IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2020

PRONOUNCED ON : 20.10.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.P.NOS.48653 OF 2006 & 33145 OF 2007
AND
M.P.NOS.2 OF 2006 & 1 OF 2007

M.Gurulakshmanan ... Petitioner in both W.Ps.

.Vs.

1. The State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Revenue Department,Fort St.George,
   Chennai - 600 009.

2. The Special Commissioner &
   Commissioner of Revenue Administration,
   Chepauk, Chennai - 600 005. ... Respondents in both W.Ps.

PRAYER IN W.P.NO.48653 OF 2006:-

Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorari to call for the entire records connected with the impugned order of the 1st respondent in G.O.(2D).No.390, dated 31.07.2006 and quash the same.

PRAYER IN W.P.NO.33145 OF 2007:-

Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus to call for the entire records connected with the impugned order of the 1st respondent in G.O.(D).No.115 dated 09.03.2007 rejecting petitioner's Review Petition dated 01.07.2006 and confirming the orders passed by the 1st respondent in G.O.(D).No.504, Revenue dated 13.07.2005 and the orders passed by the 2nd respondent in his proceedings in Na.Ka.No.Ser2(2)/102466/2002 dated 28.02.2003 is arbitrary, illegal and contrary to the material on record and against the provisions of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and quash the same and to direct the respondents to grant all attendant benefits such as regularization of leave, pay and allowances for the period from 05.11.2002 to 26.03.2003 etc.

For Petitioner in both W.Ps. : Mr.S.Sathia Chandran

For Respondents : Mr.P.Chinnadurai Additional Government Pleader in both W.Ps.

C O M M O N O R D E R

W.P.No.48653 of 2006 has been filed seeking for issuance of writ of certiorari to quash the impugned order dated 31.07.2006 in G.O.(2D).No.390 on the file of the first respondent.

2. W.P.No.33145 of 2007 has been filed seeking for issuance of writ of certiorarified mandamus to quash the impugned order of the 1st respondent in G.O.(D).No.115 dated 09.03.2007, in and by which, rejecting the petitioner's Review Petition dated 01.07.2006 and confirming the orders passed by the 1st respondent in G.O.(D).No.504, Revenue dated 13.07.2005 and the orders passed by the 2nd respondent in his proceedings in Na.Ka.No.Ser2 (2)/102466/2002 dated 28.02.2003 with a consequential direction, directing the respondents to grant all attendant benefits, such as, regularization of leave, pay and allowances for the period from 05.11.2002 to 26.03.2003 etc., to the petitioner.

3.1 The brief facts in W.P.No.48653 of 2006 is as follows :

3.2 According to the petitioner, he has joined as a Junior Assistant in the Revenue Department on 02.09.1974 and then, he was functioning as Tahsildar in various places in Erode District, till 29.12.2000. On 30.12.2000, he was promoted as Deputy Collector, subsequently, he was discharging his duties as Personal Assistant (Elections) to the District Collector till 31.05.2001. From 09.07.2001 to 05.11.2002, he was served as Special Deputy Collector, Grievance Cell, Theni. From 27.03.2003 to 08.10.2005, he was served as District Backward Classes Welfare Officer, Salem District. From 07.11.2005, he was posted and functioning as Special Deputy Collector (Srilankan Refugee Transit Camp) Trichy. In all such posts, he has been discharging his duties with due diligence, care and to the satisfaction of his superiors. It is further stated that he was working as a Special Deputy Collector (PGRC), Theni from 09.07.2001 onwards.

Subsequently, on 03.06.2003, the second respondent issued a Charge Memo dated 01.05.2003 in C.C.No.ser2(2)/104457/2002 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 containing the following charges:

> ''i. Preparation of the list of beneficiaries containing 3567 persons only when it was decided to extant benefits to 3747, during the Hon'ble Chief Minister's visit to Theni District on 16.09.2002 and thereby put the District Administration in difficulty to prepare a new list of 3747 beneficiaries.
>
> ii. Submitting of extraneous and irrelevant replies to the Urgent Office Note issued by the District Collector.
>
> iii. Instead of forwarding a grievances redressal petition from one S.V.Sundaram with regard to Pujariship to the Joint Commissioner, HR & CE enquired the same and prepared the orders.
>
> iv. Preparation of the above said order without seeking advice from higher officers which could have led to passing of wrong orders by the District Collector.
>
> v. In the enquiry so conducted in relation to charge No.3, the non-attestation of 5 out of 9 depositions, the exhibits etc.''

