

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
12.03.2019	21.03.2019

CORAM

THE HON'BLE MR. JUSTICE M.VENUGOPAL

AND

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.31959 of 2018

and

WMP.No.37196 of 2018

C.Ranganathan

... Petitioner

vs.

1.The Registrar General,
High Court,
Chennai - 600 104.

2.The Principal District Judge,
Kancheepuram District,
Chengalpattu.

3.The Chief Judicial Magistrate,
Kancheepuram,
Chengalpattu.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent made in ROC.No.200/2010/C1 dated 24.10.2018 by confirming the order of the third respondent made in Dis.No.1510/A/2008 dated 12.06.2008 A.No.102 of 2008 and quash the same and direct the respondents to reinstate the petitioner with all service and monetary benefits.

For Petitioner : Mr.M.Muthappan
For Respondents : Mr.R.Sunil Kumar

ORDER

M.VENUGOPAL, J.

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2.The Petitioner was appointed as 'Masalchi' through Employment Exchange in the Court of Judicial Magistrate No.II, Chengalpattu, by the Second Respondent/Principal District Judge, Kancheepuram District @ Chengalpattu, vide his proceedings dated 26.02.2007. He joined the service in the said Court and was working there without any complaint. While that being so, in June, 2007, he suffered from 'Piles Complaint' and took treatment for the same and was absent from duty from 01.06.2007 to 23.07.2007. He was issued with Memos on 02.06.2007 and 17.07.2007 by the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu, for his 'Unauthorised Absence'. He submitted his explanation in regard to his inability of submitting proper Leave Letter and made a request to treat the period of his absence as 'Leave' without salary and also requested to permit him to join the duty. However, the Second Respondent/Principal District Judge, Kancheepuram District @ Chengalpattu, vide his proceedings dated 30.07.2007, treated the Petitioner's absence period from 01.06.2007 to 23.07.2007 (53 days) as 'Extraordinary Leave on Medical Certificate' and allowed him to join the duty.

3.The Learned Counsel for the Petitioner brings it to the notice of this Court that in November, 2007, the Petitioner suffered from the same problem and submitted a Leave Letter for 3 days from 11.11.2007 to 14.11.2007. Again, he sent a Leave Letter through an Office Assistant of the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu on 15.11.2007 and prayed for further 3 days leave. However, the said Leave Letter was returned to the same Office Assistant. Subsequently, after completion of Leave, he went to join the duty, but he was refused to join the service by the Judicial Magistrate No.II, Chengalpattu.

4.It is represented on behalf of the Petitioner that a Memo dated 28.11.2007 was issued to the Petitioner calling upon his explanation for 'Unauthorized Absence'. After receipt of the Memo, he went and met the Learned Judicial Magistrate No.II, Chengalpattu and explained his position in person. But, the Second Respondent/Principal District Judge, Kancheepuram @ Chengalpattu, without framing any charges and conducting any enquiry, terminated the Petitioner from service with effect from 04.11.2007, as per his Proceedings dated 12.06.2008. He made a Representation to the Registrar (Administration), High Court, Madras on 18.05.2009, who, intturn, forwarded the same to the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu, who, vide his proceedings dated 14.10.2009, declined to consider the same and directed the Petitioner to approach the Hon'ble High Court for preferring an Appeal.

