

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4217 of 2019

R.Selvaraj ... Appellant/Petitioner

-vs-

- 1.The Principal Secretary to Government,
Department of Health and Family Welfare,
Secretariat,
Chennai - 600009.
- 2.The Director of Medical Education,
Kilpauk,
Chennai - 600010.
- 3.The Dean,
Annal Gandhi Memorial Govt. Hospital,
Tiruchirappalli - 620017. ... Respondents/Respondents

Appeal filed under Clause 15 of the Letters Patent Act against the order dated 23.07.2019 passed in W.P.No.10461 of 2012.

W.P.No.10461 of 2012 : Writ Petition is filed under Article 26 of the Constitution of India, praying to issue a writ of certioari filed mandamus Calling the records of the 3rd respondent pertaining to his order of removal from service of the petitioner which is made in Pa-Mu-No.7801/Ni6/08 dated 03.03.2009 the order of 2nd Respondent made in Na.Ka.No.24034/CMP 2(2) 09 dated 08.10.2009 and the order of 1st respondent injecting the revision petition of the petitioner in G.O.(10th year) No.1258 dated 22.11.2011 and quash the same consequent to direct the respondents to reinstate the petitioner into service with all attendant benefits

For Appellant : M/s. R.Malaichamy

For Respondents : Mr.Akhil Akbarali
Government Advocate

JUDGMENT

(Delivered by SUBRAMONIUM PRASAD, J.)

Assailing the dismissal of the writ petition, which was filed by the petitioner challenging the order terminating his appointment, the writ petitioner has filed the instant writ appeal.

2. The writ petitioner was appointed as a Telephone Attendant. His services were not regularized. During his first year of service itself, he was absenting himself without taking prior permission and had taken leave often. Consequently, a charge sheet was served on him which has the following 3 Articles of charge :-

"Article - 1

Shri.R.Selvaraj, Telephone Attendant, Annal Gandhi Memorial Government Hospital - Trichy has not yet completed even one year of service. He has availed leave on frequent occasion without prior intimation from the competent authority and thus he has caused inconvenience to the administration.

Article - 2

He did not attend before the Medical Board on 26.09.2008 even though he was appraised by through letter, telegram and messenger in respect of his medical leave applied on 26.09.08.

Article - 3

Thus by the above act, he has violated Rule 19 (2) and 20 of the Tamil Nadu Civil Services (Conduct) Rules."

3. The petitioner gave a reply stating that he was having a medical ailment, without specifying as to what ailment was he suffering from. The petitioner was asked to appear before the Medical Board, which the petitioner did not attend on the ground that he did not receive the letter. The petitioner was asked to appear for an inquiry to which also he did not attend. Since the petitioner did not appear in the inquiry, the Enquiry Officer found the petitioner guilty of the charges. The Disciplinary Authority on the basis of the inquiry report, passed an order of termination against the writ petitioner. The petitioner thereafter filed an appeal before the Director of Medical Education. The Director of Medical Education also after going through the entire material before him, came to a conclusion that the order of removal from service does not suffer from any infirmity. This order

was further taken up before the Revisional Authority. The Revisional Authority too by G.O.(Pathandu) No.1258, Department of Health and Family Welfare (I-2) dated 22.11.2011 upheld the order of removal from service. It is this order which is challenged before this Court in the writ petition.

4. The Writ Court also, after going through the records, did not find any infirmity with the way the inquiry was conducted and the decision making process and therefore, found that there was no perversity in the order and hence, dismissed the writ petition.

5. Heard Mr. R.Malaichamy, learned counsel for the appellant.

6. Learned counsel for the appellant would strenuously contend that the charge sheet is extremely vague inasmuch as it does not specify the days on which he was absent. He would further contend that the Enquiry Officer was biased and the writ petitioner had already given a letter expressing his lack of confidence on the Enquiry Officer and therefore, the Enquiry Officer ought not to have proceeded with the matter. He further states that he was suffering from ailments because of which, he could not attend the proceedings. Lastly, he would contend that for a 16-days absence, the order of termination is shockingly disproportionate. Learned counsel for the appellant strenuously contends that the nature of his ailment had been stated in the reply to the enquiry report which has not been considered. There is no material on record which discloses any form of medical ailment which has been suffered by the petitioner and the mere ipsi dixit of the petitioner cannot be considered.

7. The material on record discloses that right from the very first year of his appointment and that too when the petitioner has not been regularized, he was in the habit of taking leave without permission. The petitioner was asked to appear before the Medical Board, which he conveniently chose not to appear on the ground that he had not received the letter directing him to appear before the Medical Board. However, the learned Single Judge has found that intimation to appear before the Board was sent to him by post which has been received by his wife. It is well settled that the order of the authorities below should not be interfered with by a Writ Court exercising jurisdiction under Article 226 of the Constitution of India unless the order is perverse or that the decision making process is contrary to the principles of natural justice or it is based on nil evidence. We do not find such infirmity in the orders of the authorities below, imposing the punishment of removal from service to the petitioner.

8. In view of the above, no interference is called for and the Writ Appeal is, accordingly, dismissed. No costs.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Department of Health and Family Welfare,
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Chennai - 600009.

2. The Director of Medical Education,
Kilpauk,
Chennai - 600010.

3. The Dean,
Annal Gandhi Memorial Govt. Hospital,
Tiruchirappalli - 620017.

+1cc to Mr.R.Malaichamy, Advocate SR.No.14294

W.A.No.4217 of 2019

NRJK (CO)
GMY (05/03/2020)

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