

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.26303 of 2012

P.Vanithakumari .. Petitioner

-VS-

1. The Government of Tamil Nadu
rep. by its Principal Secretary to Government,
Public Health and Family Welfare (I-1) Department,
Fort St. George, Chennai-600 009.

2. The Special Commissioner of
Indian Medicine and Homeopathy, Near Anna Arch,
Poonamallee High Road, Chennai-600 106.

.. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent relating to his order bearing G.O.(D) No.310, Public Health and Family Welfare (I-1) Department, dated 24.3.2011 confirming the order of the 2nd respondent bearing Proceedings No.438/Ni2/1/2006 dated 29.8.2008 and quash the said order dated 24.3.2011 and direct the respondents to reinstate the petitioner in service with continuity of service and backwages and other attendant benefits.

For Petitioner :: Mr.S.Ayyathurai

For Respondents:: Mrs.A.N.Thambidurai

Special Government Pleader

WEB COPY
ORDER

Heard learned counsel for the parties through video conferencing due to the Covid-19 pandemic.

2. The Special Commissioner of Indian Medicine and Homeopathy, the second respondent herein has passed the impugned order imposing the punishment of dismissal from service against the petitioner, for the reason that the petitioner, who joined the Government service in the year 1998, is a member of the Siddha section of the Government Primary

Health Centre at Valathi in Villupuram District, went on long leave absents herself for over 1170 days, therefore, she is not fit for the Government job. Accordingly, he imposed the punishment of dismissal from service, as against which, the petitioner filed appeal before the first respondent and the same was also dismissed. Aggrieved thereby, the present writ petition has been filed.

3. Mr.S.Ayyathurai, learned counsel appearing for the petitioner submitted that after the petitioner joined the Government service in September, 1998 in the Sidha Section of the Government Primary Health Centre at Valathi, Villupuram District, she was suffering from chronic ulcer, gastritis and stomach pain frequently due to which she became weak and therefore, she had to take medical treatment by going on leave intermittently by submitting the leave applications with medical certificates. While so, she visited with the charge memo dated 2.12.2006 alleging unauthorized absence calling for explanation and on receipt of the said charge memo, the petitioner also submitted a detailed explanation denying the charge and further explaining her health conditions with a request to condone her absence from duty, but without satisfying with the explanation offered by the petitioner, the second respondent ordered for an inquiry. One Siddha Medical Officer of Kanchipuram District conducted the inquiry. But the inquiry was not properly and fairly conducted, in accordance with the principles of natural justice and no witnesses like Medical Officer of the Primary Health Centre concerned was examined in the inquiry. Therefore, the petitioner informed the second respondent that she is inexperienced in facing the domestic inquiry and therefore, she requested the assistance of a lawyer/office bearer of the union but the said request was rejected and that the inquiry was only an empty formality. Although the petitioner produced all the relevant documents like the medical certificates and copies of the leave letters, the inquiry officer wrongly submitted his report holding that the charges levelled against the petitioner stood proved.

4. Explaining further, Mr.S.Ayyathurai, learned counsel, bringing to the notice of this Court the report of the inquiry officer, submitted that when the counter affidavit filed by the respondents shows that the petitioner absented from duty for over a period of 1170 days, the inquiry report wrongly states that she was absent from duty for a period of 1270 days. That also shows that the inquiry officer has not gone deep into the vital and crucial aspect, for the reason that when the counter affidavit states that only on some occasions, extraordinary leave have not been regularized, the report

given by the inquiry officer against the petitioner that she was absent from duty for over 1170 days is not correct. Accepting the report of the inquiry officer, the disciplinary authority, the second respondent also wrongly imposed the punishment of dismissal from service, which is disproportionate to the charges levelled and subsequently proved. As the petitioner is having still seven years of service and now the Government of Tamil Nadu has also enhanced the retirement age to 59 years, she has got another eight years of service. Hence, the absence of the petitioner from duty may be condoned and let the respondents reasonably modify the punishment of dismissal from service into any other punishment of increment cut or otherwise, as the petitioner is also prepared to forego the entire backwages, so that the petitioner may be able to rejoin duty, as she is having long years of service. He has also relied upon a judgment of the Supreme Court in *Krushnakant B. Parmar vs. Union of India* and another reported in 2012 (3) LLN 116 (SC) dealing almost a similar case, wherein the Supreme Court modified the punishment of dismissal from service into one of reinstatement with 50% backwages. Therefore, a similar indulgence may be shown to the petitioner, for which the petitioner would be grateful and would also devote her entire further service in the interest of the department after joining duty.

