temporary basis and within a short period after such recruitment, the Petitioner failed to report to work and instead submitted leave letters. He further submitted that initially the Petitioner stated that his wife was employed in Ramanadhapuram District and that his parents' health condition did not permit him to work in Nilgiris District, and that he later changed his version and cited his own health condition as the reason for not reporting for work. The learned Government Advocate further submitted that the Petitioner did not appear even at the enquiry proceedings. In these circumstances, he submitted that the punishment that was imposed is not disproportionate.

9. The affidavit, counter affidavit, documents on record and oral submissions of both sides were carefully considered.

10. In the instant case, a temporary employee failed to report for work within a short period after his recruitment. The record discloses that the Petitioner did not rejoin duty from 01.06.1998 until his dismissal from service on 17.10.2000. In effect, the Petitioner did not rejoin duty for a period of more than two years. In this connection, it is relevant to refer to FR 18 which reads as follows:

"18. (1) Except leave on medical certificate or study leave under rule 84, no Government Servant (Permanent or Approved Probationer), who has not completed five years of service, shall be granted leave of any kind for a continuous period exceeding six months at any one time.

(2) Except on medical certificate or study leave under rule 84 no Government servant (Permanent or Approved Probationer), who has completed five years of service, shall be granted leave of any kind for a continuous period exceeding one year at any one time.

(3) When a Government servant (Permanent or Approved Probationer) does not

resume duty after remaining on leave for a continuous period of six months or one year, as the case may be, under sub-rules (1) or (2), or remains absent from duty after the expiry of his leave otherwise than on foreign service; or on account of suspension or on account of leave for employment abroad under section II-A of the Tamil Nadu Leave Rules, 1933 for any period which, together with the period of leave granted to him, exceeds the limit, he shall be liable for disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules. (G.O.Ms.No.154 P&AR (FR.III) dated 8th August, 2000).

(4) There shall be an interval of a period of three years between two spells of the maximum leave so granted."

11. It is also the admitted position that the Petitioner received the notice in connection with the enquiry proceedings but failed to attend the enquiry. If the health condition of the Petitioner was genuinely such that he could not rejoin duty in the Nilgiris District, the Petitioner could have attended the enquiry proceedings and produced all the leave letters and medical certificates as exhibits in the said enquiry. In such event, the Enquiry Officer would have considered and verified the veracity of the leave letters and medical certificates before finalising the enquiry report. However, the Petitioner did not attend the enquiry proceedings. The contention of the learned counsel for the Petitioner that the Respondents acted on the assumption that FR 18(3) makes it mandatory that an employee who is absent for more than six months or more than one year, as the case may be, should be dismissed from service is not tenable. Although the order of dismissal cites FR 18(3), it is not clear as to whether the pre-amended or post amended FR 18(3) is cited therein. Even after amendment, FR 18(3) enjoins that disciplinary proceedings should be initiated against an employee for unauthorized absence, which is in violation of FR 18(1) and (2). In the present case, the Respondents initiated disciplinary proceedings for unauthorized absence by following the principles of natural justice. However, in spite of putting the Petitioner on notice, he did not participate in the enquiry.

12. Therefore, the only question that remains to be examined is whether the punishment is disproportionate. In this regard, it is relevant to bear in mind that punishment would be considered to be disproportionate, if it is not within the spectrum of reasonable responses by the employer in the facts and circumstances. In the instant case, the Petitioner remained absent from duty from 01.06.1998 onwards and did not rejoin duty until his dismissal on 17.10.2000. Therefore, it is not a case

of unauthorized absence for a few days or a limited period of time. The cases cited by the learned counsel for the Petitioner are, by contrast, cases wherein the unauthorised absence was for a limited period of time. Therefore, the said decisions are distinguishable on facts. Moreover, the Petitioner was a temporary employee who had been recruited very recently. Therefore, it cannot be said that the punishment is disproportionate.

13. Accordingly, this Writ Petition is dismissed but there shall be no order as to costs.

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

kal/rrg

To

1. The Secretary to Government
Government of Tamilnadu,
Revenue Department,
Fort St. George,
Chennai-9.
2. The Principal Commissioner and
Commissioner for Revenue Administration,
Chepauk,
Chennai-5.
3. The District Collector,
Nilgiris District,
Udhagamandalam.
4. The Personal Assistant (General)
to the District Collector,
Udhagamandalam.

+1cc to Mr.M.Ravi, Advocate, S.R.No.42827

+1cc to the Government Pleader, S.R.No.43237

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SV (CO)

RRS (26/06/2019)