5.The Learned Counsel for the Petitioner contends that the Petitioner filed WP.No.26086 of 2009, questioning the proceedings of the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu, dated 14.10.2009 and this Court, vide Order dated 17.12.2009, advised the Petitioner to withdraw the said Writ Petition with Liberty to file an Appeal to the First Respondent. Pursuant to the same, he preferred an Appeal to the First Respondent/Registrar General, High Court, Madras, on 30.12.2009 through Proper Channel. He made repeated Representations to the First Respondent on numerous dates including 19.06.2012, 13.12.2012, 28.08.2014 and lastly on 21.06.2017 (through Registered Post). Since no order was passed, he filed WP.No.18067 of 2018 praying for issuance of a 'Writ of Mandamus' in directing the First Respondent/Registrar General, High Court, Madras to dispose of his Appeal dated 30.12.2009 within the time specified by this Court. Infact, this Court, in WP.No.18067 of 2018 passed an order on 17.07.2018, by observing that an Order was passed in the Appeal dated 30.12.2009 filed by the Petitioner, by the Hon'ble Judge of the Sub Committee, in ROC No.200/2010/C1 and etc. Ultimately, this Court had directed the First Respondent/Registrar General, High Court, Madras, to take necessary follow up steps to communicate the order passed in the Appeal, within a period of two weeks from the date of receipt of copy of this order. The said order was received by the Petitioner on 20.09.2018. Thereafter, on 24.09.2018, the Petitioner made a Representation to the First Respondent/Registrar General, High Court, Madras, along with order copy. He was directed to approach the Judicial Magistrate Court, Chengalpattu. Accordingly, he approached the Office of the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu and a copy of the Impugned Order dated 24.10.2018 was served on him in person on 29.10.2018.

6.The Learned Counsel for the Petitioner comes out with a plea that the First Respondent/Registrar General, High Court, Madras had failed to consider that the Petitioner was appointed under the Tamil Nadu Basic Services Rules and although his service was not regularised, he was terminated from service for certain allegations, for which, no full fledged enquiry was conducted by framing definite charges. Therefore, it is contended on behalf of the Petitioner that the Impugned Order of Termination passed by the Third Respondent as confirmed by the First Respondent is liable to be set aside, in the Interest of Justice.

7.The Learned Counsel for the Petitioner points out that the First Respondent/High Court, Madras had failed to consider that

when the Petitioner had approached the Registrar (Administration), who, inturn, forwarded the same to the Third Respondent and he had rejected the same, vide order dated 14.10.2009. Subsequently, the Petitioner filed WP.No.26086 of 2009 before this Court and on 17.12.2009, this Court had granted Liberty to the Petitioner to file an Appeal before the First Respondent.

8.The other contention advanced on behalf of the Petitioner is that the First Respondent/High Court, Madras had failed to consider that Rule 27(3) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is not applicable to the facts of the present case, inasmuch as it deals with a case of 'withholding of Appeal' which was not filed within two months after the date on which the Petitioner/Appellant was informed about the order of the Appeal.

9.The Learned Counsel for the Petitioner takes a stand that the Petitioner submitted the 'Grounds of Appeal' on 30.12.2009 and the same was forwarded to the First Respondent by the Disciplinary Authority and as such, the reason furnished by the First Respondent/High Court, Madras is highly an illegal one and quite contrary to the Service Rules, that too, after a period of 10 years.

10.The Learned Counsel for the Petitioner submits that the Third Respondent terminated the Petitioner's service without framing charges and conducting an enquiry on the basis of certain allegations which is a clean case of negation of the 'Principles of Natural Justice'. Apart from that, if a termination is made without framing necessary charges and in the absence of any enquiry, certainly the same carries a 'Stigma' and therefore, the Impugned Order of Termination is liable to be set aside by this Court.

11.The Learned Counsel for the Petitioner emphatically takes a plea that the period of 'Unauthorised Absence' of the Petitioner is supported by Medical Certificate and due to his suffering, he could not get proper sanction of the Medical Leave. The Learned Counsel further contends that the Punishment inflicted on the Petitioner/Appellant is disproportionate to the delinquency committed by him. Hence, the Petitioner has filed the present Writ Petition praying for passing of an order by this Court in directing the Respondents to reinstate him temporarily, as 'Masalchi' pending disposal of the Writ Petition. In reality, in the present Writ Petition, the Petitioner has prayed for calling of the Records pertaining to the Order of the First Respondent dated 24.10.2018 by confirming

the order of the Third Respondent dated 12.06.2008 and to quash the same.

