



WP No.18035 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-07-2022

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.18035 of 2014

R.Vembulli

..

Petitioner

VS.

The Registrar,
University of Madras,
Centenary Buildings,
Chepauk Campus,
Chennai – 5.

..

Respondent

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 of the respondent in his proceedings in அலுவலக கடித எண்.எப்1(ஆ) பிரிவு/IV/2013/1222 தேதி 17th April 2013 and quash the same and thereby direct the respondent to reinstate the petitioner in the services with all back wages and all benefits.

For Petitioner

: Mr.N.Suresh

For Respondent

: Ms.V.Sudha



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ORDER

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The order of removal from service issued by the respondent-University dated 17.04.2013, is sought to be quashed in the present writ petition.

2. The writ petitioner was appointed as Peon in the University of Madras by the respondent on 08.08.2007 and the petitioner joined duty on 16.08.2007. The petitioner was made permanent on 26.10.2009 after completion of the probation period of two years. The petitioner remained unauthorisedly absent for the period from 30.08.2011 to 10.04.2012.

3. The petitioner states that due to some family circumstances and on account of health issues, he could not report for duty and remained absent. However, the petitioner states that his absence from duty was not willful and due to certain compelling reasons.

4. The respondent-University initiated departmental



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disciplinary proceedings and issued a charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. An Enquiry Officer was appointed, who in turn conducted an enquiry. The petitioner conceded the charges and pleaded guilty with reference to the allegation of unauthorised absence. Thus, the Enquiry Officer hold that the charges against the writ petitioner are held proved. The report of the Enquiry Officer was accepted by the Disciplinary Authority, who in turn imposed the penalty of removal from service. Thus, the petitioner is constrained to move the present writ petition.

5. The learned counsel for the petitioner contended that though the petitioner admitted the allegations of unauthorised absence, the absence was not willful and due to certain compelling circumstances. Thus a lenient view is to be taken in respect of the mitigating circumstances pleaded by the delinquent official.

6. The learned counsel appearing on behalf of the respondent objected the said contention raised on behalf of the petitioner by stating that



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the petitioner was a chronic absentee. It is not the case where on one occasion, the petitioner remained unauthorisedly absent. In fact, the petitioner remained unauthorisedly absent from 18.02.2011 to 01.03.2011 (12 days) and 03.03.2011 to 05.04.2011 (34 days). The petitioner submitted an explanation stating that he could not report for duty due to his family circumstances. Thus, the respondent had taken a lenient view on compassionate grounds and warned about the lapses and the respondent further informed that the petitioner should be more careful in attending the office duty in future. The petitioner was further informed by the respondent that non-compliance of the office orders would be viewed seriously and suitable actions would be initiated against the writ petitioner based on the materials already available on records. Even thereafter, the petitioner submitted Earned Leave applications on medical certificate for his absence from duty and the said leave period was regulated as 'Leave on Loss of Pay' vide proceedings dated 23.05.2009.

7. The learned counsel for the respondent states that the petitioner had availed 235 days of leave during the period between



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08.08.2011 and 10.04.2012. The petitioner had not followed the instructions given by the respondent. Again the petitioner had violated the office orders and remained unauthorisedly absent. He remained unauthorisedly absent for duty from 30.08.2011 to 04.09.2011 and from 03.10.2011 to 09.10.2011 and thereafter he was continuously absent for duty from 10.10.2011 to 10.04.2012 (i.e., 184 days).

8. The learned counsel appearing on behalf of the respondent reiterated by stating that during the first occasion, the respondent has taken a lenient view and regulated the leave as loss of pay. Again the petitioner remained unauthorisedly absent for about 184 days without obtaining any prior permission or intimation from the Authorities concerned. Thus, the respondent initiated departmental disciplinary proceedings against the writ petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner had not submitted any representations/explanations to the charges. During the enquiry, he conceded the allegations of unauthorised absence. Thus, based on the records available, the Enquiry Officer submitted his report holding that the charges



against the writ petitioner are held proved. Based on the proved charges, the punishment of removal from service was issued. Therefore, there is no infirmity with reference to the procedures followed by the authorities and thus, the petitioner is not entitled for any relief.

9. This Court is of the considered opinion that the petitioner was appointed only in the year 2007 and he had completed his probation only on 26.10.2009. He again remained unauthorisedly absent for duty from 2010 onwards. The first spell of leave availed by the petitioner on medical ground was from 08.11.2010 to 04.01.2011 (i.e., 58 days).

