



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**W.P(MD)No.22073 of 2021
and
W.M.P(MD)Nos.18681 & 18682 of 2021**

S.Senthil Kumar

...Petitioner

Vs.

1.The Registrar General,
Hon'ble High Court of Judicature at Madras,
Chennai - 600 104.

2.The Principal District Judge,
Dindigul @ Dindigul District.

3.The Enquiry Officer / Judicial Magistrate,
Fast Track Court (Magisterial Level),
Palani,
Dindigul District.

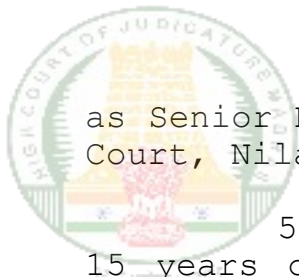
4.The District Munsif,
Nilakkottai,
Dindigul District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records in connection with the impugned rejection order passed by the first respondent in his proceedings in Order : R.O.C.No.78285/2019/C1 dated 23.03.2021 by confirming the dismissal order passed by the second respondent in his proceedings in D.P.No.3/2017/A1 dated 14.06.2018 and quash the same and consequently direct the respondents 1 and 2 to reinstate the petitioner into service with all attended monetary benefits with continuity of service.

For Petitioner : Mr.Sathish Babu

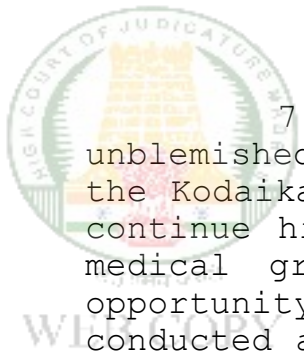
For Respondents : Mr.G.Thalaimutharasu,
Standing Counsel



as Senior Bailiff in the year 2014 and posted at the District Munsif Court, Nilakkottai.

5.The learned counsel would further submit that during his 15 years of long service, he rendered unblemished service without any default and to the utmost satisfaction of his superiors and by proceedings, dated 09.12.2004, the petitioner was transferred on deputation to the District Munsif cum Judicial Magistrate, Kodaikanal. Since the petitioner has got respiratory problem, he could not continue his service at Kodaikanal, since it is a hill area. Therefore, he made a request to the authorities concerned for transfer to the plain area. However, his request was not considered for a long time. Therefore, on 11.02.2015 he applied for leave on medical ground for one year from 11.02.2015 to 10.02.2016, after giving due information, he left for taking treatment. During the period of deputation, due to his family problem, he could not concentrate on his work and after solving all the problems, when he approached the fourth respondent in the month of November 2016, the petitioner submitted a letter to rejoin duty and the same was not accepted by saying that he shall report before the second respondent. The petitioner could not approach the second respondent and even the second respondent did not allow him to make his submission in person and he had no occasion to express his grievance before the authorities concerned. Due to health condition as well as the family problem, he was away from the native and stayed in Kerala for sometime and also in Chennai.

6. The learned counsel for the petitioner would further submit that all of a sudden, he was served with an enquiry report submitted by the third respondent along with notice of the second respondent called for further representation. At that point of time only, he came to know about the disciplinary proceedings initiated against him. Immediately the petitioner approached the second respondent to give his explanation regarding the real situation for not reporting duty during the relevant period, since the second respondent did not allow him to make his submission he could not express his grievance. Subsequently, he was served with an order of dismissal passed by the second respondent on 14.06.2018. Subsequently, he came to know about all the proceedings that were conducted in his absence as ex-parte. Aggrieved over the said order of dismissal, dated 14.06.2018 passed by the second respondent, the petitioner filed a writ petition in W.P.(MD) No.21109 of 2019 before this Court, challenging the said order of dismissal. This Court dismissed the said writ petition giving liberty to file an appeal before the first respondent, by exhausting the alternative remedy by filing an appeal before the first respondent. The petitioner filed an appeal before the first respondent and the first respondent without considering the submission made by the petitioner rejected his appeal. Aggrieved over the same, he has filed the present writ petition.

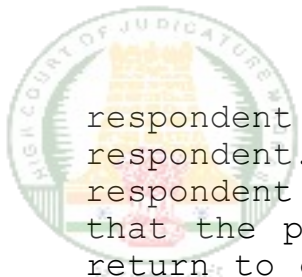


7. The main contention of the petitioner is that he put his unblemished service for the past 15 years. Since he was deputed to the Kodaikanal hill area, due to his health condition, he could not continue his service. Therefore, he applied for un-earned leave on medical ground, for taking treatment and he was not given an opportunity to give his submission and an *ex-parte* enquiry was conducted and based on the report an order of dismissal was passed. Neither the second respondent as a disciplinary authority nor the first respondent as an appellate authority have considered his health condition and also his past conduct and service. Therefore, the punishment awarded to the petitioner seems to be shockingly disproportionate and further it is only an *ex-parte* enquiry and it is clear violation of principles of natural justice and therefore, the dismissal order passed by the second respondent based on the said enquiry report filed by the third respondent, dated 14.06.2018 and also the rejection order passed by the first respondent after two years, dated 23.03.2021 are liable to be set aside and the petitioner to be reinstated with all the consequential benefits.

8. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents and perused the materials available on record.