12.The Learned Counsel for the Petitioner in support of his contentions, refers to the decision of the Hon'ble Supreme Court in Jaswantsingh Pratapsingh Jadeja v. Rajkot Municipal Corporation and another reported in (2007) 10 SCC 71 at spl.page 75, wherein, at paragraph 4, it is observed as follows:

"4.Cause was shown by him. The same having been found to be unsatisfactory was rejected. No departmental enquiry was conducted. A finding of fact was arrived at to the effect that the enquiry proceedings which were pending against him were not brought to its logical end. His period of probation was extended up to 30-4-2003 without assigning any reason. There was no such power in the appointing authority. His services, however, were discharged stating:

"Major J.P. Jadeja was appointed as Vigilance Officer (General) in the Vigilance Department of Rajkot Municipal Corporation. Thereafter Shri Jadeja was on leave from 3-2-2003 to 6-2-2003 and was to have reported for duty on 7-2-2003. However, as he remained absent till 22-3-2003 without any intimation a final notice referred to at Serial No. 2 above was issued to which a fax report for additional leave was received as referred.

A reply was received to the final notice as above. The reply after consideration requires to be rejected. As a vigilance officer, it is expected of him to complete inquiries within a fixed time-frame and as a result of long absence from such important duties could result in stagnation which cannot be tolerated and is in breach of Condition 4/6 of the appointment order.

Looking to the assessment of work as referred to hereinabove, the period of probation is extended from 1-1-2003 to 30-4-2003. Thereafter the period is not extended and it is directed that services be thereafter discharged after payment of one month's notice pay."

13.The Learned Counsel for the Petitioner in the aforesaid decision, further relies on paragraphs 10 and 11 (at special page 76), which run thus:

"10.We may apply the said tests in the instant case. In the instant case, the language used in the impugned order is ex facie stigmatic. It referred to the earlier orders containing allegations of misconduct on the part of the appellant and the fact that he had been found guilty thereof. The appellant was said to have absented himself from duties. He had been found guilty of negligence, carelessness and showing absolute disregard towards his duties. A disciplinary proceeding was initiated therefor. His explanation to the show-cause notice was rejected. He was, therefore, found guilty of the charges levelled against him. Only thereafter, he was discharged from service by reason of the impugned order dated 29-4-2003."

"11.Before, however, we embark upon the legal questions, we must notice that the appellant had not been confirmed in his services from 1999 to 2003. The power of Commissioner of Municipality to appoint a person on temporary basis is governed by the statutory rules. It has not been shown before the High Court or before us as to under what provisions of law the period of probation was extended from time to time. Applicability of the provisions of the Act is not in dispute. It may be true that such a contention was not raised before the High Court, but if under the statute, the period of probation could not have been extended, he will be deemed to have been confirmed on expiry of the period of probation."

14.Besides the above, the Learned Counsel for the Petitioner, in the aforesaid decision, at special page 81, points out paragraph 28, wherein, it is held as under:

"28.From the discussions made hereinbefore, it is evident that termination of services of the appellant purporting to discharge him simpliciter cannot be accepted, being stigmatic in nature. The form of the order terminating the services coupled with the background facts clearly leads to the conclusion that the order impugned in the writ petition by the appellant was punitive."

15.By way of Reply, the Learned Counsel for the Respondents submits that the Petitioner joined duty as 'Masalchi', in the Court of the Judicial Magistrate No.II, Chengalpattu on

01.03.2007 and within a week of his joining duty, he was on 'Unauthorised Absence' from duty for the period from 07.03.2007 to 13.03.2007 and at the time of joining on 14.03.2007, he submitted a Leave Application on 'Medical Grounds' and by taking a lenient view, his 'Unauthorised Absence' was treated as 'Extraordinary Leave on Medical Certificate'. Once again, the Petitioner had not reported to duty from 01.06.2007 onwards and hence, the Learned Judicial Magistrate No.II, Chengalpattu, sought an explanation on 05.06.2007 from the Petitioner and also reported the same to the Higher Authorities. Because of the reason that the Petitioner failed to submit his explanation, he was issued with a Memo dated 18.07.2007 by the Learned Judicial Magistrate No.II, Chengalpattu, who directed the Petitioner to appear in person, failing which, he would be terminated from service by initiating 'Disciplinary Proceedings', as he was working on 'Temporary Basis'.

