IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.35258 of 2004

S.Narayanappa ... Petitioner

Vs.

1.The Special Commissioner
and Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.

2.The Collector, Dharmapuri,
Dharmapuri District.

3.The Personal Assistant (General) to the Collector,
Dharmapuri, Dharmapuri District. ... Respondents

PRAYER: The Writ Petition has been filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, call for the records relating to the impugned order of second respondent in Na.Ka.No.104471/97/A4 dated 01.11.2003, confirming the order of third respondent in Na.Ka.No.104471/97 dated 27.03.2003 and quash the same and direct the respondent to reinstate the petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Mohanraj

For Respondent : Mrs.R.Janaki
Additional Government Pleader

O R D E R

This writ petition has been filed to quash the order passed in by the second respondent/District Collector, Dharmapuri in Na.Ka.No.104471/97/A4, dated 01.11.2003.

2 The learned counsel appearing for the petitioner would submit that the petitioner was appointed as a Watchman on 31.12.1979. Thereafter, in the year 1981, he was appointed as Office Assistant under the Revenue Inspector. On 01.03.1997, due to illness, he could not attend the office and that he made application for earned leave for one month and he has submitted

other leave letters for the months of April, May and June for extending leave. According to the petitioner, he reported duty on 11.07.1997, before the Tahsildar, Denkanikottai and he was informed that there were no leave applications available at the Office. Therefore, he had applied for unearned leave on Medical Certificate between the period 01.03.1997 to 11.12.1997 and he had sent the Medical Certificate by Registered Post to the Tahsildar, Denkanikottai, on 12.07.1997. Even though, he was willing to join duty on 11.07.1997, he was not permitted to join and posting order was not given. On the other hand a Charge Memo was issued by the third respondent/Personal Assistant (General) to the Collector, on 09.12.1997, for absenting himself for more than six months continuously from duty i.e., from 01.03.1997 to 13.10.1997. Since the petitioner was bedridden, could not submit his explanations and however appeared for the enquiry before the Tahsildar/Enquiry Officer, on 14.12.1998 and his explanations were recorded as statements and the Enquiry Officer held the charges proved. Thereafter, a personal hearing was given by the third respondent to the petitioner, on 20.09.1999 and the petitioner has submitted that he was not able to submit his explanations for the Charge Memo issued by the third respondent, since he was suffering from Paralysis at that time and that he had recovered from illness. The statement given by the petitioner was not accepted and punishment of removal from service was ordered on 27.03.2003. As against which, he has preferred revision before the Special Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-600 005, on 06.01.2004. During the pendency of the above said revision, he has preferred the above writ petition.

3 According to the petitioner, he was absent due to illness from 01.03.1997 and he submitted his leave application by Registered Post on 12.07.1997. The factum of the sending the leave letter by Registered Post and the receipt of which was acknowledged by the Tahsildar were proved by marking documents. In that case, action under Fundamental Rule 18 (3) will not apply for the leave period would exceed only three months and 11 days and it is not more than six months. Therefore, the punishment itself is not sustainable. Even, the Appellate Authority has not considered the facts as to whether, the sufficient grounds were made out for taking action and as to whether, the penalty is excessive, adequate or inadequate. Without considering these facts, the Appellate Authority simply confirmed the finding, as if, the petitioner has admitted his misconduct. Therefore, he seeks to set aside the impugned order and consequently, reinstate him in service.

4 The respondents have categorically denied all the allegations made by the petitioner and would contend that the petitioner is the only person available in the office and he is

very much aware that his absence will definitely cause hindrance to the routine functioning of the office. In spite of the same he absented himself from duty from 01.03.1997, without applying for leave. The Tahsildar has not received any leave application from him. Since, he absented himself for more than six months, disciplinary action was initiated. The opportunity of personal hearing was given to him and after complying with the principles of natural justice, order of removal from service was passed on 27.03.2003. Since, the proceedings were conducted in a fair manner, the order need not be interfered with.

5 Heard both sides and perused the materials placed on record.

6 Admitted fact remains that the petitioner claims that he had suffered Paralytic attack from March 1997. He also produced a leave letter by registered post on 12.07.1997 with acknowledgment from Tahsildar. Further, it is clear from the statement of the respondent that Tahsildar was appointed as Enquiry Officer and enquiry was held on 14.12.1998. On that day, the petitioner was bedridden but appeared before the Tahsildar and his statement was recorded. Thereafter, it is seen from the counter affidavit that the Personal Assistant (General) to the Collector personally enquired the writ petitioner on 20.09.1999 and passed order of removal from service on 27.03.2003. The petitioner has preferred an appeal before the District Collector/Second respondent herein on 13.10.2003 and the said appeal was rejected by an order dated 01.11.2003. No where in the order passed by the third respondent as well as the second respondent, it was mentioned that the petitioner was not suffering from any illness. Even the Enquiry Officer has not stated that the petitioner was suffering from paralytic attack, in spite seeing him personality.

7 Overwhelming evidence and statements made before the second and third respondents by the petitioner that he was suffering from paralytic attack and that he has recovered from the illness, were not discussed at all. It is true that a Government Servant who absent himself for more than six months can be subjected to disciplinary action as per Rule 18(3) of Fundamental Rules of Tamil Nadu Government. In normal circumstances, when a person is said to have been affected by serious illness, it is a duty of the disciplinary authority to refer him to Medical Board.

8 Admittedly, the petitioner has made an application on 12.07.1997 by register post along with Medical Certificate. In that event the respondent ought to have referred him to Medical Board and should have found that whether he was really affected

by any illness; whether it is temporary or permanent; whether he could be taken back to service or not? or whether to give some other alternative employment or not?

9 Without considering any of his submissions, it is appears that on the basis of the report submitted by the enquiry officer, the Disciplinary Authority imposed the punishment and mechanically, the Appellate Authority has also confirmed the same. The punishment imposed, in spite of documentary evidence to show that the leave letter was received by the Tahsildar along with a medical certificate reveal that the authorities have not applied their mind and in that circumstance, the punishment imposed, in the consideration of this Court, is harsh and dis-proportionate and bad for non-application of mind.

10 The petitioner has now attained the age of superannuation and he is now 67 years old. No purpose will be solved by remitting the matter for fresh enquiry. It is also evident that though the petitioner had submitted leave letters, proceeded on leave without approval or sanction from the Authority. Hence, some punishment shall be imposed.

11 Considering the misconduct as well as the factual circumstances and to meet the ends of justice, the punishment of removal from service is modified and that the period of absence between 01.03.1997 to 13.10.1997, shall be treated as dies-non and to which the period, the petitioner will not be entitled to any pay and it will have impact on his pension.

12 Therefore, the respondents are directed to give an order of reinstatement and notional benefits to the petitioner as if he continued in service except for the service cut and disburse all his terminal benefits within a period of eight weeks from the date of receipt of a copy of this order.

13 With the above directions, this writ petition stands allowed and the order passed by the third respondent in proceedings in Na.Ka.No.104471/97, dated 27.03.2003 and the order passed by the second respondent in Proceedings in Na.Ka.No.104471/9A/A4, dated 01.11.2003 are set aside. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Special Commissioner
   and Commissioner of Revenue Administration,
   Chepauk, Chennai - 600 005.

2.The Collector, Dharmapuri,
   Dharmapuri District.

3.The Personal Assistant (General) to the Collector,
   Dharmapuri, Dharmapuri District.

+1cc to the Government Pleader Sr.10530
+1cc to Mr.P.Rajendran, Advocate Sr.104988

W.P.No.35258 of 2004

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srg 19/03/2020