



W.P(MD)No.20575 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.20575 of 2015

and

M.P(MD).Nos.1 and 2 of 2015

M.Pushbakaran,

: Petitioner

Vs

1. The Director,
Office of the Director of Employment & Training,
Guindy, Chennai 32.

2. The Joint Director(Craftsman Training),
Director of Employment & Training,
Guindy, Chennai 32.

3. T.Rajasekar,
Enquiry Officer,
(Now Working as Joint Director)
Office of Director of Employment & Training,
Guindy, Chennai 32.

4. The Government Industrial Training Institute,
Rep. by its
Principal,
Thiruchendur, Tuticorin District.

: Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent vide Se.Mu.Order No.23008/OP2/2015, dated 17.07.2015, by confirming the order passed by the 2nd respondent vide Se.Mu.Order No.28413/OP2/2011, dated 16.04.2015, on the basis of the every enquiry report dated 04.03.2014 and quash the same and may consequently direct the respondents 1, 2 and 4 to regularize the service of the petitioner by accepting his absence from 07.06.2010 to 03.07.2011 on Medical Leave and may grant him all the service benefits in par with his immediate juniors including promotion as Training Officer from 31.12.2014.

For Petitioner : Mr.K.P.Narayana Kumar

For Respondents : Mr.P.Thambidurai

Government Advocate (Civil Side)

ORDER

This writ petition had been filed in the nature of Certiorarified Mandamus to quash the impugned order passed by the 1st respondent vide Se.Mu.Order No.23008/OP2/2015, dated 17.07.2015, by confirming the order



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passed by the 2nd respondent vide Se.Mu.Order No.28413/ OP2 /2011, dated 16.04.2015, on the basis of the every enquiry report dated 04.03.2014 and consequently to direct the respondents 1, 2 and 4 to regularize the service of the petitioner from 07.06.2010 to 03.07.2011 and may grant him all the service benefits in par with his immediate juniors including promotion as Training Officer from 31.12.2014.

2. The brief facts of the case are that the petitioner was appointed as Workshop Assistant in Government ITI - Erode on 20.02.1984 and was promoted as Junior Training Officer and transferred to Government ITI in North Madras on 01.08.1990. Subsequently, on 02.06.1999 he was promoted as Assistant Training Officer. Due to ill health, the petitioner applied for medical leave from 07.06.2010 to 03.07.2011, periodically submitted his leave application and the same was received by the fourth respondent. The petitioner joined duty on 04.07.2011. Subsequently, the petitioner was served with a charge memo by the second respondent, dated 08.06.2012 under Rule 17(b) of Tamil Nadu Civil Servants (Discipline and Conduct) Rules. The charges against the petitioner are that the petitioner was absent from 07.06.2010 to 03.07.2011, whereby, he violated the Rule 18(2) of the



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Fundamental Rules of Tamil Nadu. The petitioner failed to attend Medical Board as per the notice, dated 04.08.2010, 08.09.2010 and 06.10.2010, whereby, violated the Rule 20(1) of Government Servants Conduct Rules. An enquiry officer was appointed and the charges were held proved in the enquiry report dated 04.03.2014.

3.The contention of the petitioner is that the enquiry officer without considering the explanation submitted by him and held the charges are proved and it is totally erroneous. On the basis of such erroneous enquiry report, the second respondent passed the impugned order, dated 16.04.2015, by withholding the increment without cumulative effect for one year. The petitioner preferred an appeal and the same was dismissed. The appellate authority has not analyzed any of the grounds raised by the petitioner. Aggrieved over the same, the present petition had been filed.

4.The respondents have filed counter affidavit stating that the petitioner has failed to appear before the Medical Board despite repeated reminders. Finally, the petitioner attended the Medical Board, wherein, the Board has stated the genuinity of the medical leave taken could not be arrived by clinical



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examination and also stated that the petitioner has not produced supportive documents to prove the illness. Therefore, the respondents have come to the conclusion that the petitioner has taken the medical leave without any basis. Even though the charge against the petitioner is serious, a lenient view was taken and the punishment of stoppage of increment for one year was imposed. Hence the respondents prayed to dismiss this petition.

