



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2021

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.17058 of 2013

S.Sankara Subbu

... Petitioner

Vs.

1.The Government of Tamil Nadu,
represented by the Secretary to Government ,
Home Department,
(Prisons 2) Fort St. George,
Chennai.

2.The Additional Director General of Prisons,
Annasalai, Chennai - 8.

3.Superintendent of Central Prison,
Palayamkottai, Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records relating to the orders (1) No.6023/P1/2004 dated 03.11.2005 passed by the thrid respondent and confirmed by (2) No.20877/EW.1/2006 dated 25.11.2006 by second respondent and (3) G.O.(D)No.1105 dated 06.10.2008 by third respondent and to quash the same and issue consequential direction to the respondents to take into account the petitioners leave period between 24.07.2004 to 14.09.2004 as medical leave on medical certificate.

For Petitioner : Mr.Jegatha Ayyappan
for Mr.A.Siva Subramanian
For Respondents : Mr.M. Linga Durai,
Government Advocate.

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the third respondent, dated 03.11.2005, as confirmed by the second respondent, by order 25.11.2006, and the third respondent, vide G.O. (D)No.1105, dated 06.10.2008 and to direct the respondents to take into account the petitioner's leave period from 24.07.2004 to 14.09.2004, as medical leave.

2.Heard Mr.Jeganatha Ayyappan, learned Counsel for the Writ Petitioner and Mr.M.Lilnga Durai, learned Government Advocate appearing for the respondents.

3.Brief facts, that are necessary for the purpose of disposal

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of this Writ Petition, are as follows:

3.1.The petitioner was appointed as Second Grade Warden on 26.03.1998 at Trichy and he was transferred to Palayamkottai on 01.01.1999. The petitioner submitted that due to heart ailment, he was admitted in a hospital from 24.07.2004 to 07.08.2004 and that he continued to take treatment even thereafter. It is the case of petitioner that he applied for further leave from 08.08.2004 to 22.08.2004 after getting medical certificate. By proceedings of the third respondent, the petitioner was referred to Medical Board for subjecting himself to medical examination. The petitioner appeared before the Medical Board on 30.08.2004. It is stated by the petitioner as per the advice of the Medical Board, he was asked to take treatment for the period till 13.09.2004.

3.2.Later the third respondent issued proceedings on 13.09.2004, declaring that the petitioner had committed desertion from service as per Rule 128(2) of the Tamil Nadu Prisons Manual Volume-II. Later, a charge memo was issued under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner was charged for being absent without permission from 24.07.2004 to 07.08.2004 and from 08.08.2004 to 22.08.2004. The petitioner submitted his reply on 15.10.2004. Thereafter, an Enquiry Officer was appointed. After conclusion of the enquiry, the third respondent issued second show cause notice. After getting explanation from the petitioner to the second show cause notice, the third respondent passed final order imposing a punishment of reducing the petitioner's present pay by one stage for a period of six months with cumulative effect.

3.3.The petitioner preferred a review before the second respondent and the second respondent, by order, dated 25.11.2006, confirmed the order of the first respondent. Thereafter, the petitioner filed a further appeal to the first respondent and the first respondent vide G.O.(D)No.1105, dated 06.10.2008, confirmed the order passed by the respondents 2 and 3. Challenging the orders passed by the respondents 1 to 3, imposing a punishment by reducing the petitioner's present pay by one stage for the period of six months with cumulative effect, the above Writ Petition is filed.

4.The learned Counsel appearing that the petitioner submitted that the punishment was imposed without an application of mind and without considering the documents produced by the petitioner to prove his illness. It is the case of the learned Counsel for the petitioner that the petitioner was admitted in the hospital on 24.07.2004 and that he promptly intimated the same to the third respondent followed by a medical certificate. Since the petitioner was forced to take leave due to medical reasons, it is contended by the learned Counsel for the petitioner that the petitioner was unnecessarily asked to appear before the Medical Board, despite he



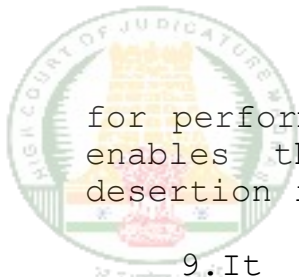
leave on medical ground. It is also contended by the learned Counsel appearing for the petitioner that the findings of the Enquiry Officer and the Disciplinary Authority are not based on evidence and that therefore, they are perverse.