16.The Learned Counsel for the Respondents contends that the Petitioner appeared and submitted his explanation for his 'Unauthorised Absence' from 01.06.2007 to 23.07.2007 i.e. for 53 days on 'Medical Grounds' and requested that he may be permitted to join duty on 24.07.2007 and his absence may be treated as 'Leave on Loss of Pay'. The Learned Counsel further proceeds to point out that the Learned Judicial Magistrate No.II, Chengalpattu, vide letter dated 25.07.2007, had forwarded the same to the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu, who, in turn, granted 'Extraordinary Leave on Medical Certificate' without Pay and Allowances. Again, the Petitioner had not turned up for duty on 15.11.2007 after availing 'Casual Leave' for three days from 12.11.2007 to 14.11.2007 and till 28.11.2007.

17.It is the version of the Respondents that the Learned Judicial Magistrate No.II, Chengalpattu, in her Memo dated 28.11.2007, had called for explanation from the Petitioner for his absence from 15.11.2007 by Registered Post with Acknowledgment Due. But, the same was returned 'Unserved' with an endorsement 'Intimation Delivered, Not Claimed' and the same was informed to the Third Respondent on 07.12.2007. In fact, the Learned Judicial Magistrate No.II, Chengalpattu, on 14.02.2008, while reporting to the Third Respondent about the 'Unauthorised Absence' of the Petitioner from 14.11.2007, had stated that the Petitioner, from the date of joining duty in the Judicial Department, had not attended the Office regularly and he was in the habit of absenting from duty unauthorisedly on many occasions. Furthermore, he is of an adamant nature and insubordinate to his superiors and hence, he may be terminated from service. A copy of the Report had also been submitted to the Second Respondent.

18. On behalf of the Respondents, it is submitted that the Third Respondent, considering the report of the Learned Judicial Magistrate No.II, Chengalpattu, Entire Enquiry File and Service Register of the Petitioner, by his proceedings dated 12.06.2008, had terminated the Petitioner from service with effect from 14.11.2007. Being not satisfied with the same, the Petitioner had preferred WP.No.26086 of 2009 and this Court, by order dated 17.12.2009, had dismissed the said Writ Petition as 'Withdrawn' with an observation to pursue the Appeal Remedy, if he is so advised.

19. According to the Respondents, the Petitioner filed an Appeal on 30.12.2009 before the First Respondent (Appellate Authority) praying for reinstatement with all Service and Monetary Benefits. He filed WP.No.18067 of 2018 and this Court on 17.07.2018 had directed the Registrar General, High Court, Madras, to take necessary follow up steps to communicate the Order passed in the Appeal within a period of two weeks from the date of receipt of copy of this order. Consequently, this Court on 24.10.2018, confirmed the order of the Third Respondent/Chief Judicial Magistrate, Kancheepuram District @ Chengalpattu dated 12.06.2008. Apart from that, it is the stand of the Respondents that the Petitioner, who was terminated from service on 12.06.2008, had not chosen to prefer an Appeal within two months as prescribed under Rule 27(3) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

20. The Learned Counsel for the Respondents contends that the Petitioner had failed to discharge the duties assigned to him in a satisfactory manner. Further, he was in the habit of absenting himself from duty without any prior intimation to the Office and he was adamant in nature and was Insubordination to his superiors. This would be evident from the perusal of the Reports submitted by the Learned Judicial Magistrate No.II, Chengalpattu to the Third Respondent/Chief Judicial Magistrate, Kancheepuram @ Chengalpattu.