To the said Charge Memo, the petitioner duly submitted his explanation on 10.06.2003. Thereafter, on 24.12.2003, an oral enquiry was conducted, however, not even a single witness in support of the charges against the petitioner was either proposed or examined. It is further stated that the petitioner requested the Inquiry Officer to permit him to cross examine 7 witnesses, who were connected to the said charges and to that effect, he has also preferred a petition addressed to the Inquiry Officer. However, the Inquiry Officer by proceedings dated 01.04.2004 rejected the request of the petitioner holding that cross examination of the said witnesses was irrelevant and extraneous to the matter and the same may cause unnecessarily delay in the disposal of the disciplinary proceedings. Subsequently, he filed a petition dated 25.04.2004 to the Inquiry Officer requesting that the matter may be placed for consideration by the Government. On 28.05.2004, the Inquiry Officer proceeded with the enquiry, without waiting for the Government orders. Further, the petitioner submitted his deposition in writing and also requested the Inquiry Officer to consider the relevancy of the exhibits submitted by him and no order was passed on their admissibility by the Inquiry Officer. It is further stated that the Inquiry Officer submitted his report holding that the charges levelled against the petitioner were proved. Based on the same, the first respondent in G.O. (2D).No.390 dated 31.07.2006, awarded a punishment of stoppage of increment for two years without cumulative effect. Aggrieved over the same, the petitioner has come forward with the present writ petition.

4.1 The brief facts in W.P.No.33145 of 2007 is as follows :

4.2 According to the petitioner, while he was working as a Special Deputy Collector (PGRC), Theni, by an order dated 02.11.2002, he was appointed as Revenue Divisional Officer, Tirunelveli and was relieved on 05.11.2002 F.N. However, he could not join in the new post, due to his mother's ill health and he applied for Earned Leave for 25 days from 05.11.2002 and the same was duly informed to the second respondent. The second respondent by telegram dated 04.12.2002, directed the petitioner to join duty as Revenue Divisional Officer, Tirunelveli forthwith, failing which disciplinary action would be initiated. It is further stated that from 07.12.2002 to 22.03.2003, he was placed under compulsory wait, due to administrative reasons, thereafter, on 21.03.2003, he was directed to join duty as District Backward Classes Welfare Officer, Salem and he has joined in the said post on 27.03.2003. Subsequently, the second respondent by proceedings dated 22.04.2004, regularised the period of break in service of the petitioner from 05.11.2002 to 26.03.2003 as Earned leave, based on the request made by the petitioner dated 06.02.2003.

4.3 It is further stated that the second respondent by its letter dated 26.12.2002 issued a show cause notice charging the petitioner under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules holding that the petitioner had not joined in the new post without applying for leave and also did not report to duty without prior intimation. To which, the petitioner submitted his explanation dated 23.01.2003. However, the second respondent by its order dated 28.02.2003 in Na.Ka.No.Ser2(2)/102466/2002 awarded a punishment of stoppage of increment for six months without cumulative effect. Aggrieved over the same, the petitioner preferred an appeal dated 24.04.2003 before the first respondent.