5.The respondents have filed the counter affidavit justifying the orders passed by the respondents 1 to 3. It is to be noted that the petitioner did not report duty for the period from 24.07.2004 to 07.08.2004 and thereafter, from 08.08.2004 to 22.08.2004. The petitioner was asked to appear before the Medical Board by a communication dated 16.08.2004. Even after 22.08.2004, the petitioner did not report duty till 12.09.2004. Therefore, by an order, dated 13.09.2004, the petitioner was declared as deserted. Even after receiving the order on 14.09.2004, the petitioner came with a story that he was admitted in hospital as inpatient from 30.08.2004 to 03.09.2004. The charge against the petitioner was that the petitioner was unauthorisedly absent for a long period and tried to justify by getting medical certificate thereby, exhibits dishonesty without a passion or attachment to service.

6.The fact that the petitioner did not report duty for a long period is not disputed. Though the petitioner has submitted leave application for the first spell by producing medical certificate, the petitioner was asked to appear before the Medical Board after his long leave from 07.08.2004 to 22.08.2004. Even thereafter, the petitioner was absented continuously for another 21 days. Therefore, an order was passed declaring the petitioner as deserted. The petitioner produced certificates to show that he was admitted as inpatient from 30.08.2004 to 03.09.2004. The certificate issued by the Medical Board is contrary to the stand taken by the petitioner. Therefore, the petitioner has acted in a manner unbecoming of a Government servant. The medical report by the Medical Board does not go well with the petitioner's statement that he was compelled to get admission into the hospital as inpatient. Therefore, the charge against the petitioner is proved.

7.The finding of the third respondent regarding misconduct of the petitioner cannot be faulted. The petitioner has come forward with an explanation, which was specifically considered, but rejected by the respondents. It is to be noted that the Medical Board has certified that the petitioner was fit to do his duty in letter, dated 14.09.2004. The petitioner joined duty on 15.09.2004. He applied medical leave for the earlier period upto 22.08.2004, but did not join duty on 23.08.2004.

8.As per Rule 128(1) Tamil Nadu Prison Manual Volume-II, no subordinate officer shall be absent during work hours fixed for his attendance without the permission of Superintendent or Additional Superintendent or Jailor. Any subordinate officer disabled from the performance of duty by illness shall give or send immediate notice



for performance of the duty to the disabled officers. Rule 128(2) enables the authority to declare the unauthorized absent, as desertion if the absence spread beyond 21 days without leave.

9.It is the specific case of the respondents that the petitioner had failed to produce any leave or intimation for a period of 21 days from 23.08.2004. Therefore, the third respondent was right to treat the petitioner as deserted, as per the proceedings, dated 13.09.2004. Despite the fact that the specific charges have been framed by the respondents, the petitioner tried to explain by some story that he was actually suffering from illness. The sequence of events clearly indicates that the petitioner went to the extent of admitting himself in a hospital without a medical condition. Therefore, the third respondent imposed the punishment after considering all the documents, report of the Enquiry Officer and other witnesses, particularly, the report of Medical Board. Since the misconduct committed by the petitioner directly comes under the delinquency, as contemplated under Rule 128, the petitioner is guilty of the charges framed against him. The punishment given to the petitioner is very mild, instead of termination, the petitioner's pay was reduced to one stage of increment for six months with cumulative effect. The punishment does not suffer from any legal infirmity. There is no irregularity or illegality either in the decision or in the decision making process. This Court has no reason to interfere with the order of the first respondent. Hence, this Writ Petition is liable to be dismissed and accordingly, dismissed. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:

- 1.The Secretary to Government,
The Government of Tamil Nadu,
Home Department,
(Prisons 2) Fort St. George,
Chennai.
- 2.The Additional Director General of Prisons,
Annasalai, Chennai - 8.
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