21. The Learned Counsel for the Respondents submits that eleven months after the termination, the Petitioner instead of filing an Appeal, had sent a Representation to the Registrar (Administration), High Court, Madras on 18.05.2009 seeking to re-consider the Termination Order passed by the Third Respondent, which was forwarded to the Third Respondent, who, in turn, declined to consider the same, on 14.10.2009. Subsequently, the Petitioner had filed an Appeal before the First Respondent/Registrar General, High Court, Madras, only on 30.12.2009, that too, after withdrawing the Writ Petition in W.P.No.26086 of 2009 assailing the Order of the Third Respondent. Further, neither in the Representation to the First

Respondent nor in the Appeal, which was filed after 15 months of delay, contain any reason for the delay in preferring the Appeal.

22.The Learned Counsel for the Respondents comes out with an argument that within a period of 8 months from the date of his appointment on 01.03.2007 to 14.11.2007, the Petitioner 'being a Probationer', remained absent unauthorisedly for three times covering a total period of about 76 days. Besides this, the Petitioner was 'insubordinate' to his superiors and 'adamant' in character. Hence, the belated Appeal filed by the Petitioner (being Temporary Masalchi) has no merit for reversing the Termination Order. Moreover, the report filed by the Learned Judicial Magistrate No.II, Chengalpattu, about the Petitioner's record, does not support his case for a favourable order for continuing his service as 'Masalchi'.

23.The Learned Counsel for the Respondents cites the decision of the Hon'ble Supreme Court in Kunwar Arun Kumar v. U.P.Hill Electronic Corporation [(1997) 2 SCC 191] at spl.pages 192 and 193, wherein, at paragraph 5, it is observed as under:

"5.The petitioner challenged the order of termination in the High Court. The High Court without going into the question whether or not it is a stigma, came to the conclusion that the respondents had totally lost confidence in the appellant and that he was totally unsuitable for the job for which he was employed and, therefore, he was found not entitled to any enquiry. Consequently, it dismissed the writ petition. Shri Sehgal, learned Senior Counsel for the petitioner, contends that the finding recorded amounts to a stigma; action taken without conducting enquiry and giving an opportunity to the petitioner, is violative of Article 311(2) of the Constitution and the rules made thereunder. Therefore, he is entitled to an opportunity of being heard and be dismissed only on the ground of misconduct and not by termination simpliciter. We do not agree with the learned counsel. The reasons mentioned in the order may be a motive and not a foundation as a ground for dismissal. During the period of probation, the authorities are entitled to assess the suitability of the candidates and if it is found that the candidate is not suitable to remain in service they are entitled to record a finding of unsatisfactory performance of the work and duties during the period of probation. Under these circumstances, necessarily the appointing authority has to look into the performance of the work and duties during the period of probation and if they record a finding that during that probation period, the work and performance of the duties were unsatisfactory, they are

entitled to terminate the service in terms of the letter of appointment without conducting any enquiry. That does not amount to any stigma. If the record does not support such a conclusion reached by the authorities, a different complexion would arise. In this case, they have recorded the finding that the petitioner was regularly absent on one ground or the other. Under these circumstances, the respondents terminated his services. We do not find any illegality in the action taken by the respondents."

24. Be it noted, a 'Probationer' has no right to hold a post and his service can be terminated at any point of time, based on 'Unsuitability'. A termination of 'Probationer' for unsatisfactory service is 'Termination Simpliciter' and it is not a case of 'Stigmatic Termination', in the Considered Opinion of this Court.

25. A 'Probationer' is entitled to be 'Discharged' if it is found that he is unsuitable for the post, which he is holding and this can be done without adhering to the ingredients of Article 311 of the Constitution of India.

26. It must be borne in mind that the word 'Probation' means 'Testing of one's capacity, conduct or character, especially before he is admitted to a 'Regular Employment'. If within the original or extended period of Probation, the 'Appointee' is found to be 'Unsuitable' for a 'Permanent Absorption', then, an 'Employer' can pass an order terminating the 'Probationary Appointment' and put an end to the 'Jural Relationship'.

