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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	16.08.2021
Pronounced On	23.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.1768 of 2020
(Through Video Conferencing)

R.Samuel Selvaraj ... Petitioner
Vs.

1.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai - 600 006.

2.Presidency College,
Rep. by its Principal, Chennai.

3.Ulaganatha Narayanasamy Government
Arts College,
Rep. by its Principal, Ponneri. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondents, especially the first respondent relating to his proceedings made in Na.Ka.No.28929/C3/2018, dated 26.02.2019 referring the petitioner to Medical Board and the consequential proceedings of the first respondent made in Na.Ka.No.28929/C3/2018, dated 27.11.2019 issuing instructions the third respondent to regularize the petitioner's leave as Earned Leave without medical certificates and also as Un-earned Leave on medical certificates as recommended by the Medical Board and quash the same as null & void, illegal & invalid and consequently direct the first respondent to regularize the petitioner's leave applied on medical grounds with Medical Certificates issued by the competent Medical Authority attached to Rajiv Gandhi Government General Hospital, Chennai - 600 003 on medical grounds from 22.08.2017 to 02.08.2018 adjusting 540 days of Medical Leave on the account of the petitioner.

For Petitioner : Mr.A.Amalraj

For Respondents: Mr.L.S.M.Hasan Fizal, G.A.



O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to his proceedings made in Na.Ka.No.28929/C3/2018, dated 26.02.2019 referring the petitioner to Medical Board and the consequential proceedings of the first respondent made in Na.Ka.No.28929/C3/2018, dated 27.11.2019 issuing instructions to the respondent to regularize the petitioner's leave as Earned Leave without medical certificates and also as Un-earned Leave on medical certificates as recommended by the Medical Board and quash the same as null and void, illegal and invalid and consequently, direct the first respondent to regularize the petitioner's leave applied on medical grounds with Medical Certificates issued by the competent Medical Authority attached to Rajiv Gandhi Government Hospital, Chennai - 600 003 from 22.08.2017 to 02.08.2018 adjusting 540 days of Medical Leave on the account of the petitioner.

2. The petitioner was serving as an "Associate Professor" with the second respondent Presidency College. He was thereafter transferred to M.R. Government Arts College, Mannargudi. The transfer to the aforesaid college was challenged by the petitioner before this Court in W.P.No.26429 of 2017. While challenging the transfer order, the petitioner took Medical Leave.

3. During the pendency of the said Writ Petition, a compromise was brokered between the petitioner and the first respondent. Consequent to the same, the said Writ Petition was disposed as withdrawn. While disposing the Writ Petition, following observations were made by this Court:-

"3. Considering the submissions of the learned counsel for the parties, the writ petition stands disposed of as withdrawn with the direction to the respondents to consider the regularisation of such period of absence of the petitioner by allowing the leave to the petitioner as permissible to him in accordance with law. Consequently, connected miscellaneous petition is closed. However, in the circumstances, there shall be no order as to costs."

4. The petitioner was thereafter transferred to the third respondent Ulaganatha Narayanasamy Government Arts College by the first respondent on 03.08.2018 vide Na.Ka.No.3716/C3/2018, dated 02.08.2018. In the process, the petitioner ended up taking about 346 days Medical Leave.



5. It is case of the petitioner that the respondents have retrospectively rejected the Medical Leave taken by the petitioner between 22.08.2017 and 02.08.2018 (346 days) merely on the ground that the petitioner was hospitalized only for a period of 6 days between 22.05.2018 and 27.05.2018 because there were no records to substantiate that the petitioner was admitted as an inpatient during the aforesaid period.

6. It is the case of the petitioner that the petitioner was certified to be suffering from medical ailment by the Competent Medical Officers attached to the Rajiv Gandhi Government Hospital, Chennai - 600 003 and was advised to take rest initially for a period of 15 days and thereafter 6 days and thereafter several days. It is therefore submitted that non-grant of Medical Leave for the aforesaid period of 340 days was not justified.

7. The learned counsel for the petitioner further submits that this is contrary to Rule 67 of the Tamil Nadu Fundamental Rules. He further submits that Annexure-II, Part I to the Fundamental Rules specifies the procedure for leave in the case of Government Servants. He submits that if the respondents were of the view that the petitioner was not entitled to Medical Leave, at best, they can initiate disciplinary proceedings to show cause why the leave availed by the petitioner beyond the period of six months was to be rejected. Instead, the respondents have directly passed impugned proceedings by holding that the petitioner was not entitled to 340 of 346 days Medical Leave availed between 22.08.2017 and 02.08.2018.

8. Defending the impugned proceedings, the learned Government Advocate appearing for the respondents, on instructions, submits that admittedly, there are no records to substantiate that the petitioner was hospitalized beyond the period of six days as has been found by the Medical Board vide Letter dated 30.09.2019. He therefore submits that there was no error in the impugned proceedings and this Writ Petition was therefore liable to be dismissed.

9. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the impugned proceedings and all records.

10. The transfer is a necessary concomitant of service in Government. A Government Servant, on being transferred, has to necessarily join duty on transfer and discharge his function and cannot frustrate by taking leave and also want the leave to be treated as Medical Leave.

11. Rule 18(2) of the Fundamental Rules, makes it clear



that a Government Servant who has completed five years of service may avail leave for a period of one year on the strength Medical Certificate and/or study leave under Rule 84 of the Fundamental Rules. Rule 18 of the Fundamental Rule is reproduced below:-

18. (1) Except leave on medical certificate or study leave under rule 84, no Government Servant (Permanent or Approved Probationer), who has not completed five years of service, shall be granted leave of any kind for a continuous period exceeding six months at any one time.

(2) Except on medical certificate or study leave under rule 84 no Government servant (Permanent or Approved Probationer), who has completed five years of service, shall be granted leave of any kind for a continuous period exceeding one year at any one time.

(3) When a Government servant (Permanent or Approved Probationer) does not resume duty after remaining on leave for a continuous period of six months or one year, as the case may be, under sub-rules (1) or (2), or remains absent from duty after the expiry of his leave otherwise than on foreign service; or on account of suspension or on account of leave for employment abroad under section II-A of the Tamil Nadu Leave Rules, 1933 for any period which, together with the period of leave granted to him, exceeds the limit, he shall be liable for disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules.

12. As per Rule 66 of the Fundamental Rules, it is the Appointing Authority who is competent to sanction leave on production of such Medical Certificate. As per Rule 71 of the Fundamental Rules, a Government Servant who has been granted leave as also a Government Servant who has not been granted leave is required to produce medical certificate of fitness in Form Annexure 1-A to the Fundamental Rules. The Government has also framed Rules under Rule 74 of the Fundamental Rules subject to the instructions of the Comptroller and Auditor-General of India for granting leave.

13. As per Rule 9(a)(i)(c) of the aforesaid Rules framed under Rule 74 of the Fundamental Rules, the recommendation of the Medical Board shall be compulsorily obtained where a Government Servant applies for Un-earned Leave on Medical Certificate after orders transferring him/her to another post, place and etc. are issued to him/her, irrespective of the period



of leave applied for, before sanction of the leave.

14. Under Rule 18 of the Fundamental Rules, discretion is vested with the Competent Authority to proceed Departmentally against a Government Servant for remaining absent without appropriate and without any proof on medical.

15. As per Rule 9(A) framed under the aforesaid Rules, before leave is sanctioned, the recommendation of Medical Committee shall be compulsorily obtained.

16. The first respondent as an Appointing Authority has forwarded the Medical Certificates submitted by the petitioner to the Medical Board for the purpose of regularising the leave availed by the petitioner during the period between 22.08.2017 and 02.08.2018 (346 days) in terms of Rule 9 framed under Rule 74. Rule 9 reads as under:-

9. Every certificate of a medical committee or a medical officer recommending the grant of leave to a Government servant must contain a proviso that no recommendation contained in it shall be evidence of a claim to any leave not admissible to the Government servant under the terms of his contract, or of the rules to which he is subject.

17. Vide G.O.Ms.No.460, Finance (FR.II), dated 21.04.1976, order was issued stipulating a reference to the Medical Committee in certain cases, as to avoid misuse of availing of Un-earned Leave on Medical Certificates. In cases, where the Un-earned Leave on Medical Certificates exceeds two months, the recommendation of the Medical Committee was felt necessary for the sanction of Un-earned leave.

18. In Personnel and Administrative Reforms (Fr.11) Department Memo No.1642/78-2, dated 22.03.1978, the Government had also given some instructions to avoid misuse of Un-earned Leave on Medical Certificate. Relevant Portion of the said Memo reads as under:-

3. The Government after consideration of the point made by the Director of Medical Education agree with him and direct that the Head of Departments shall refer all the cases, which are required to be referred to the Medical Committee with reference to the G.O.Ms.No.460, Finance (FR.II), dated 21.04.1976, immediately after the receipt of such applications for Un-earned Leave on Medical Certificate before the expiry of the leave applied for. In cases, where the individual could not be



on medical certificate need not be granted to him but the absence may be regulated by sanctioning other categories of leave to which, the individual may be eligible.

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19. Under the Rules framed under Rule 74 of the Fundamental Rules, a Medical Officer should not recommend the grant of leave in any case where it appears that there are no reasonable prospects that the Government Servant concerned will ever be fit to resume his duties. In such cases, the opinion that the Government Servant is permanently unfit for Government service should be recorded in the Medical Certificate.