4.4. It is further stated that the first respondent by its proceedings in G.O.(2D).No.766, dated 22.12.2004, rejected the request of the petitioner to regularise the period of his unauthorised absence from 07.12.2002 upto his joining in the new post i.e. 22.3.2003 as compulsory wait and also requested the second respondent to regularise the entire period of absence from 05.11.2002 to 26.03.2003 as Extraordinary Leave without allowance as there is no provision to regulate the unauthorised absence as eligible leave. Subsequently, the petitioner by petition dated 03.01.2005 requested the first respondent to reconsider the above said order and the same was rejected by the first respondent on 14.07.2005. It is further stated that the first respondent in G.O.(D).No.504, dated 13.07.2005 rejected the appeal preferred by the petitioner. Subsequently, the second respondent by its proceedings dated 12.08.2005 cancelled the order dated 22.04.2004 issued by him treating the period from 05.11.2002 to 26.03.2003 as Extraordinary Leave and ordered recovery of pay and allowances for the said period. Aggrieved over the said orders, the petitioner filed a petition dated 05.10.2005 to the first respondent seeking regularisation of the break in service i.e from 05.11.2002 to 26.3.2003 as Earned Leave, Compulsory Wait and duty joining period, respectively and also filed a Review Petition dated 01.07.2006 seeking to cancel the orders passed against the petitioner inflicting the above said punishment by conveniently suppressing the telegram issued by the second respondent dated 04.12.2002, and since the same were not considered by the Government, the petitioner approached this Court by way of filing W.P.No.44582 of 2006. By order dated 23.11.2006, this Court directed the first respondent to consider the Review Petition filed by the petitioner and pass appropriate orders in accordance with law within a period of four weeks. Subsequently, the first respondent by impugned orders dated 09.03.2007 in G.O.(D).No.115 rejected the Review Petition dated 01.07.2006, thereby confirming the orders passed by the first respondent in G.O.(D).No.504, Revenue dated 13.07.2005 and the orders passed by the second respondent in his proceedings dated 28.02.2003. Challenging the said orders, the petitioner is before this Court with the present writ petition.

5. In W.P.No.48653 of 2006, it is the case of the petitioner that while he was working as a Special Deputy Collector (PGRC), Theni from 09.07.2001 onwards, on 03.06.2003, the second respondent issued a Charge Memo dated 01.05.2003 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 containing the charges relating to preparation of the list of beneficiaries; submitting of extraneous and irrelevant replies to the Urgent Office Note issued by the District Collector etc. and three more charges. Based on the enquiry, he was imposed with punishment as stated above.

6. A reading of the entire typed set of papers, would go to show that for the Charge Memo issued to the petitioner, the petitioner duly submitted his explanation on 10.06.2003. Thereafter, on 24.12.2003, an oral enquiry was conducted. It is the contention of the learned counsel for the petitioner that in

support of the charges against the petitioner, no witness was either proposed or examined and the petitioner was not permitted to cross examine the witnesses.

7. On a perusal of the records, it is clear that the petitioner requested the Inquiry Officer to permit him to cross examine 7 witnesses, who were connected to the said charges and to that effect, he has also preferred a petition addressed to the Inquiry Officer. However, the Inquiry Officer by proceedings dated 01.04.2004 rejected the request of the petitioner holding that cross examination of the said witnesses was irrelevant and extraneous to the matter and the same may cause unnecessarily delay in the disposal of the disciplinary proceedings. Subsequently also the petitioner filed a petition dated 25.04.2004 to the Inquiry Officer requesting that the matter may be placed for consideration by the Government. On 28.05.2004, the Inquiry Officer proceeded with the enquiry, without waiting for the Government orders. The petitioner’s request to the Inquiry Officer to consider the relevancy of the exhibits was also not considered and no order was passed on their admissibility by the Inquiry Officer. The Inquiry Officer submitted his report holding that the charges levelled against the petitioner were proved. Based on the same, the first respondent in G.O.(2D).No.390 dated 31.07.2006, awarded a punishment of stoppage of increment for two years without cumulative effect. Therefore, it is clear that the petitioner was not given a reasonable opportunity to cross examine the 7 witnesses produced on the side of the respondents. Further the request of the petitioner to consider his case and wait for Government Orders, was also not properly taken into account before submitting the inquiry report. Therefore, there is violation of principles of natural justice and for the sole reason, the impugned order is not sustainable. Accordingly, W.P.No.48653/2006 is allowed. The impugned order dated 31.07.2006, is quashed.

