

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.41199 of 2005

M.K.Chandrasekaran

... Petitioner

Vs.

1. The Assistant Director,
Land Survey Department,
Kanchipuram District,
Kanchipuram.
2. The Regional Deputy Director of Survey
and Land Records,
Chepauk, Chennai - 5.
3. Special Commissioner and Additional Director,
Survey and Land Records,
Chepauk, Chennai 600 005.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 3rd respondent, vide proceeding Na.Ka.A1/23595/2005 (L.S), dated 28.09.2005 and quash the same.

For Petitioner : Mr.R.Raman Laal

For Respondents : Mrs.K.Bhuvaneswari, AGP

O R D E R

This petition has been filed to quash the order of the 3rd respondent dated 28.09.2005.

2. The petitioner herein, who unauthorisedly absented himself from duty from 08.01.1990 to 26.11.2000, was subjected to charges under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 05.05.2000. When the petitioner herein had appeared for personal enquiry on 17.11.2000, he had given a representation to permit him to join duty to enable him to attend to the disposal of 8A cases. The

petitioner herein was allowed to join duty, pending the disciplinary proceedings. Subsequently, the first respondent herein had accepted the enquiry report and imposed the punishment of reduction of seniority by 10 places. Since the punishment was not in consonance with the gravity of the proved charges of unauthorised absence for more than 10 years, the third respondent herein through an order dated 17.10.2004, directed the second respondent to remove the petitioner from service under Rule 18 of the Fundamental Rules. Consequently, the second respondent had passed the order dated 13.01.2005 cancelling the earlier order of punishment dated 23.09.2004 and imposed the punishment of removal from service after considering the petitioner's explanation. The petitioner's appeal to the third respondent was also rejected on 28.09.2005, as against the same, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that when the original order of reinstatement does not refer to the appointment, pending the disciplinary proceedings, particularly when the petitioner's reappointment was confirmed on 31.05.2002, the respondents are not justified in passing the impugned order. He also submitted that the second respondent herein is not empowered to suo motu revise the order of the first respondent and in view of the same, the impugned orders are liable to be set aside.

4. The learned Additional Government Pleader appearing for the respondents, by reiterating the statements made in the counter affidavit submitted that, the petitioner's unauthorised absence was for an inordinate 10 years, for which, there is no proper explanation. In view of the petitioner's request to join duty for disposing of the 8A cases, the first respondent had permitted him to join duty. According to the learned Additional Government Pleader, the subsequent confirmation will not give him any right to seek for setting aside the order of dismissal, which was based on the enquiry duly conducted.

5. I have given careful consideration to the submissions made by the respective counsels.

6. It is not in dispute that the petitioner herein was absent from 08.01.1990 to 26.11.2000, for which, there was no leave application and he has been removed from service for unauthorised absence. When the charges came to be framed against the petitioner herein on 05.05.2000, the first petitioner was reinstated afresh with effect from 24.11.2000. The explanation given for such a reinstatement is that the petitioner, during the course of departmental enquiry, had made a request to join duty and work under the Taluk Deputy Inspector of Survey, Tambaram to attend to the disposal of the 8A cases. In this

background, the order of reinstatement came to be made. Though there is no specific statement in the order of reinstatement that the petitioner was permitted to join, without prejudice to the disciplinary proceedings, such an action can be inferred from the facts when the respondents had chosen to proceed with the disciplinary proceedings, even after the petitioner was reappointed on 24.11.2000. The petitioner had relied upon the confirmation order dated 31.05.2002, wherein his name is found in Serial No.50. I am unable to comprehend as to how the fresh appointment made on 24.11.2000 and the subsequent order of confirmation dated 31.05.2002 will confer rights on the petitioner to preclude the respondents from imposing any punishment.

7. Insofar as the suo motu revision of the original punishment imposed by the first respondent is concerned, it is seen that after the enquiry, the petitioner was issued with a show cause notice seeking his explanation. On consideration of the explanation, the first respondent had imposed the penalty of reduction of the petitioner's seniority by 10 places in the post of Sub Inspector of Survey, which fact was informed to the third respondent. When the third respondent was of the view that the punishment was not in consonance with the gravity of the charges, he had directed the second respondent to review the punishment. In pursuance of the direction of the third respondent, the second respondent had imposed the punishment of removal of service for the unauthorised absence for more than 10 years.

8. It is also stated in the counter affidavit that an action has been initiated against the first respondent by the third respondent for not awarding proper punishment to the petitioner in accordance with the gravity of the charges, in accordance with the instructions issued in G.O.Nos.153 and 154, Personnel Administrative Reforms Department dated 08.08.2000.

9. Pursuant to the order of the third respondent, the Regional Deputy Director of Survey and Land Records, Chennai / 2nd respondent cancelled the order of the first respondent dated 23.09.2004 through an order dated 13.01.2005. As such, it is seen that the second respondent herein acted only on the direction of the third respondent and thereby, the original punishment imposed by the first respondent was cancelled. As such, there is no infirmity in the revision of the original punishment of the first respondent.

10. Even otherwise, the explanation given by the petitioner for the unauthorised absence is that he was grieving over the death of his father for 10 years, which cannot be construed to be a sufficient cause, since the period of absence for 10 long

years, is inordinate. In the absence of any proper explanation, I am of the view that the Enquiry Officer had properly concluded the charges and held that the absence of the petitioner was unauthorised. The second respondent as well as the third respondent have correctly appreciated the gravity of the offence and imposed the punishment. Hence, I do not find any reason to interfere with the well found orders. Accordingly, the Writ Petition stands closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Assistant Director,
Land Survey Department,
Kanchipuram District,
Kanchipuram.
2. The Regional Deputy Director of Survey and Land Records,
Chepauk, Chennai - 5.
3. Special Commissioner and Additional Director,
Survey and Land Records,
Chepauk, Chennai 600 005.

+1 cc to M/s.R.Ramanlal, Advocate, Sr.No. 40873

W.P.No.41199 of 2005

CSL/01.07.2019

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