27. In fact, the termination of an Employment of a person holding a post on 'Probation' without any 'Enquiry' whatsoever will not deny him any right to a post and therefore, there is no 'Punishment', in the eye of Law. That apart, 'Fitness' for the job is one of the main reasons for a person's confirmation.

28. At this stage, this Court cites the decision in *Konsam Joykumar Singh v. Union Territory of Manipur and others* reported in AIR 1963 Manipur, page 25 at special page 26, wherein, at paragraph 7, it is observed and held as under:

"7. A probationer has no right to the post held by him and as such a termination of his employment does not carry with it any evil consequences. The expression "discharge" terminating the employment of a public officer is not decisive. Even an order discharging a

temporary public servant may or may not amount to dismissal. Whether it amounted to an order of dismissal depended upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. [AIR 1958 SC 36 and AIR 1961 SC 177, Relied on]."

29. This Court further refers to the decision of the Hon'ble Supreme Court in *Rajesh Kohli v. High Court of Jammu and Kashmir* and another reported in (2010) 12 SCC 783 at spl. pages 790 and 791, wherein, at paragraphs 18 to 22, it is observed as under:

"18. During the period of probation an employee remains under watch and his service and his conduct is under scrutiny. Around the time of completion of the probationary period, an assessment is made of his work and conduct during the period of probation and on such assessment a decision is taken as to whether or not his service is satisfactory and also whether or not on the basis of his service and track record his service should be confirmed or extended for further scrutiny of his service if such extension is permissible or whether his service should be dispensed with and terminated. The services rendered by a judicial officer during probation are assessed not solely on the basis of judicial performance, but also on the probity as to how one has conducted himself.

19. The aforesaid resolution taken by the Full Court on its administrative side clearly indicates that the matter regarding his confirmation or otherwise or extension of his probation period for another one year was considered by the Full Court but since his service was not found to be satisfactory on consideration of the records, therefore, the Full Court decided not to confirm him in service and to dispense with his service and accordingly recommended for dispensation of his service. On the basis of the aforesaid recommendation of the High Court, an order was passed by the Government of Jammu and Kashmir dispensing with the service of the petitioner.

20. These facts clearly prove and establish that the order of termination of service of the petitioner was not issued by the Jammu and Kashmir High Court but it only recommended his termination as his service was not found to be satisfactory. The aforesaid recommendation was accepted by the Government which finally ordered the termination of his service. The aforesaid order was an order of the competent authority and issued by the Government of Jammu and

Kashmir. Since the said order was issued by the competent authority, it was a valid order and should be treated as such, although it was specifically not issued in the name of the Governor.

21. In the present case, two orders are challenged, one, which was the order of the High Court based on the basis of the resolution of the Full Court and the other one issued by the Government of Jammu and Kashmir on the ground that they were stigmatic orders.

22. In our considered opinion, none of the aforesaid two orders could be said to be a stigmatic order as no stigma is attached. Of course, the aforesaid letters were issued in view of the resolution of the Full Court meeting where the Full Court of the High Court held that the service of the petitioner is unsatisfactory. Whether or not the probation period could be or should be extended or his service should be confirmed is required to be considered by the Full Court of the High Court and while doing so necessarily the service records of the petitioner are required to be considered and if from the service records it is disclosed that the service of the petitioner is not satisfactory it is open for the respondents to record such satisfaction regarding his unsatisfactory service and even mentioning the same in the order would not amount to casting any aspersion on the petitioner nor could it be said that stating in the order that his service is unsatisfactory amounts to a stigmatic order."

30. Moreover, in Pavenendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences, reported in (2002) 1 SCC 520 at spl. pages 528, 529 and 530, the Hon'ble Supreme Court at paragraphs 21 and 29, held as follows:

"21. One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."

"29. Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz.

what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."

31. Apart from that, in the decision of the Hon'ble Supreme Court in Chaitanya Prakash v. H.Omkarappa reported in (2010) 2 SCC 623, the facts are that the services of the respondent were terminated by the appellant company. During the period of probation, his services were not found to be satisfactory and he was also given letters for improvement of his services and his period of service was also extended and ultimately the company terminated him. As a matter of fact, the Hon'ble Supreme Court, after referring to a catena of decisions, came to the conclusion that the impugned order of termination of the respondent was not stigmatic.

