

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 04.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.15872 of 2009

R.Nagalakshmi

...Petitioner

Vs

1. The Commissioner of Social Welfare,  
Chepauk, Chennai - 600 005.

2. The Collector,  
Krishnagiri,  
Krishnagiri District.

...Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the Second Respondent in Na.Ka.31585/08/X-1 dated 16.04.2009 and quash the same and direct the Respondents to reinstate the Petitioner in service with all attendant benefits.

For Petitioner : Mr.P.Rajendran

For Respondents : Mrs.R.J.Radhika  
Government Advocate

O R D E R

By this writ petition, the impugned order of dismissal dated 16.04.2009 of the second Respondent is challenged.

2. The Petitioner was engaged as a Noon Meal Organizer at the Panchayat Union Elementary School, C.Gettur from 01.10.2004. Previously she was engaged as a Community Nutrition Worker at Chinnakothur, Village, Shoolagiri Panchayat Union, Hosur Taluk, Krishnagiri District from 20.03.1995. In the year 2007, the Petitioner's husband was admitted in hospital due to a severe back problem (disc-related issues). In those circumstances, she submitted a leave application requesting for two months leave from 01.07.2007 to 31.08.2007. According to the Petitioner, her husband's health condition did not improve; consequently, she continued to remain on leave and forwarded leave applications. This contention is refuted by the Respondents.

3. In these circumstances, a warning notice dated 09.09.2008 was issued to the Petitioner. In response thereto, the Petitioner submitted an explanation on 29.10.2008. Upon receipt thereof, a communication dated 05.01.2009 was sent on behalf of the District Collector to the Commissioner stating that an explanation had been submitted by the Petitioner for her absence by enclosing a medical certificate in support thereof, wherein she also requested for permission to resume duty because her husband's health condition had improved sufficiently. However, by the impugned order dated 16.04.2009, the Petitioner was dismissed from service by citing the communication dated 23.03.1994 from the Commissioner, Community Health Department, to the effect that if a person is absent from duty unauthorisedly for more than two months, proceedings should be initiated to dismiss such person from service. The present writ petition is filed in these facts and circumstances.

4. I heard Mr.P.Rajendran, the learned counsel for the Petitioner, and Ms.R.J.Radhika, the learned Government Advocate for the Respondents.

5. The learned counsel for the Petitioner pointed out that the Petitioner availed leave on account of the ill health of her husband and admittedly submitted a leave letter for the period from 01.07.2007 to 31.08.2007. Even as regards the period subsequent thereto, he points out that along with the explanation dated 29.10.2008, the Petitioner enclosed medical records and that this is evident from the communication dated 05.01.2009 on behalf of the Collector, wherein reference is made to the same in paragraph 3 thereof. In spite of providing such explanation, he submits that the impugned order was passed without conducting an enquiry and without taking into consideration the explanation provided by the Petitioner. By drawing reference to the impugned order, he pointed that the explanation is adverted to in paragraph 3 of the impugned order. But the conclusion at paragraph 4 thereof does not evidence any consideration of the said explanation. In addition, he submits that the Petitioner did not commit an offence involving moral turpitude. In such circumstances, the punishment meted out to the Petitioner is grossly disproportionate to the offence.

6. On the contrary, the learned Government Advocate, Mrs.Radhika, submits that the Petitioner submitted a leave letter for the period from 01.07.2007 to 31.08.2007 but no medical certificate was enclosed in support thereof. As regards the period subsequent thereto, she submits that the Petitioner did not turn up for duty from 01.07.2007 for a considerable period of time in excess of one year. Consequently, the warning notice dated 09.09.2008 was issued to her. She also referred to the communication dated 29.08.2008 from the Block Development Officer to the Collector advertizing to the circular dated 23.03.1994 with regard to the

requirement of initiating action to dismiss an employee who is absent for more than two months without due authorisation. She also placed the said circular dated 23.03.1994 before the Court, Accordingly, she submits that it is not a case of unauthorized absence for a limited duration. The Petitioner herein was unauthorizedly absent for an inordinate period of time and offered an explanation only after the warning notice dated 09.09.2008 was issued to her. She further points out that given the nature of work of a Noon Meal Organizer, the students of the school are put to great hardship and, in that context, the offence of unauthorized absence is a serious offence which warrants the punishment which was meted out to the Petitioner.

