



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.09.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.7438 of 2010
and
M.P(MD)No.2 of 2010

K.Mariselvam

: Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Chennai - 09.

2. The Commissioner of Municipal Administration,
Municipal Commissionerate, Chennai.

3. The Municipal Commissioner,
Kadayanallur Municipality,
Kadayanallur,
Tirunelveli District.

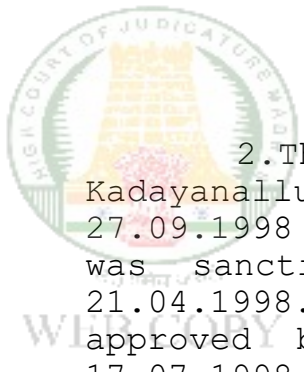
: Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, Writ of certiorarified mandamus, to call for the records pertaining to the order of the first respondent issued in G.O.(Pa) No.171 Municipal Administration and Water Supply (NA.PA.3) Dept, dated 09.04.2010 and set aside the same and further directing the respondents herein to reinstate the petitioner as sweeper (sanitary worker) in the service of the Kadayanallur Municipality with back wages, with all service benefits and continuity of service in the interest of justice.

For Petitioner	: Mr.K.P.Krishna Doss
For R1 and R2	: Mr.R.Murugan, Additional Public Prosecutor
For R3	: No Appearance

ORDER

This writ petition has been filed by the petitioner for issuing a writ of certiorarified mandamus, to quash the order passed by the first respondent dated 09.04.2010 and to set aside the same and to direct the respondents to reinstate the petitioner as Sweeper in Kadayanallur Municipality with back wages, with all service benefits including continuity of service.



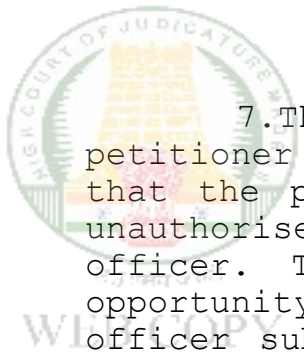
2.The petitioner was appointed as sanitary worker in Kadayanallur Municipality/third respondent, by an order dated 27.09.1998 in a consolidated pay of Rs.1,000/- per month. The post was sanctioned by the third respondent by proceedings dated 21.04.1998. It is stated that the appointment of petitioner was approved by the appointment committee by a resolution dated 17.07.1998.

3.The petitioner did not report for duty from October 2002 to July 2013, stating that the petitioner was suffering from illness and he was forced to take Homeopathic and oil massage treatment in Kerala.

4.The third respondent issued a show cause notice on 10.03.2005, seeking explanation from the petitioner for his unauthorised absence for a long time. Though the petitioner submitted his explanation, denying the charges, the third respondent, after ordering domestic enquiry, accepted the findings of enquiry officer and imposed punishment dismissing the petitioner from service after issuing second show cause notice. After dismissal of the petitioner from service, the petitioner preferred an appeal before the second respondent. The appeal was dismissed by the second respondent, by order dated 12.12.2006. Thereafter, the petitioner filed a mercy petition to the first respondent to set aside the order of dismissal passed by the third respondent and confirmation order of the second respondent. The mercy petition filed by the petitioner was before the second respondent. Thereafter, the second respondent forwarded the same to the first respondent. However, the first respondent passed an order rejecting the mercy petition. Challenging the same, the present writ petition is filed by the petitioner.

5.The learned counsel appearing for the petitioner submitted that the impugned order was passed without considering the petitioner's representation on merits and hence, it is liable to be quashed for total non application of mind. The learned counsel further submitted that the respondents failed to consider the medical certificates issued by the Doctors and other materials to show that the petitioner was really suffering from illness and that he was compelled to take treatment in Kerala.

6. The counsel for the petitioner further stated that though there was a long absence the punishment of dismissal is excessive. It is also contended by the petitioner's counsel that the order of suspension was revoked and that therefore, the impugned order imposing the punishment of dismissal from service is not legal, after the reinstatement of petitioner withdrawing the order of suspension. Absolutely there is no merit in any of the contentions of the counsel for the petitioner in this case.



7.The third respondent, passed the order dismissing the petitioner from service based on the findings of the enquiry officer that the petitioner has not given valid explanation for his long unauthorised absence. No material was produced before the enquiry officer. The enquiry was conducted properly after giving full opportunity to the petitioner by the enquiry officer. Enquiry officer submitted his report stating that the charges against the petitioner was proved. It is seen that the petitioner himself has admitted that he had not given any explanation for his long unauthorised absence or valid reasons for failure to given an intimation to the Establishment, in which he was in service. Oral intimation pleaded was not proved.

8.In the said circumstances, the findings of the enquiry officer is unassailable. The third respondent is justified in passing an order in accordance with the Tamil Nadu Municipal (Non-Centralised Regular) Public Health Establishment Discipline and appeal Regulations 1977. Further the appeal filed before the second respondent was also dismissed and the first respondent, is not supposed to consider the matter afresh and the petition filed by the petitioner to review the order passed by the respondents 2 and 3, cannot be interfered with unless there is patent illegality or glaring omission.

9.Having regard to the facts admitted, this Court is unable to find any reason to interfere with the order passed by the first respondent, especially when the first respondent in the present case has considered the issues raised by petitioner and passed a reasoned order.

10.The plea of the petitioner that he is ignorant of service rules and regulations, was not accepted.

11.As a result, this Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,

<https://hcservices.secreto.in/hcservices> Chennai - 09.



2.The Commissioner of Municipal Administration,
Municipal Commissionerate,
Chennai.

+1 CC to Spl.GP (SR-86152[F] dated 10/09/2019)

W.P (MD) No.7438 of 2010
and
M.P (MD) No.2 of 2010
09.09.2019

DAS

MK (30.09.2019) 4P 4C