

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 31088 of 2004

and

W.P.M.P. 155 of 2005

N.Vasudevan

... Petitioner

-vs-

The Registrar,
Anna University,
Guindy,
Chennai - 25.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondent and quashing the order dated 30.03.2001 made in No. 57452/PR64/98 and consequently direct the respondent to reinstate the petitioner with all back wages and other attendant benefits.

For Petitioner : Mr.P.Solomon Francis

For Respondent : Mr.V.Govardhan
Standing counsel

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the respondent and quash the order dated 30.03.2001 made in No. 57452/PR64/98 and consequently direct the respondent to reinstate the petitioner with all back wages and other attendant benefits.

2. The petitioner was recruited as Watchman on 18.02.1998 and he claimed to have been regularized from 06.04.1999 and according to the petitioner, he applied for leave on 11.01.2000 for a period of one month and again he applied leave on 07.09.2000, for a period of six months without salary. All these leave applications were filed through proper channel. However, there was a charge memo issued against the petitioner, on four counts, which relates to his unauthorized absence for longer period and other connected issues, pursuant to which, according to the petitioner, even though, he sought

for sanctioning of leave, without sanctioning the leave and without giving proper opportunity to the petitioner, the disciplinary proceedings ended in punishment, by the impugned order dated 30.03.2001 passed by the respondent / University, by and under which, the petitioner has been terminated from service. Challenging the said order, the present Writ Petition has been filed.

3. Heard Mr.Solomon Francis, learned counsel appearing for the petitioner, who would submit that, the petitioner's service having been regularized, he is entitled to get sanctioning of leave due to the personal reasons as well as the medical grounds and when this was requested specifically, the said request having been turned out and at one point of time, they issued a charge memo. Despite the fact, due to the family situation, which ended in a criminal case, the petitioner was not in a position to report duty, therefore, he applied for leave on loss of pay, that was not sanctioned by the University. Therefore, the very action taken against the petitioner by the respondent / University in the name of disciplinary proceedings, which abruptly culminated in the impugned order of removal of service, may be interfered by this Court.

4. The learned counsel appearing for the petitioner would also submit that, during the pendency of the Writ Petition, the learned Judge of this Court, having considered the facts of the case, permitted the petitioner to approach the respondent / University by making a representation and a direction was also given by the learned Judge to consider such representation sympathetically by the respondent / University and pursuant to the said order passed by the learned Judge on 11.09.2017, the petitioner has given a representation to consider the request of the petitioner sympathetically and to regularize the leave period which was sought to be sanctioned by various requests of the petitioner and accordingly, the order terminating the petitioner, which is impugned herein, can be reviewed.

5. The learned counsel would further submit that, the said request also, as submitted by the petitioner, pursuant to the orders passed by this Court on 11.09.2017, has been turned out or rejected. This attitude on the part of the respondent / University would clearly indicate that, the respondent / University does not want to face the petitioner for the reasons best known to him and that is the reason, without adopting and conducting the disciplinary proceedings, they abruptly terminated the service of the petitioner, on the alleged ground of unauthorized absence without seeking the leave sought for by the petitioner. Therefore, the impugned order is liable to be interfered with, he contended.

6. However, Mr.V.Govardhan learned Standing counsel appearing for the respondent / University by relying upon the averments made in the counter filed by the University would submit that, the petitioner had been unauthorizedly absent from 24.12.1999, i.e., after about eight months service as a probationer, without even prior intimation or permission and without any proper leave application, he had been absent for longer period and his whereabouts also were not known to the employer. Only in that circumstances, after waited for twenty days, the respondent issued a memo on 13.01.2000, directed the petitioner to report duty immediately and also called for explanation for his unauthorized absence from 24.12.1999.