4.Heard Mr.K.P.Narayana Kumar the learned counsel appearing for the petitioner and Mr.P.Thambidurai the learned Government Advocate (Civil Side) appearing for the respondents and perused the records.

5.The contention of the learned counsel appearing for the petitioner is that even though the charge was framed under Rule 17(b) of the Tamil Nadu Government (Discipline and Conduct) Rules, minor punishment was imposed on the petitioner. Therefore, this disciplinary proceeding ought to be taken as initiated under Rule 17(a) of the Tamil Nadu Government (Discipline and Conduct) Rules. If the disciplinary proceeding is taken under Rule 17(a) of the Rules, the respondents cannot withhold the promotion opportunities of the petitioner. Further, he relied on the judgment rendered by this Court in the



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case of ***S.Kannan Vs. State of Tamil Nadu***, reported in **(2009) 8 MLG 217**.

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6. The next contention that was raised by the petitioner is that the very charge itself is that the petitioner was absent from 07.06.2010 to 03.07.2011. The respondents have not denied the fact that the petitioner had submitted the leave application periodically, on 07.06.2010, 27.06.2010, 01.08.2010, 05.09.2010, 10.10.2010, 14.11.2010, 19.12.2010, 23.01.2011, 27.02.2011, 03.04.2011, 08.05.2011 and 05.06.2011.

7. The respondents have submitted that the petitioner has taken leave more than one year, which is against Rule 18(2) of the Fundamental Rules of Tamil Nadu.

8. On a perusal of the said rule, it is seen that the medical leave can be availed based on the leave applications even beyond one year. In the present case, it is not the allegation of the second respondent that the petitioner had availed medical leave without any application. Therefore, the respondents have erroneously come to the conclusion the leave is against the Rule 18(2) of the Fundamental Rules of Tamil Nadu. Infact, Rule 18(2) of the Fundamental



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Rules is favouring the petitioner, where it says that the Government Servant shall avail leave beyond one year on medical ground or any foreign service.

Therefore, basis of the first charge is erroneous.

9.The next contention of the petitioner is that the petitioner has not reported before the Medical Board inspite of receiving the notice, dated 04.08.2010, 08.09.2010 and 06.10.2010. All these three notices were not received by the petitioner, when the petitioner has received the subsequent notice, the petitioner reported before the Medical Board and thereafter, the Medical Board has given the report stating that the petitioner has not submitted sufficient documents to prove the illness. Therefore, the second ground was also not properly considered by the respondents. Moreover, the charge memo was issued on 08.06.2012 and the enquiry report was issued on 04.03.2014. Since the enquiry was conducted beyond the period of one year, the respondents are denying promotion to the petitioner for the subsequent period for which, the juniors of the petitioner were considered for promotion. According to the petitioner, on 30.12.2014, the petitioner's juniors were considered for promotion to the next level of post. Since the delinquency was from 07.06.2010 to 03.07.2011, the petitioner is eligible to be considered for



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promotion. Moreover, the punishment imposed on the petitioner is only a minor punishment, in such circumstances, the petitioner cannot be denied promotion from 2010 to 2017.

10. Therefore, this Court is of the considered opinion that the petitioner is entitled to be considered from 30.12.2014, the date on which the petitioner's juniors were considered for promotion. The respondents are directed to consider the petitioner's name from the said date and grant notional promotion to the petitioner. However, the petitioner is not entitled to get any monetary benefits and but entitled to give effect of notional promotion in the pensionary benefits.

11. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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2. The Joint Director(Craftsman Training),
Director of Employment & Training,
Guindy, Chennai 32.

3. The Enquiry Officer,
(Now Working as Joint Director)
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4. The Principal,
The Government Industrial Training Institute,
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S.SRIMATHY, J.

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