



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.1311 of 2015

WEB COPY

K.Maruthamuthu

... Petitioner

vs.

1.The Secretary to Government,
Revenue Department,
Secretariat,
St.George Fort,
Chennai-600 009.

2.The Additional Director,
Survey and Land Records Department,
Chennai-600 005.

3.The Regional Deputy Director,
Survey and Land Records Department,
Trichy.

4.The Assistant Director,
Survey and Land Records Department,
Pudukkottai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in G.O.(2D)No.910, dated 03.11.2014 and to quash the same and consequently to direct the respondents to appoint the petitioner with all attendant service benefits.

For Petitioner : Mr.B.Vijay Karthikeyan

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in G.O.(2D) No.910, dated 03.11.2014 and to quash the same and consequently to direct the respondents to appoint the petitioner with all attendant service benefits.



2.The petitioner joined the service as a Surveyor cum Draftsman on consolidated basis, vide order, dated 30.11.1982. Thereafter, the petitioner was brought to the time scale of pay, vide order, dated 21.08.1984. The petitioner was promoted as Firka Surveyor on 10.06.1988 and was working until 14.05.2006. The allegation against the petitioner is that he had unauthorizedly absented himself from service from 15.05.2006 onwards. The petitioner attained superannuation in the year 2016. The petitioner admits that he did not attend duty from 15.05.2006 to 29.06.2006. Thereafter, applied for Earned Leave from the period 30.01.2007 to 29.04.2007 and submitted a medical report. Thereafter, the fourth respondent, vide proceedings, dated 02.05.2007, directed the petitioner to join duty without prejudice to the proposal to the disciplinary action against the petitioner. The petitioner joined duty on 10.05.2007, but was not allotted any duty.

3. A charge memo, dated 25.04.2007, was issued alleging that from 15.05.2006 onwards, the petitioner unauthorizedly absented without prior intimation. The petitioner submitted an explanation on 29.06.2007. An Enquiry Officer was appointed and the enquiry report, dated 31.08.2007 has held the charges are proved. Thereafter, a second show cause notice was issued to the petitioner directing to submit an explanation to the enquiry report. The petitioner submitted an explanation, dated 17.09.2007. After considering the explanation, the petitioner was dismissed from service, vide order, dated 27.02.2008. Thereafter, the third respondent vide order, dated 26.05.2008, regularized the unauthorized absence period from 15.05.2006 to 27.02.2008 as unearned leave. The petitioner preferred an appeal on 24.04.2009. The third respondent rejected the same as time barred. The petitioner preferred a Writ Petition in W.P. (MD) No. 2398 of 2009 and this Court directed the respondents to condone the delay and pass order on merits, vide order, dated 24.02.2009. The appellate authority has dismissed the appeal on 08.11.2010 and the petitioner preferred a Revision Petition before the first respondent and the first respondent, vide G.O.(2D)No.910, dated 03.11.2014, has dismissed the Revision Petition and confirmed the order passed by the lower authorities. Aggrieved over the same, the petitioner has preferred the present Writ Petition.

4.The petitioner has challenged the revision order and the appellate order and prayed to direct the respondents to reinstate the petitioner with all attendant benefits.

5.The respondents have filed a counter affidavit stating that the first respondent after examining all the orders passed by the respondent Nos.2, 3 and 4, observed that the petitioner has absented for duty for a period from 15.05.2006. The petitioner has not produced any documentary evidence in support of his claim and in the appeal there are no fresh grounds to consider. As per G.O. Ms. No.411, Personnel and Administrative Reforms, RR (FR.III)

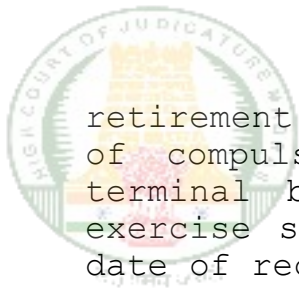


Department, dated 05.04.2008, any Government servant who goes on unearned leave on medical certificate should submit a leave application well in advance. The fourth respondent issued orders requesting the period of absence from 15.05.2006 to 27.02.2008 as external leave without pay, vide order, dated 26.05.2005, even though the petitioner was dismissed from service with effect from 27.02.2008. The petitioner was granted an opportunity to explain before the Enquiry Officer and there is no violation of principles of natural justice. The petitioner's past 14 delinquencies were taken into consideration while issuing the dismissal order. The petitioner has an habit of absenting himself from duty without submission of leave letter, non-submission of monthly dairies and also performance of petitioner during service were taken into account. Thereafter, the punishment of dismissal from service is legally sustainable and there are no merits to interfere with the impugned order.

6. Heard Mr.B.Vijay Karthikeyan, learned Counsel appearing for the petitioner and Mr.D.Sachi Kumar, learned Additional Government Pleader appearing for the respondents.

7. Admittedly, the petitioner absented himself from 15.05.2006 to 27.02.2008, i.e., for 653 days. The contention of the petitioner is that he was unwell and he had chronic ailment in small intestine and diabetes problem. The order passed by the fourth respondent narrated the track record of the petitioner. It is seen that in the year 1998, the petitioner had absented for four times and was imposed with a punishment of stoppage of salary for three months and censure. Again in the year 1999 and stoppage of salary was imposed, again in the year 2001 and two times censure. In the year 2002, three times censure and in 2005, again three months, in the year 2005, for 172 days leave without salary was sanctioned and in the year 2005 again stoppage of salary for three months. For all these 14 delinquencies of unauthorized absence, the petitioner was imposed with the punishments. These 14 delinquencies, which are shown in the impugned order are to show the previous antecedents of the petitioner.

8. It is seen from the records that the petitioner was in service from 21.08.1984 to 14.05.2006, i.e., for the past 22 years. The petitioner has submitted medical certificates before the Enquiry Officer and in spite of the same, without taking into account the ailment of the petitioner, the dismissal from service was imposed. The petitioner was 57 years at the time of filing this Writ Petition and has attained superannuation on date of 31.01.2016. Since the petitioner has put in 22 years of service and at the verge of his superannuation, he was unwell. On taking all these factors into consideration, this Court is of the considered view that the punishment of dismissal from service ought to be modified. Therefore, this Court is modifying the punishment as compulsory



retirement. The respondent are directed to implement the punishment of compulsory retirement and consequential order of disbursing terminal benefits and other benefits shall be passed. The said exercise shall be completed within a period of six weeks from the date of receipt of the copy of the order.

9. With the above modification, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Tmg

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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Revenue Department,
Secretariat,
St. George Fort,
Chennai-600 009.
2. The Additional Director,
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Trichy.
4. The Assistant Director,
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+1 CC to M/s.SPL.GP (SR-3347[F] dated 01/02/2022)

W.P. (MD)No.1311 of 2015

31.01.2022

RD/CK(10.02.2022) 4P 6C

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