

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.36679 of 2004

and

W.M.P.No.717 of 2008

K.S.Khaja Mohideen

... Petitioner

Vs.

1.The Secretary to Government,
Municipal Administration and
Water Supply (Corp.3) Department,
Fort St.George, Chennai 600 009.

2.The Chairman,
Appointment Committee,
Corporation of Chennai,
Chennai 600 003.

3.The Commissioner,
Corporation of Chennai,
Chennai 600 003.

... 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 records of the first respondent in G.O.Ms.No.527 of M.A. & W.S. Department, dated 22.11.2001 passed in pursuance of the proceedings in Thi.Ka.Me.Thu.Na.No.A5/4287/98, dated 18.01.2001 of the third respondent and Thi.Ka.Me.Thu.Na.No.A5/4287/1998, dated 08.12.1999 of the third respondent and quash the orders passed therein.

For Petitioner : Mr.C.P.Sivamohan

For R1 : Mrs.R.Janaki

Additional Government Pleader

For R2 & R3 : Mr.S.Saravanan

Standing Counsel

O R D E R

This writ petition has been filed to quash the order passed by the first respondent in G.O.Ms.No.527 of M.A. & W.S. Department, dated 22.11.2001, in pursuance of the proceedings in Thi.Ka.Me.Thu.Na.No.A5/4287/98, dated 18.01.2001 of the third respondent and Thi.Ka.Me.Thu.Na.No.A5/4287/1998, dated 08.12.1999 of the third respondent

2 The learned counsel for the petitioner would submit that the petitioner was appointed as a peon in Class IV Service of the Corporation of Chennai in the year 1973 and promoted as Conservancy Inspector under the third respondent herein, in the year 1982. A charge memo was issued to him on 17.06.1999, for absenting himself unauthorizedly between the period 02.02.1991 to 15.12.1997. The petitioner has submitted his explanation before the Zonal Officer for absenting himself that, he was admitted in Kilpauk Mental Health Institution as inpatient and after few days, he has taken treatment from a private Doctor. He submitted a certificate from the private Doctor for the said period. Therefore, he claimed that, he could not submit his leave application and however, his family members have sent information about his health condition to the respondent. Because of that no disciplinary action was taken against him. Apart from this, the petitioner has not submitted any other documents pertaining to his health condition, his treatment in Mental Health Institute, details of medical treatment taken from the private doctor, the Diagnosis, prescription and medical advice given by the doctor, specifically for a period of eight years, when he was under unauthorized absence.

3 The learned counsel for the respondent would submit that the explanations given by the petitioner for his absence for eight years are not satisfactory and even in the enquiry, he has stated that he has no documentary evidence to show that he was affected by mental illness. Therefore, the charges were held proved and punishment of removal from the service was imposed. It is well settled that when the Government Servant has absented himself for more than six months, he can be subjected to disciplinary action. In the instant case, the petitioner was absent for more than 83 months and the ailments stated by the petitioner is not simple one, but mental illness. The hospital more particularly the institutions under the control of government will have permanent records for giving treatment to mentally ill patients.

4 As submitted by the respondent, if the petitioner was admitted in the Kilpauk Mental Institute, the hospital will have records for the treatment as inpatient. Even non production of said records after show cause notice and during oral hearing certainly go to show that statement made by the petitioner is not credit worthy. Further, subsequent details of treatment and the other connected records to show that he was affected by mental illness from a private medical practitioner cannot be believed.

5 In view of the above, the finding of the Enquiry officer as well as the decision taken by the Disciplinary Authority appears to be reasonable and correct. Hence, the

order passed by the first respondent does not warrant any interference.

6 In the result, the writ petition stands dismissed and order passed by the first respondent in G.O.Ms.No.527 of M.A. & W.S. Department, dated 22.11.2001, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Municipal Administration and
Water Supply (Corp.3) Department,
Fort St.George, Chennai 600 009.

2.The Chairman,
Appointment Committee,
Corporation of Chennai,
Chennai 600 003.

3.The Commissioner,
Corporation of Chennai,
Chennai 600 003.

+1cc to Mr.C.P.Sivamohan, Advocate, SR.No.105666.
+1cc to Mr.S.Saravanan, Advocate, SR.No.104825.
+1cc to Government Pleader, SR.No.105311.

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BR(CO)
CSR:14.02.2020

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