5. Opposing the above prayer, Mr. A.N. Thambidurai, learned Special Government Pleader appearing for the respondents, supporting the stand taken in the counter affidavit filed by the respondents, submitted that the petitioner frequently went on extraordinary leave from 04.12.98 to 23.1.99 for 51 days, again from 2.2.99 till 23.3.99 for 50 days. Once again she went on extraordinary leave for 57 days from 26.3.99 to 22.5.99. Even after some time, from 15.10.99 till 19.10.99 for five days she went on extraordinary leave without medical certificate, again for 20 days, from 16.7.2001 to 14.08.2001 she was on extraordinary leave on Medical Certificate and for 114 days till 26.11.2001 from 05.08.2011. In this manner, almost for 1170 days, she absented for duty, out of which, the leave of 102 days have not been regularized, for which the petitioner failed to give explanation. Therefore, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules to the petitioner and dissatisfied with her explanation, the second respondent appointed an inquiry officer. During the inquiry also, the petitioner was given a fair opportunity and she has also acknowledged that the inquiry was conducted as per the principles of natural justice. Therefore, the petitioner cannot say that she was not given a fair opportunity to defend the charges.

<https://hcservices.ecomn.gov.in/hcservices/> File No. 17, as the second respondent was unable to manage

the duties assigned to the petitioner, in view of her long and unauthorized absence, he imposed the punishment of dismissal from service. As against which the petitioner filed appeal before the first respondent, who also found that the petitioner was frequently absenting from duty for almost a period of three years i.e., 1170 days, of which the leave of 102 days have not been regularized and that agreeing with the order passed by the second respondent, dismissed the appeal. Therefore, when the final fact finding authority agreed with the order of dismissal from service, on the ground that the petitioner is incorrigible person in view of her long absence from duty, if the same is modified, then every one will be following the same, as a result the regular work in the office would be put to sabotage. Since the allegation against the petitioner is very serious, as she remained absent for more than three years without any explanation whatsoever, out of which the leave of 102 days have not been regularized, this Court cannot show any indulgence on the ground that the petitioner is prepared to forego the entire backwages.

6. I also find some merits on the submissions made by the learned Special Government Pleader for the respondents. The petitioner joined the service of the Government in September, 1998 in the Siddha section of the Government Primary Health Centre at Valathi in Villupuram District. Since she went on frequent medical leave, she was issued with a charge memo dated 21.2.2006 alleging that she unauthorisedly absented from duty and was called upon to submit her explanation. Accordingly, she also submitted her explanation denying the charge. But the second respondent, not satisfied with the explanation, ordered for inquiry and appointed one District Siddha Medical Officer of Kanchipuram District to go into the correctness of the charges levelled against the petitioner. In the inquiry, as per the counter affidavit filed by the respondents, in paragraph-6 therein, it could be seen that the petitioner has stated that she was given a fair chance and she has also admitted that she was satisfied with the inquiry, on 12.2.2007. Therefore, when the petitioner herself acknowledged that she was satisfied with the inquiry, the question as to whether the punishment of dismissal from service imposed by the second respondent that was confirmed by the first respondent, can ever be enquired into by this Court sitting under Article 226. The petitioner was charged that after she joined duty on 16.1.98, she availed leave for the following dates:

Sl.N o.	Leave Period From To	No. of days	Nature of Leave
1	04.12.98 23.01.99	51	EOL
2	02.02.99 23.03.99	50	EOL
3	26.03.99 22.05.99	57	EOL
4	15.10.99 19.10.99	5	EOL without MC
5	16.07.01 14.08.01	20	UEL on MC
6	05.08.01 26.11.01	114	EOL on MC
7	07.04.02 28.04.02	28	EOL on MC
8	05.05.02 21.05.02	17	EOL on MC
9	05.06.02 21.06.02	17	EL on MC
10	16.04.03 30.04.03	15	Not regularized
11	23.08.03 27.08.03	6	EL
12	05.09.03 09.09.03	5	EL
13	16.10.03 15.11.03	31	Not regularized
14	16.11.03 23.01.04	69	UEL on MC
15	25.01.04 28.01.04	4	Not regularized
16	08.03.04 22.03.04	15	UEL on MC
17	23.04.04 23.08.04	93	UEL on MC
18	27.08.04 03.07.05	311	EOL
19	07.07.05 02.03.06	235	EOL
20	16.03.06 05.05.06	52	Not regularized

Sl.N o.	Leave Period From To	No. of days	Nature of Leave
	Total	1195	

7. In view of the above frequent absence from duty out of the service of eight years, the respondents, finding that she is a habitual absentee from duty, rightly ordered for an inquiry. A perusal of the above table shows that out of 1195/1170 days of absence, 102 days have not been regularized. Therefore, when the petitioner during the eight years of service, took medical leave or extraordinary leave for over a period of 3 years and 2 months, I do not find any merit in the arguments by Mr.S.Ayyathurai, learned counsel appearing for the petitioner to condone her lapses, for the reason that she is prepared to forego the backwages. When the petitioner suffered the punishment of dismissal from service on proven charges, this Court, considering the fact that the inquiry was held fairly and properly, is not inclined to interfere with the quantum of punishment. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss/tsi

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Public Health and Family Welfare (I-1) Department,
Fort St. George, Chennai-600 009.

2. The Special Commissioner of
Indian Medicine and Homeopathy, Near Anna Arch,
Poonamallee High Road, Chennai-600 106.

W.P.No.26303 of 2012

PVS (CO)
CB(31/07/2020)