9. Admittedly, the petitioner was working as a Senior Bailiff lastly before the fourth respondent, during that time he was deputed to the District Munsif cum Judicial Magistrate, Kodaikanal. During the relevant period he was absented himself from duty from 11.02.2015 to 10.02.2016. Though the petitioner has stated that he would submit an application for leave and left for treatment, however, recorded the findings that the petitioner has not submitted any medical certificate and the same was reported to the second respondent. The second respondent asked the fourth respondent to act accordingly, in the manner known to law. Therefore, a show-cause notice was issued to the petitioner and since there was no response and twice it was returned as un-served and lastly served to the petitioner on 03.03.2015. Since the petitioner did not return to duty, he was continuously absented from duty and the charge memo issued under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge memo was sent through the post and the same was returned as 'door locked' and subsequently, it was also sent by registered post and the same was also returned as 'door locked'. Therefore, the petitioner was proceeded with *ex-parte* enquiry. The Enquiry Officer found charge levelled against the petitioner was proved.

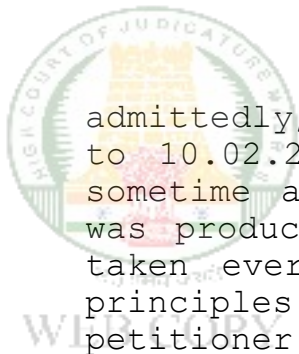
10. It is found that the petitioner submitted an application seeking Extraordinary Leave (EOL) without Medical Certificate for the period from 11.02.2015 to 10.02.2016. The said application was forwarded by the District Munsif cum Judicial Magistrate, Kodaikanal to the fourth respondent. The fourth



respondent in-turn, had forwarded the application to the second respondent. Therefore, the second respondent directed the fourth respondent to act in the manner known to law. Further, it is found that the petitioner after submitting the leave application did not return to duty. The fourth respondent issued an Official Memorandum directing the petitioner to appear within three days from the date of receipt of the Official Memorandum. The delinquent has also received the same on 04.03.2015 and he did not appear. Therefore, the charge memo along with annexure was sent to the petitioner and the same was returned as 'door locked'. Therefore, the enquiry was proceeded with ex-parte after giving sufficient opportunity to the petitioner, the petitioner did not report duty and did not participate in the enquiry proceedings and give his explanation and the third respondent filed an enquiry report before the second respondent. Based on the enquiry report of the third respondent, the second respondent passed an order of dismissal on 14.06.2018. Even thereafter, the petitioner did not file any appeal before the first respondent. who is the appellate authority and he straight-away filed a writ petition before this Court in W.P. (MD) No.21109 of 2019. Since the petitioner did not exhaust the appeal remedy, this Court has also dismissed the writ petition, giving liberty to the Petitioner to file an appeal before the first respondent. Therefore, he filed an appeal before the first respondent and the first respondent also considered the entire facts and also the charges levelled against the delinquent. Since the petitioner has no merit in the appeal, the appeal was dismissed. Challenging the same the present writ petition has been filed.

11.It is settled proposition of law that while invoking Article 226 of the Constitution of India, this Court cannot re-appreciate the facts. Since the disciplinary authority and the appellate authority are the fact finding authorities, have given a finding based on the facts placed before them. Unless there is any perversity or any violation of principles of natural justice or any violation of law, the Writ Court normally will not interfere with the findings of the disciplinary authority and the appellate authorities, which are the fact finding authorities.

12.A reading of the material shows that admittedly the petitioner himself was absented from duty from 11.02.2015 to 10.02.2016. Though he submitted a leave application only through post, even without submitting any medical certificate and when he was asked to report duty, he failed to report duty and also he continuously absented himself from duty. Therefore, a show-cause notice was issued, two times he evaded to receive the same and subsequently, the same was served on him on 03.03.2015 and he did not submit any explanation and therefore, charge-memo was issued. Even thereafter also he did not report to duty. It is the duty of the public servant or employees, while leaving from the Headquarters, have to intimate their address in which they are



admittedly, the petitioner did not attend the office from 11.02.2015 to 10.02.2016 and he has also stated that he was in Kerala for sometime and Chennai for sometime, however no medical certificate was produced to prove his illness. Therefore, the department has taken every efforts at all the level. There is no violation of principles of natural justice and the charge levelled against the petitioner was grave in nature and considering the nature and responsibility of the job, both the disciplinary authority and also the appellate authority have rightly passed the dismissal order and there is no merit in the writ petition.

13.The learned counsel for the petitioner lastly submitted that the petitioner was originally appointed as a Watchman and subsequently, he was promoted to various levels and he was rendering 15 years of service and except this, no other complaint against the petitioner and the order of the punishment of dismissal may be modified to one to go on compulsory retirement.

14.Considering the facts and circumstances that the petitioner was originally appointed as a Watchman in the year 2000 and subsequently, the post was redesignated as Office Assistant in the year 2004 and then promoted as Junior Bailiff in the year 2009 and lastly he was promoted as Senior Bailiff in the year 2014 and served till 11.02.2015, we are of the considered opinion that the punishment of dismissal from service may be altered into compulsory retirement and accordingly, the punishment imposed on the petitioner to dismiss him from service is modified into one to allow him to go on compulsory retirement. He may be paid the retirement benefits as he may be entitled to.

15.With the aforesaid modification, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

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