7. Upon consideration of the submissions of the learned counsel for the respective parties and on examining the impugned order, it is evident that no formal enquiry was conducted. While it is stated that the Petitioner had not provided an address for communication and, therefore, she could not be put on notice in respect of the enquiry, the fact that the Petitioner received the warning notice and provided an explanation thereto belies the aforesaid contention. Moreover, in light of the imposition of the major penalty of dismissal from service, an enquiry should have been conducted by providing a reasonable opportunity to the Petitioner.

8. In addition, it is clear from the proceedings dated 05.01.2009 of the Collector that the explanation dated 29.10.2008 from the Petitioner was received and that a medical certificate was enclosed therewith. The impugned order also adverts to the receipt of an explanation from the Petitioner. However, after adverting to the explanation, the impugned order does not disclose any reasons for rejecting the explanation. Moreover, the punishment imposed for the offence of unauthorized absence, which is fundamentally different from misappropriation or receipt of unlawful gratification or other offences involving moral turpitude, appears to be grossly disproportionate. In any event, the impugned order dated 16.04.2009 is vitiated on account of the non-consideration of the explanation of the Petitioner. Accordingly, the said order is not sustainable and is hereby quashed. As a corollary, the Petitioner shall be reinstated without back wages. Nonetheless, it is made clear that it is open to the Respondents to initiate a fresh enquiry after putting the Petitioner on notice and providing a reasonable opportunity to the Petitioner. Any disciplinary action pursuant thereto, including the nature of punishment, shall be taken by reckoning the observations in this order.

9. This writ petition is disposed of on the above terms. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Social Welfare,  
Chepauk, Chennai - 600 005.

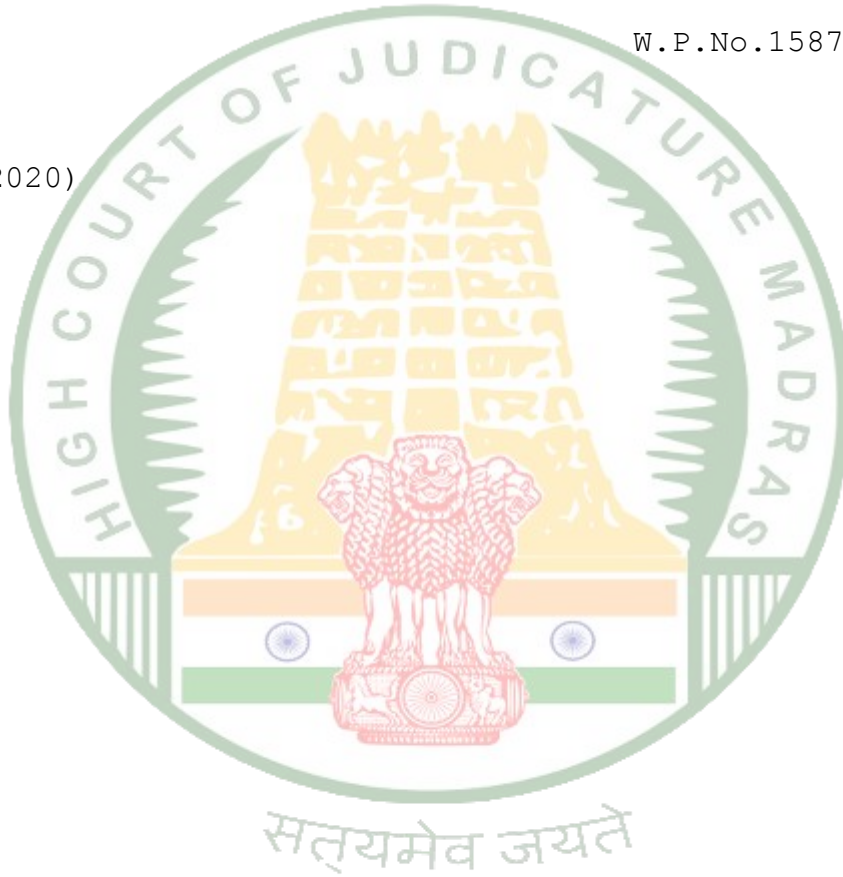
2. The Collector,  
Krishnagiri,  
Krishnagiri District.

+1cc to Mr.P.Rajendran, Advocate, S.R.No.39180

+1cc to the Government Pleader, S.R.No.39312

W.P.No.15872 of 2009

NMI (CO)  
RV (31/12/2020)



WEB COPY