

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/11/2019

C O R A M

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE

a n d

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.27539 of 2019

G.Hudson Das

Petitioner

Vs

1. The Registrar General,
High Court Madras, Chennai 104.

5. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified Mandamus, calling for the records to the order of the 2nd respondent passed in proceedings CON.No.1/2017 A, dated 20.03.2018, modified by the 1st respondent in his order R.O.C.No.26540/2018/C1, dated 14.08.2019 and quash the same and direct the 2nd respondent to reinstate the petitioner in service with all benefits i.e., by paying 50% remaining salary for the suspension period and full salary and other benefits from the date of dismissal till reinstatement.

For petitioner ... Mr.P.Ebenezer Paul

For respondent ... Mr.S.Kaithamalai Kumaran
(for R1 & R2)

O R D E R

Subramonium Prasad,J.

The instant writ petition is for a certiorarified mandamus, calling for the records relating to the order passed by the Chief Metropolitan Magistrate, Egmore, Chennai, as modified by the Registrar General, High Court Madras, Chennai dated 14.08.2019, and directing the reinstatement of the writ petitioner to service.

2. The writ petitioner joined on 30.07.2014 as office assistant in the Court of Chief Metropolitan Magistrate, Egmore, Chennai. After completion of two years, he completed

his probation in the year 2016 and was serving as office assistant in the Additional Mahila Court. It is stated that on 03.12.2016 at about 9.30 PM, while the writ petitioner was in an inebriated condition, he broke the glass pane of the chamber of the Chief Metropolitan Magistrate.

3. An explanation was called for from the writ petitioner and on 05.12.2016, the writ petitioner stated that he had received a message regarding certain illness of his mother. He stated that his father had lost his two legs in an accident and when he heard that his mother was also ill, he was shocked and in that situation he leaned against the window pane in the chamber of the Chief Metropolitan Magistrate which broke.

4. The explanation was not accepted. The writ petitioner was suspended by an order dated 24.01.2017. An enquiry was initiated under Section 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 and a charge memo was issued to the writ petitioner, framing three charges namely:-

"Charge 1: On 03.12.2016 at about 21:50 hours, the petitioner had broken the window pane of the chamber of 2nd Metropolitan Magistrate and damaged court property which is against Rule 20 of the Tamil Nadu Government Servants Conduct Rules.

Charge 2: During the said incident he was under the influence of liquor, hence he violated Rule 21 of the Tamil Nadu Government Servants Conduct Rules.

Charge 3: On 03.12.2016, the evening Court functioned from 6 to 8 pm and the petitioner was in premises till 9.30pm without any permission and he had broken the window pane under the influence of liquor which again is in violation of Rule 20 of the Tamil Nadu Government Servants Conduct Rules."

5. A FIR was also registered on 10.01.2017 before Periamet Police Station, Kilpauk for offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The writ petitioner filed a petition under Section 482 of the Cr.P.C. for quashing the FIR registered on 10.01.2017. A learned Single Judge of this Court by an order dated 12.12.2018 quashed the FIR. The learned Single Judge gave a finding that there is no criminal intent on the part of the writ petitioner to break the window pane. The learned Single Judge therefore held that in the absence of criminal intent, no offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 was not made out.

6. The enquiry was conducted. It was found that the writ petitioner was guilty of the charges leveled against him and an order was passed on 20.03.2018 terminating the writ petitioner from the service. The writ petitioner thereafter filed an appeal before the Registrar General, High Court

Madras, under Rule 19 of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules.

7. The petitioner filed W.P.No.13019 of 2019 for a direction to the Registrar General of this Court to consider the appeal and pass necessary orders. The High Court Madras, by an order dated 29.04.2019 disposed of the writ petition and directed the Registrar General to dispose of the appeal.

8. The Registrar General, by an order impugned herein modified the punishment of dismissal from service and replaced it with an order of removal from service without any bar to claim employment in public service in future. It is this order which is under challenge in the instant writ petition.

9. The writ petitioner states that he did not break the window pane on purpose and that when he received a phone call stating his mother was not well, he was shocked and he leaned against the window pane which broke. The respondents have filed a counter stating that just by simply leaning against the glass window, the window pane would not have broken. The counter states that the enquiry report clearly shows that the writ petitioner was in a drunken state and that such an employee cannot be permitted to continue to work in a Court.

10. Heard the counsel for the parties.

11. This court by an order dated 12.12.2018 has already quashed the FIR No.73 dated 10.01.2017 for offence under Section 3 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The writ petitioner had stated that he received a phone call from his mother stating that his mother was not well and that he was not able to bear the pain and therefore he leaned against the window pane.

12. During the hearing the writ petitioner has given affidavit undertaking. The affidavit of undertaking is being reproduced hereunder:-

"AFFIDAVIT OF UNDERTAKING

I. G.Hudson Das, S/o. Gnanadhas, Indian Christian, aged about 27, residing at No.236, Aramuravilai, Thitpiramalai, Karungal Post, Vilavancode Taluk, Kanniyakumari District - 629 157, now temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows.

1. I am the petitioner herein and I am well acquainted with the facts stated hereunder. I am filing this affidavit of undertaking before this Hon'ble Court.

2. I respectfully submit that I am not having the habit of consuming alcohol/liquor. My body structure is due to my family medical history of obesity. My father before he met with an accident thereby losing both his legs was obese. Similarly my mother and my sister are obese in nature. Therefore I am having a stout physique and due to dismissal order passed by the 2nd respondent, I am suffering a lot and I am unemployed to meet my livelihood. If I am reinstated, I will diligently discharge my duties with utmost satisfaction and I undertake and assure before this Hon'ble court that I will not consume liquor in future also.

Hence I pray that this Hon'ble Court may please to set aside the order of dismissal passed by the 2nd respondent which was modified by 1st respondent as removal from service and reinstate me as prayed for in Writ Petition No.27359 of 2019 and thus render justice."

13. Even though no reason is forthcoming from the writ petitioner as to what was he doing in the Court premises at 9.30 PM, this Court by taking into account the undertaking given by the petitioner and taking into account the fact that his father has lost both his legs, his mother is not well and he has two unmarried sisters, is inclined to modify the punishment of removal from service without any bar to claim employment in public service in future, to one of stoppage of increment for 5 years with cumulative effect. The punishment stands modified. The writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

pkn.

To

1. The Registrar General,
High Court Madras, Chennai 104.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.

+1cc to Mr.P.Ebenezer Paul, Advocate, S.R.No. 98242

W.P.No.27539 of 2019