20. By Personnel and Administrative Reforms (FR.III) Department Letter No. 16213A/FRIII/87-10 dated 26.02.1988, it was clarified as under:-

3. After careful consideration of the above points, the Government direct that where a Government Servant applied for Un-earned Leave on Medical Certificate on or after the date of issue of the order, transferring him to another post, place, etc. irrespective of the period of leave applied for, the recommendation of the Medical Committee shall be compulsorily obtained (To be more specific, in all cases, where Un-earned Leave on Medical Certificate is applied for, on receipt of the posting order by the individual transferring him to another post/place, the recommendation of the Medical Board shall be obtained). Failure to refer such cases to Medical Board within the stipulated time after receipt of application for Un-earned Leave on Medical Certificate will entail disciplinary action against those responsible in office, as already indicated in Letter No.655114/82-6, dt.08-04-83.

21. In the present case, the leave on medical grounds coincides with petitioner's transfer to M.R.Government Arts College, Mannargudi vide order dated 18.08.2017 of the first respondent in Na.Ka.No.28929/C3/2017-2. The petitioner started availing leave from 22.08.2017 to 02.08.2018 (346 days). It is too much of a coincide that the petitioner should avail Medical Leave during the aforesaid period when he questioned to transfer to the said college. Medical Leave was not sanctioned by a Competent Authority as the petitioner was transferred from the second respondent Presidency College to M.R. Government Arts College, Mannargudi and failed to join duty there. If the petitioner was genuinely unwell, he was certainly entitled to avail Medical Leave as per Rule 18 of the Fundamental Rules. However, the facts indicate that he was not unwell all through.



22. In the present case, barring production of Medical Certificate from different registered Medical Practitioners of Government College/Hospital, there is no evidence to substantiate that the petitioner had undergone any medical treatment. It is evident that the petitioner had availed leave to frustrate the transfer order and therefore attempted to legitimise his absence by producing Medical Certificates. The fact also indicates that the petitioner was not suffering from any serious illness for being absent for a period of 346 days. What is discernible is that the petitioner wanted to frustrate the transfer order dated 18.08.2017 of the first respondent in Na.Ka.No.28929/C3/2017-2, whereby, the petitioner was transferred from second respondent Presidency College to M.R. Government Arts College, Mannargudi.

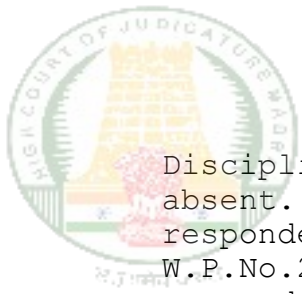
23. Such absence cannot be condoned as Medical Board has concluded that the petitioner has not substantiated any serious illness warranting absence from duty. The petitioner should have first joined the duty at the M.R. Government Arts College, Mannargudi and thereafter applied for leave. Instead, the petitioner failed to join service at M.R. Government Arts College, Mannargudi and filed Writ Petition.

24. As per Rule 67 of the Fundamental Rules, leave cannot be claimed as of right. When exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.

25. The moment a compromise was brokered and the petitioner was transferred to third respondent Ulaganatha Narayanasamy Government Arts College in Ponneri, the petitioner's illness disappeared. The petitioner promptly joined the third respondent Ulaganatha Narayanasamy Government Arts College pursuant to the posting order dated 02.08.018.

26. Discretion whether to initiate Disciplinary Proceeding under Rule 18(3) of the Rules or not is vested with the first respondent. The petitioner cannot insist that without Disciplinary Proceeding, leave availed cannot be cancelled is without merits. The petitioner cannot claim any privilege based on the Medical Certificates, the content of which have been found to be not true. The petitioner cannot insist on Disciplinary Proceedings for cancelling leave in as much as the leave was sanctioned by the Appointing Authority in the first place.

27. The petitioner had merely sent Medical Certificates to the second respondent college though the petitioner had been transferred to M.R. Government Arts College, Mannargudi. Therefore, it was open for the first respondent to initiate



Disciplinary Proceedings against the petitioner for being absent. However, it is the discretion vested with the first respondent. Further, by an order dated 03.08.2018 in W.P.No.26429 of 2017, this Court had indirectly hinted the first respondent to regularise the leave on Medical Certificates in terms of the existing rules and regulation. The respondents have considered the same and have passed the impugned orders.

28. Therefore, I do not find any merits in the contention of the petitioner questioning the decision of the first respondent to forward the petitioner to Medical Board and the consequential order dated 27.11.2019 of the first respondent.

29. In the light of the above discussion, this Writ Petition is dismissed. No cost.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

- 1.The Director of Collegiate Education,
College Road, Nungambakkam,
Chennai - 600 006.
- 2.The Principal,
Presidency College, Chennai.
- 3.The Principal,
Ulaganatha Narayanasamy Government Arts College,
Ponneri.

+1cc to Mr.A.Amalraj, Advocate, S.R.No. 42161

+1cc to the Government Pleader, S.R.No.42628

W.P.No.1768 of 2020

NK(CO)
GN(17/09/2021)