



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2022

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CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.7937 of 2022

C.Ganesan

...Petitioner

Vs.

1. The Registrar General
High Court of Judicature at Madras
High Court Building
Chennai-104.

2. The Deputy Registrar (Grouping)
High Court of Judicature at Madras
High Court Building
Chennai-104.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the first respondent culminated in the order dated 09.10.2020 passed in proceedings bearing Roc.No.45022-A/2018 Estt-II passed by the first respondent, quash the same and consequently direct the first respondent to reinstate the petitioner as sweeper in High Court, Madras.

For the Petitioner : Mr.N.L.Rajah,
Senior Counsel for
M/s.BFS Legal

For the Respondents : Mr.Karthik Ranganathan

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)



In this writ petition, a challenge is made to the order dated 09.10.2020, whereby the petitioner was imposed with the penalty of compulsory retirement, after conducting disciplinary enquiry into the matter.

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2. The facts on record show that the petitioner absented himself from duty since 14.05.2018. An Official Memorandum was issued on 25.05.2018 directing the petitioner to join duty. The said Memorandum was received by the petitioner on 28.05.2018, but the petitioner did not join duty. He was given another Official Memorandum dated 12.06.2018 directing him to join duty forthwith, failing which, necessary action would be taken against him. The said Memorandum was also received by the petitioner on 14.06.2018. But, the petitioner neither joined duty nor submitted leave application.

3. As the Official Memorandums remain of no avail, the High Court took the decision to proceed against the petitioner under the Tamil Nadu Government Servants (Discipline and Appeal) Rules and accordingly, a charge memo was issued alleging that the petitioner absented himself from duty unauthorisedly since 14.05.2018, which shows gross negligence, non devotion to duty and dereliction of duty, as the petitioner failed to join duty despite the Official Memorandums directing him to join duty.

4. The above charge memo was served on the petitioner with a direction to submit his written statement of defence within 21 days. But, the petitioner failed to submit his written statement of defence within the stipulated time. However, he chosen to submit very lately, namely on 26.02.2019, along with form of questionnaire. Thereafter, the petitioner submitted a leave application on 01.03.2019 for the period from 12.05.2018 to 03.03.2019.

5. An enquiry was conducted by the respondents and the evidence of the Management was considered by the Enquiry Officer. A finding was recorded by the Enquiry Officer that the charges framed against the petitioner were proved. The enquiry report was furnished to the delinquent with a direction to submit his representation, if any, within 15 days from the date of receipt of that Office Memorandum. The petitioner again defaulted in sending his representation despite the fact that the said Memorandum was received on 18.07.2019.

6. The disciplinary authority, after considering the petitioner's application to join duty and the written statement of defence of the petitioner in which he admitted the charges



and pleaded that his absence was not wilful, but on the ground of prolonged illness and also taking note of the period of absence from 14.05.2018 and the ignorance of Office Memorandums directing the petitioner to join duty and in the light of the report of the Enquiry Officer, has passed the impugned order.

7. The petitioner had earlier also conducted himself in the same manner, by remaining absent from duty from 26.12.2012 to 11.12.2013 and suffered a minor punishment of censure. Even then, the petitioner failed to change his conduct. In fact, during the period of enquiry also, the petitioner had submitted his written statement of defence and thereupon, he further remained absent from 09.06.2017 onwards till the passing of the order. Since the petitioner has no devotion to duty and he absented himself from duty unauthorisedly, the Management took a lenient view and passed the order of compulsory retirement, instead of dismissal from service.

8. Admittedly, the repeated deliberate indiscipline on the part of the petitioner cannot be taken lightly, apart from the fact that no reason was given by the petitioner for not responding to the Official Memorandums directing him to join the duty and submitting the written statement of defence belately and again absenting himself from duty till the passing of the order, i.e. order dated 09.10.2020, which is nearly two years.

9. Learned senior counsel appearing for the petitioner submitted that one more opportunity may be given to the petitioner to at least to put forth his defence before the Registrar General. However, the prayer aforesaid has been made without giving reason for not responding to any of the Official Memorandums. It is further that if absence was on the ground of illness, even then, the petitioner was under an obligation to send the leave application along with medical certificate and that too periodically.

10. In the instant case, the petitioner placed on record a prescription of the Doctor to show his health condition. Apart from the said prescription prescribing only one medicine, one certificate has been produced by the petitioner to indicate his ailment. The liberty to enquiry cannot be given by us to fill up the default. The petitioner had produced the certificate dated 21.03.2022 to indicate that he was taking treatment for the last ten years from a Doctor. This is nothing but to fill up the gap without specifying the period of illness, particularly when the petitioner took a decision to file a writ petition. The creation of evidence in this nature cannot be permitted. Rather, evolving



a mechanism to produce the certificate to fill up the gap, by creating documents, would show the conduct of the petitioner.

11. For all the reasons aforesaid, we find no ground to send the matter back for enquiry. Accordingly, the writ petition fails and is dismissed. There will be no order as to costs. Consequently, WMP Nos.7930 and 7931 of 2022 are also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kpl/drm
To:

1. The Registrar General
High Court of Judicature at Madras
High Court Building
Chennai-104.
2. The Deputy Registrar (Grouping)
High Court of Judicature at Madras
High Court Building
Chennai-104.

Copy to

1. The Deputy Registrar(Admin)
High Court, Madras 104.
2. The Sub Assistant Registrar(Estt)
High Court, Madras 104.
3. The Section Officer
Legal Cell, High Court, Madras 104.

+1 CC to M/s.BFS Legal Advocates sr 22833(21/04/2022)

W.P.No.7937 of 2022

MG(CO)
SP(12/04/2022)