7. He would further submit that, though the University received an undated letter from the petitioner on 28.02.2000, wherein, he has requested to grant unearned leave on private affairs from 24.12.1999 to 21.04.2000 (i.e., 120 days), since the said request made by the petitioner for sanctioning of leave for such long period nearly four months above, was not feasible for compliance, as the rule does not permit for such sanctioning of leave, that too having been unauthorizedly absent for such period, a charge memo dated 26.07.2000 was issued against the petitioner and explanation also has been called for, as to why, disciplinary proceedings should not be initiated against the petitioner. Instead of giving reply to the said charge memo as well as the show cause notice, the petitioner again on letter dated 10.08.2000, sought for unearned leave for six months. Since the petitioner has not come forward to report duty as initially asked for and subsequently also he has not chosen to give any acceptable reply to the show case and also has not given any explanation to the charge memo served on him and he had been continuously absent for several months, the respondent / University, having completed the disciplinary proceedings, concluded that, for such an unauthorized absence on the part of the petitioner without any valid reasons, he is liable to be punished and accordingly, termination order dated 30.03.2001 was issued, which is nothing but culminating the disciplinary proceedings initiated against him. Therefore, the learned counsel appearing for the respondent submitted that, no interference is called for in the impugned order.

8. As far as, further rejection order now made on the representation of the petitioner which was directed to be considered sympathetically by the orders of this Court, the learned Standing counsel appearing for the respondent submits that, since no sympathy could be shown on the petitioner, as admittedly he was unauthorizedly absent for several months and no plausible reasons can be given by him and based on the serious lapse of the petitioner only, the disciplinary action was initiated and punishment of removal of service was inflicted against him, the same cannot be reviewed merely on any sympathetic ground, according to the respondent, no such sympathetic ground is available. Hence, the said rejection also made on behalf of the respondent can very well be

justified, he contended.

9. I have considered the said submissions made by the learned counsel appearing for the petitioner as well as the respondent and have perused the materials placed before this Court.

10. It is an admitted fact that, from 24.12.1999, continuously the petitioner had been absent for duty. In this regard, even though, within twenty days, a memo was given to the petitioner to report duty, the petitioner had not reported duty and if at all he had been in a position not to attend the office convincingly, he could have extended the same and should have asked for sanctioning of leave, that too only on medical grounds or otherwise.

11. It is to be noted that, for several months, the petitioner has been unauthorizedly absent at his own will and convenience and at one point of time, he came out with a representation for sanctioning of leave for twenty days, which include the days, in which, he had already been unauthorizedly absent.

12. Subsequently also when the charge memo was issued, he has not faced the charge memo and no explanation has been given and instead the petitioner has chosen to give further letter for requesting leave for six months.

13. No employee can go on seeking leave for months together or even to the extent of more than a year, without any basis. If at all, on medical grounds, an employee wants to take a longer leave, he should have applied for such medical leave with supporting documents and even then beyond a particular period, if leave already been taken by the employee, in such a case, the employee concerned would be referred to the Medical Board to get certificate from Medical Board, if it is required or necessary.

14. In the light of the above, no such situation appears to have been available to the petitioner as he has never asked for any medical leave and asked only for unearned leave, for which, the petitioner is not entitled for such long period.

15. Therefore, absolutely there could be no justification on the part of the petitioner being absented for duty unauthorizedly for several months and once charge memo was issued, that was also not properly faced by the petitioner, instead he has chosen to give further application for unearned leave for six months, for which, as stated above, he is not entitled to. Therefore, all the action on the part of the petitioner would go to show that, he had been unauthorizedly absent for several months, for which, absolutely there is no reason from the petitioner side for the acceptance of the respondent.

16. In such a situation, by adopting the course of action, the respondent issued charge memo and subsequently on the basis of the available records as well as looking the response given by the respondent, that too not facing the charge and only seeking further leave, the respondent / University has come to a right conclusion that, he should be terminated from service.

17. Therefore, the said action taken on behalf of the University against the petitioner could not be found fault with and therefore, the subsequent representation given by the petitioner, of course as directed by this Court also cannot be expected to be decided sympathetically, unmindful of the earlier events taken place and culminated in the impugned order.

18. Therefore, this Court feels that, the petitioner has no plausible reason to seek indulgence of this Court to interfere with the impugned order. Accordingly, this Court feels that, this Writ Petition should fail and the same is liable to be dismissed. Hence it is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vji
To
The Registrar,
Anna University,
Guindy,
Chennai - 25.

+1cc to Mr.Row and Reddy, Advocate SR.No. 2359

W.P. No. 31088 of 2004

and

W.P.M.P. 155 of 2005

KV(CO)

A.SK(09.07.2021)