



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-06-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.1042 of 2014

D.Chandran

..Petitioner

vs.

1. Government of Tamil Nadu,
Represented by Secretary to Government,
Tamil Development, Religious Endowment
and Information Department,
Secretariat,
Chennai - 600 009.
 2. The Commissioner,
Hindu Religious and Charitable Endowments (Admn.),
Chennai - 600 034.
 3. The Chief Audit Officer,
Hindu Religious and Charitable Endowments (Admn.),
Chennai - 600 034.
- ..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders in (1) Pro.Na.Ka.No.6725/05/J1(4) dated 16.08.2010 of the second respondent and (2) G.O.Ms.No.56, Tamil Development, Religious Endowments and Information (RE2-1) Department, of the first respondent dated 13.02.2013 to quash the said orders and to issue consequential directions to the respondents to declare that the petitioner shall be deemed to have retired from service on 30.06.2013 with all consequential retirement and pensionary benefits and disburse those benefits with interest for the delay.

For Petitioner : Mr.I.Kabilan for
Mr.M.Ravi.

For Respondents : Ms.Geetha Thamaraiselvan,
Special Government Pleader.



O R D E R

The order of dismissal from service is under challenge in the present writ petition. A consequential direction is sought for to declare that the petitioner shall be deemed to have retired from service on 30.06.2013 with all retirement and pensionary benefits.

2. The writ petitioner joined as Junior Assistant on 22.02.1984 in the Hindu Religious and Charitable Endowments Department and promoted to the post of Assistant in the year 1994. The departmental disciplinary proceedings were initiated against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules in proceedings dated 30.04.2008 and the following charges are framed against the writ petitioner:-

"(a) Absence from duty for 1041 days between 14.06.2004 and 11.04.2008 intermittently, as per annexure attached.

(b) Disobedience of orders of Higher Authority by not acknowledging receipt of memos dated 26.09.2005, 20.10.2005, 22.05.2006 and 13.06.2006 in File No.739/2005 sent by Regional Audit Officer, Kancheepuram, and by not submitting explanations.

(c) During the intervening periods, when he was on leave as stated above, he had failed to submit Diaries of works done and to submit audit reports.

(d) Caused inconvenience to the functioning of the office by not attending to his duties and being absent without getting permission and without any reason."

3. The learned counsel for the petitioner made a submission that the petitioner was suffering from heart ailments and was undergoing medical treatment during the relevant point of time. The petitioner states that he was unable to peruse the relevant records and submit his explanations in respect of the charges in time. The third respondent appointed an Enquiry Officer and the said Enquiry Officer conducted the enquiry. The petitioner states that he explained the fact before the Enquiry Officer regarding his heart ailments as there was a block in the blood vessels. The petitioner stated that he was frequently admitted in the Hospital for taking treatment. With reference to other charges also, the petitioner defended his case before the Enquiry Officer.



4. The petitioner himself has stated that the Enquiry Officer provided an opportunity to peruse the relevant documents relating to the charges. However, the petitioner replied by stating that he did not want to peruse any of the documents and further he has not produced any documents on his side. Based on the materials available on record and affording opportunity to the delinquent official, the Enquiry Officer submitted his report and the Disciplinary Authority passed an order dismissing the services of the writ petitioner. The petitioner preferred an appeal and the said appeal was also rejected by the Appellate Authority.

5. The learned counsel for the petitioner mainly contended that the petitioner was not intentionally absented from duty. He was suffering from heart ailments during the relevant point of time and he had submitted those facts before the Enquiry Officer. However, the Enquiry Officer had not considered the fact regarding the ailments and thus the impugned order of dismissal from service and the consequential appellate order, are liable to be set aside.

6. The learned Special Government Pleader appearing on behalf of the respondent objected the said contentions raised on behalf of the petitioner by stating that the petitioner was a chronic absentee and was continuously absent from duty for about 1041 days. He was a habitual absentee and during several occasions lenient view was taken by the Department. The petitioner used to absent himself from duty without submitting leave applications or medical records. Thus, the departmental disciplinary proceedings were initiated and after conducting an enquiry and affording opportunity to the writ petitioner, the final order of dismissal from service was issued by the Competent Authority, which was confirmed by the Appellate Authority. The petitioner himself admitted the fact that an opportunity was given to him by the Enquiry Officer to peruse the records. However, he did not avail the opportunity nor produce any documents to establish his case. Thus, there is no infirmity as such in respect of the departmental disciplinary proceedings concluded by the Authority and the writ petition is liable to be rejected.

7. The learned counsel for the writ petitioner relied on certain judgments passed by this Court. Perusal of those judgments reveal that the facts are distinguishable in view of the fact that the length of absentism and other relevant factors plays a pivotal role in respect of the present writ petition on hand. In certain cases, the absentism was for a short spell and in such circumstances, the Courts have taken a lenient view. However, in the present case, the petitioner remained



8. The points to be considered are (1) whether the Disciplinary Authority had followed the procedures as contemplated under the Discipline and Appeal Rules or not and (2) whether an opportunity as contemplated was provided to the petitioner.

10. The power of Judicial Review under Article 226 of the Constitution of India is to scrutinise the processes through which a decision is taken by the Competent Authority in consonance with the Statute and Rules in force, but not the decision itself. Therefore, the quantum of punishment ordinarily cannot be interfered with by the Courts. Only if the punishment is grossly disproportionate or shocking to the conscience of the Court, then alone the power of Judicial Review is required to be exercised for the purpose of interfering with the order of punishment imposed by the Competent Authority.

<https://hcservices.ecourts.gov.in/hcservices/>



12. In view of the above judgment of the Hon'ble Supreme Court of India, the judgments passed by the learned Single Judges of this Court produced by the writ petitioner with reference to the distinguishable facts need not be considered. Thus, this Court is of the considered opinion that the nature of proved charges, the exercise of power by the Authorities with reference to the allegations are of paramount importance.

13. In the present case, the petitioner was an absentee and remained unauthorisedly absent for about 1041 days. Further, it is contended that the petitioner was having the habit of absenting himself from duty without submitting proper application or medical certificates. All those factors were considered by the Authorities and accordingly, a decision was taken and the petitioner was dismissed from service. The first respondent-Government also considered the nature of allegations, proved the charges and accordingly confirmed the order passed by the Original Authority. There is absolutely no procedural violations and opportunities as contemplated under the Rules were provided to the writ petitioner.

14. This being the factum established, this Court has no hesitation in forming an opinion that the petitioner could not establish any acceptable ground for the purpose of interfering with the quantum of punishment imposed by the Original Authority which was confirmed by the Appellate Authority.

15. Accordingly, the writ petition is devoid of merits and stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Secretary to Government,
Government of Tamil Nadu,
Tamil Development, Religious Endowment
and Information Department,
Secretariat,
Chennai - 600 009.