10. The respondent states that as per the eligibility, the petitioner is entitled to avail only 10 days for every completed year upto 15 years of service. Therefore, the period of leave for 58 days was regulated as unearned leave on medical certificate, earned leave and leave on loss of pay on medical certificate. The first spell of leave availed by the writ petitioner was regulated and again he remained absent from 18.02.2011 continuously for about about 46 days. The said leave was availed without any prior



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permission or intimation to the Authorities. The said leave period was also regulated as 'Leave on Loss of Pay'. Only during the third occasion, when the petitioner remained unauthorisedly absent for about 184 days, a charge memo was issued and an enquiry was conducted. Therefore, the respondent has taken a lenient view on two occasions i.e., during the years 2010 and 2011 respectively. On the third occasion, the writ petitioner remained unauthorisedly absent for about 184 days. Thereafter, departmental disciplinary proceedings were initiated and before the Enquiry Officer, the petitioner conceded the charges.

11. The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of **Chairman cum Managing Director, Coal India Limited and Another vs. Mukul Kumar Choudhuri and Others [(2009) 8 MLJ 460 (SC)]**. In the said judgment, the Hon'ble Supreme Court considered the principles of disproportionality in the matter of imposing punishment. It is a settled principle that the punishment imposed by the Disciplinary Authority must be in commensuration with the gravity of the proved charges. If the



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punishment is excessive or shocking to the conscience, then the Courts exercising the power of judicial review could interfere with the order of punishment.

12. Therefore, this Court has to consider whether the punishment of removal from service in this case, is excessive or not. The facts are not disputed the unauthorised absence on three occasions were established and on two occasions, the respondent had taken a lenient view and regulated the period of leave as 'Loss of Pay'. Only during the third occasion, when the petitioner remained unauthorisedly absent for about 184 days, the respondent had initiated departmental disciplinary proceedings. Thus, there is no infirmity in respect of the disciplinary action initiated against the writ petitioner.

13. The procedures as contemplated under the Rules were followed. An Enquiry Officer in the rank of Head of the Department of Philosophy was appointed, who in turn conducted an enquiry by affording an opportunity to the charged official. The writ petitioner had not defended



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his case. Contrarily, he had conceded the charges. Therefore, the Enquiry

Officer hold that the charges against the writ petitioner are held proved.

14. When the charges are admitted by the delinquent official, the Supreme Court held that there is no scope for interfering with the orders of punishment unless there are certain acceptable reasons. No doubt, even in cases where the charges of unauthorised absence are admitted by the delinquent official and if such unauthorised absence is sufficiently explained, then the Authorities are expected to take a lenient view and impose minor penalties. In other words, if the unauthorised absence for one spell wherein the charges are framed and admitted by the delinquent official, then the punishment of removal from service was considered as harsh. However, in respect of habitual absentees, no such lenient view can be taken as the unauthorised absence, are to be considered as willfull. Therefore, the facts and circumstances in each case plays a pivotal role and in the present case, the case of the writ petitioner was considered twice in respect of his unauthorised absence and the leave period was regulated.



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15. Pertinently, even during the enquiry proceedings before the Enquiry Officer, the petitioner submitted a representation on 27.09.2012, requested the authorities to permit him to join duty. The Vice Chancellor had taken a lenient view and passed an order, directing the writ petitioner to join duty on the same day i.e., on 27.09.2012 without prejudice to the pending charges framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The incumbent did not report for duty from the next day i.e., on 28.09.2012.

16. The conduct of the writ petitioner in this context is to be considered by this Court. When the petitioner remained unauthorisedly absent for duty for about 184 days and the departmental disciplinary proceedings were initiated and during the process of enquiry, the petitioner made a representation to permit him to join duty. The Vice Chancellor had taken a lenient view and permitted the writ petitioner to join duty immediately on the same day i.e., on 27.09.2012. The petitioner had not even obeyed the orders of the Vice Chancellor and left the premises and even on the next day i.e., on 28.09.2012 he did not join duty. This being the



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conduct of the petitioner, this Court do not find that the allegation against the writ petitioner is to be viewed leniently. Only the unauthorised absence when it is found to be willful and intentional, then the punishment of removal from service, cannot be said to be disproportionate.

17. In the present case, twice the petitioner was given leniency and the period of unauthorised absence was regulated as 'Loss of Pay' and on the third occasion, when he remained absent for duty for about 184 days, actions were initiated against the writ petitioner. During the said action also, the petitioner was permitted to join duty by the Vice Chancellor by exercising his discretionary powers and the said order of the Vice Chancellor was also not obeyed by the writ petitioner and he remained absent thereafter.

18. This being the conduct of the writ petitioner, this Court do not find any reason to interfere with the order of removal from service issued against him. However, it is left open to the writ petitioner to approach the Competent Authorities by way of submitting a representation



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once again.

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19. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

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Index : Yes/No.

Internet : Yes/No.

Speaking Order/Non-Speaking Order.

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To

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S.M.SUBRAMANIAM, J.

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