8. As far as W.P.33145 of 2007 is concerned, it is his case that while he was working as a Special Deputy Collector (PGRC), Theni, by an order dated 02.11.2002, he was appointed as Revenue Divisional Officer, Tirunelveli. However, he could not join in the new post, due to his mother's ill health and he applied for Earned Leave for 25 days from 05.11.2002 and the same was duly informed to the second respondent. Subsequently, the second respondent by telegram dated 04.12.2002, directed the petitioner to join duty as Revenue Divisional Officer, Tirunelveli forthwith. But from 07.12.2002 to 22.03.2003, he was placed under compulsory wait, due to administrative reasons, thereafter, on 21.03.2003, he was directed to join duty as District Backward Classes Welfare Officer, Salem and he has joined in the said post on 27.03.2003. In such circumstances,

the second respondent by proceedings dated 22.04.2004, regularised the period of break in service of the petitioner from 05.11.2002 to 26.03.2003 as Earned leave, based on the request made by the petitioner dated 06.02.2003. But thereafter, the second respondent on 26.12.2002 issued a show cause notice charging the petitioner under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules holding that the petitioner had not joined in the new post without applying for leave and also did not report to duty without prior intimation. The petitioner also submitted his explanation dated 23.01.2003. However, the second respondent by the impugned order dated 28.02.2003, awarded a punishment of stoppage of increment for six months without cumulative effect. Aggrieved over the same, the petitioner preferred an appeal dated 24.04.2003 before the first respondent. The first respondent by its proceedings in G.O.(2D).No.766, dated 22.12.2004, rejected the request of the petitioner. The petitioner's request to the second respondent to regularise the entire period of absence from 05.11.2002 to 26.03.2003 as Extraordinary Leave without allowance and to reconsider the above said order was also rejected by the first respondent on 14.07.2005. The first respondent rejected the appeal preferred by the petitioner. Subsequently, the second respondent ordered recovery of pay and allowances for the said period. Aggrieved over the said orders, the petitioner filed a petition dated 05.10.2005 to the first respondent seeking regularisation of the break in service i.e from 05.11.2002 to 26.3.2003 as Earned Leave, Compulsory Wait and duty joining period, respectively and also filed a Review Petition dated 01.07.2006, but the said Review was not considered by the Government.

9. The above narration of facts would make it clear that the petitioner has informed the respondent about his mother's ill health condition and unable to join duty and applied leave for 25 days from 05.11.2002. Subsequently, the petitioner was placed under compulsory wait from 07.12.2002 to 22.03.2003, due to administrative reasons. Thereafter, on 21.03.2003, he was directed to join duty as District Backward Classes Welfare Officer, Salem and he has joined in the said post on 27.03.2003. In such circumstances, initially, while the respondents regularised the period of break in service of the petitioner from 05.11.2002 to 26.03.2003 as Earned leave, thereafter, issuing a show cause notice dated 26.12.2002 and thereafter by impugned order, ordering recovery of pay and allowance is not sustainable. The petitioner first of all informed the respondents about his mother's ill health and applied leave. In such condition, the petitioner's eligibility to the leave he applied for has to be taken into consideration. The overstayal after his period of leave is over, is not on the fault of the petitioner but due to administrative reasons and the order of

compulsory wait issued by the respondents. The petitioner's request and his representation in this regard was accepted and his leave period was regularized. However, thereafter converting the entire period as unauthorised absence without looking into the representation of the petitioner about his personal reasons that due to his mother's ill health, he could not join duty, is not at all correct. Therefore, this court is of the considered view that the impugned order is not sustainable and the petitioner's eligible leave is to be taken for regularizing his period of absence. In such view of the matter, this writ petition is allowed. The impugned orders dated 28.02.2003, 13.07.2005, 01.07.2006 and 09.03.2007 are quashed. Further, the respondents are directed to regularize the leave period and grant the eligible attendant benefits such as regularization of leave, pay and allowances for the period from 05.11.2002 to 26.03.2003 etc. to the petitioner, as per Rules.

10. In the result, W.P.Nos.48653 of 2006 and 33145 of 2007 are allowed with the above direction. No costs. Consequently, miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Ms/nvsri

To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Fort St.George,
Chennai - 600 009.

2. The Special Commissioner &
Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.

+2ccs to Mr.S.Sathia Chandran, Advocate, S.R.No.53634
+1cc to the Government Pleader, S.R.No.54274

W.P.NOS.48653 OF 2006 & 33145 OF 2007 AND
M.P.NOS.2 OF 2006 & 1 OF 2007

PCH(CO)
PBS/29/11/2021