32. In the present case, it is not in dispute that the Petitioner joined duty as 'Masalchi' on 01.03.2007 in the Court of the Judicial Magistrate No.II, Chengalpattu. He remained absent unauthorisedly for the period from 07.03.2007 to 13.03.2007. He submitted a Leave Application on 'Medical Grounds' and by adopting a lenient view, his 'Unauthorised Absence' was treated as 'Extraordinary Leave on Medical Certificate'. As a matter of fact, the Petitioner, from 01.06.2007, had not turned up for duty and that, he submitted his explanation to the Learned Judicial Magistrate No.II, Chengalpattu and he was directed to appear in person through Memo dated 18.07.2007 and accordingly, he appeared in person and offered his explanation for his 'Unauthorised Absence' from 01.06.2007 to 23.07.2007 for 53 days on 'Medical Grounds' and requested that he may be permitted to join duty on 24.07.2007 and his absence may be treated as 'Leave on Loss Pay'. The Third Respondent had granted 'Extraordinary Leave on Medical Certificate' without Pay and Allowances to the Petitioner.

33. Again, the Petitioner had not turned up on 15.11.2007 after availing Casual Leave for three days from 12.11.2007 to 14.11.2007 and till 28.11.2007. When an explanation was called

for from the Petitioner for his absence from 15.11.2007 by Registered Post with Acknowledgment Due, the same was returned 'unserved' with an endorsement 'Intimation Delivered, not Claimed' and the same was informed to the Third Respondent/Registrar General, High Court, Madras on 07.12.2007. The Learned Judicial Magistrate No.II, Chengalpattu on 14.02.2008 had informed the Third Respondent about the 'Unauthorised Absence' of the Petitioner from 14.11.2007 stating that the Petitioner had not attended the office regularly and he was in the habit of absenting from duty unauthorisedly on numerous occasions. Further, he is of an adamant nature and insubordinate to his superiors and hence, he may be terminated from service and also submitted a copy of the Report to the Second Respondent.

34. More importantly, the Learned Judicial Magistrate No.II, Chengalpattu had reported that when she enquired the Petitioner about his attitude of absenting from duty without any prior intimation to office, the Petitioner was not willing to do the work in the Judicial Department as he was initially serving as Advocates' Clerk in Tambaram Criminal Court and earned more money compared to the monthly salary in the Department.

35. The Petitioner preferred WP.No.26086 of 2009 and this Court, vide order dated 17.12.2009, had dismissed the said Writ Petition as 'Withdrawn' with an observation to pursue the Appeal Remedy if the Petitioner was so advised. Also that, the Petitioner filed an Appeal before the First Respondent on 30.12.2009 praying for reinstatement with all Service and Monetary benefits. He filed WP.No.18067 of 2018 and this Court, on 17.07.2018, had directed the First Respondent to take necessary follow up steps to communicate the order passed in the Appeal within a period of two weeks from the date of receipt of copy of this order.

36. There is no second opinion of a primordial fact that the First Respondent through Letter dated 24.10.2018 confirmed the Order of the Third Respondent dated 12.06.2008.

37. In regard to the Plea of the Petitioner, in the Impugned Order of the First Respondent dated 24.10.2018, it was mentioned that the Petitioner's First Representation to the Registrar (Administration) on 18.05.2009 much beyond the period prescribed under Rule 27(3) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Further, in the Counter of the First Respondent, it is averred that the Petitioner had not preferred an Appeal within two months as prescribed under Rule 27(3) of the aforesaid Rules. Such being the stand of the First

Respondent, when the termination of the Petitioner was on 12.06.2008 and this Court, on 17.12.2009 in WP.No.26086 of 2009 had granted Liberty to the Petitioner to prefer an Appeal before the First Respondent, this Court is of the considered opinion that the same cannot be put against the Petitioner, after a period of nearly 9 years.

38.In the instant case, the Petitioner was a 'Probationer' and his service was not regularised. In fact, he is a frequent/habitual absentee. From the date of his appointment on 01.03.2007 to 14.11.2007, he was on 'Unauthorised Absence' during three times for a total period of 76 days. His position is that of 'Temporary Masalchi' and further, his conduct was not a good one, because of the fact that he was insubordinate towards his superiors and was of adamant character. Only after taking into consideration of all the relevant attendant factors, the Hon'ble High Court, Madras, had passed the impugned order in ROC.No.200/2010/C1 dated 24.10.2018 affirming the order of the Third Respondent dated 12.06.2008.

39.Looking at from any angle, the Order of Termination dated 12.06.2008 cannot be characterised, by any stretch of imagination, to be a case of 'Stigmatic One'. Consequently, the Impugned Order of the First Respondent dated 24.10.2018 is free from any Legal Flaw.

40.In fine, the Writ Petition is dismissed, leaving the parties to bear their respective costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

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Sub Assistant Registrar

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To

1.The Registrar General,
High Court,
Chennai - 600 104.

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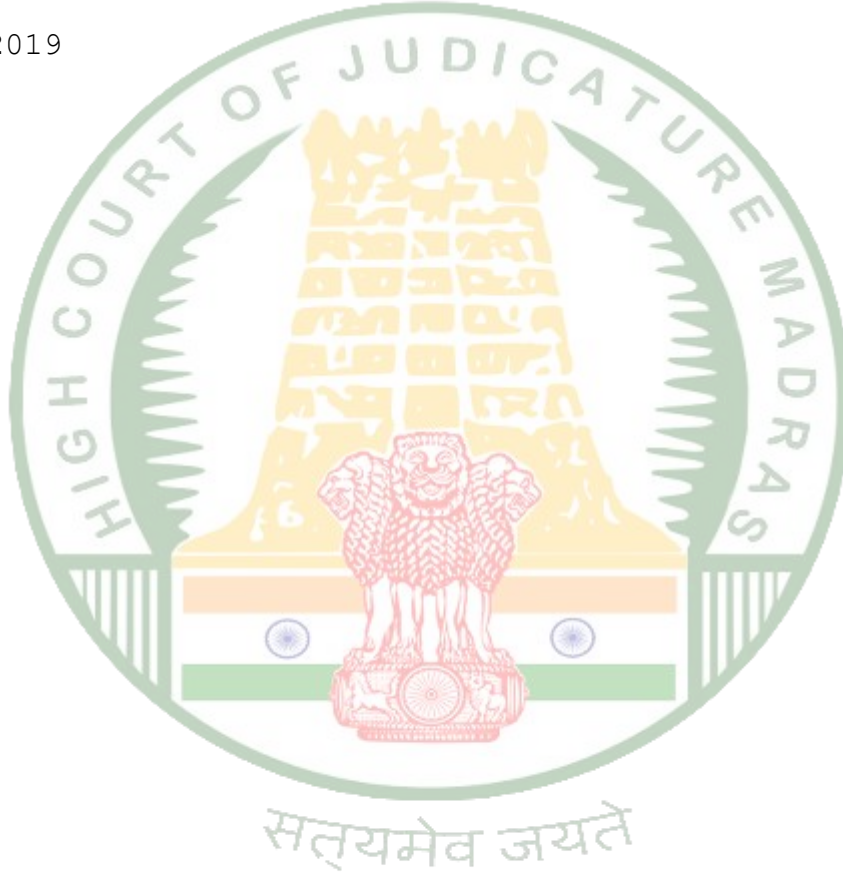
2.The Principal District Judge,
Kancheepuram District,
Chengalpattu.

3.The Chief Judicial Magistrate,
Kancheepuram,
Chengalpattu.

+lcc to Mr.M.Muthappan, Advocate sr.26669

W.P.No.31959 of 2018

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