



WP.No.11543 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	13.12.2022
PRONOUNCED ON :	28.02.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.11543 of 2011

Dr.S.Muralinath

... Petitioner

Vs.

1. The Principal Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai 600 009

2. The Director of Medical Education,
162, Poonamallee High Court,
K.M.C.H.Campus,
Chennai 600 010

3. The Dean,
Coimbatore Medical College,
Coimbatore 641 014

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the removal of the petitioner from service issued in G.O.(D) No.596 Health Family Welfare Department dated 02.06.1999 by the first respondent and his subsequent orders rejecting the petition for review in G.O.(D) No.1509 dated 12.012.2007 and quash both and



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consequently direct the first respondent to regularise the period of leave and to grant leave to which he is eligible from 02.01.1995 till the date of his superannuation on 30.04.2009 to enable the petitioner to get pensionary and all other attendant benefits due for the 13 years of unblemished and sincere record of service.

For Petitioner :Mr.Prakash Goklaney

For RR 1 & 2 :Mr.A.M.Ayyathurai
Government Advocate

For R-3 :No Appearance

ORDER

This writ petition is filed by the petitioner praying to quash the Government Order dated 02.06.1999, whereby he was imposed with the punishment of removal from service and the order dated 12.12.2007 by which the Review filed as against the said order of dismissal was confirmed. The petitioner further seeks for other attendant benefits and to regularize the leave availed by him.



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2. The petitioner was working as Reader in Radiology in the 3rd respondent-Coimbatore Medical College. It is averred by the petitioner that due to his father's medical condition, he availed leave from 02.01.1995 to 02.06.1999 and since his leave was not sanctioned, he opted for resignation from service, but the same has not been considered by the respondents. Without considering his resignation letter dated 22.12.1995, the respondent/ by the Director of Medical Education, Chennai, issued charge memo on 30.01.996, under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner submitted his explanation to the said charge memo and sought to conduct enquiry in Chennai, but the same has not been considered favourably. Thereafter, the petitioner said to have sought for personal hearing which was also denied. The enquiry officer sent the enquiry report and based on the same, an order of removal from service was passed vide G.O.(D).No.596 Health Department dated 27.06.1999 by the 1st respondent.

3. The petitioner further averred in the writ petition that he preferred



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review on 12.12.2007 but the same was also rejected.

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4. The learned counsel for the petitioner would submit that the punishment of removal from service is too disproportionate to the alleged misconduct of unauthorized absence. There is fundamental procedural error and violation of principles of natural justice.

5. Per contra, second respondent filed counter affidavit submitting that the petitioner applied for casual leave for three days from 02.01.1995 to 04.01.1995 and subsequently cancelled the casual leave and requested Earned Leave for 60 days from 02.01.1995. The leave applied by the petitioner was refused and he was directed to rejoin duty. But instead of joining duty, the petitioner extended the leave for another 60 days from 03.03.1995 and unauthorisedly absent from duty. Hence, disciplinary action under rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules was initiated against the petitioner by the second respondent vide charge memo dated 30.01.1996. The petitioner submitted his explanation



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and inquiry officer was deputed but the petitioner did not attend enquiry.

Since the petitioner expressed his unwillingness to attend the enquiry, exparte inquiry was conducted and report was submitted holding all the three charges framed against the petitioner as proved.

6. On the basis of the enquiry report and the findings of the enquiry officer, all the charges framed against the petitioner are held as proved. After getting the view of the TNPSC, final order imposing the punishment of removal from service was passed on the petitioner vide G.O.(D).No.596, Health and Family Welfare Department dated 02.06.1999.

7. The petitioner preferred a review which was rejected as devoid of merits by the first respondent.

8. The learned Government Advocate would submit that the respondent Department had taken a correct decision to reject the review as the petitioner without attending the oral enquiry, requested for personal



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hearing only in his further representation after the receipt of the Inquiry Officer's report and therefore, the review was rightly rejected confirming the order of removal from service.

9. Heard both sides and perused the records carefully.

10. The fact that the petitioner had absented himself unauthorizedly from 02.01.1995 was neither denied nor disputed by the petitioner. The question was whether there were satisfactory reasons for his absence. The explanation was that he did not join duty for the reason that he has to take care of his ailing father. The unauthorized absence for a long period of more than four years remained unexplained. Grant of leave is not something that can be inferred or presumed. There is no explanation as to why he remained absent unauthorizedly for more than four years. Hence the charge of long unauthorized absence was clearly proved. For the proved charge of unauthorised absence, the punishment imposed was not disproportionate to the gravity of the misconduct.



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11. The punishment was imposed based on the findings of the enquiry officer's report to the effect that unauthorized absence or overstaying leave, is an act of indiscipline. In the considered opinion of this court, for the misconduct of unauthorized absence, the first and second respondents have correctly come to the conclusion and imposed punishment of removal from service and the first respondent, revisional authority confirming the said punishment, rejected the Review filed by the petitioner, which do not warrant any interference by this court. Accordingly, this writ petition is dismissed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
Neutral citation : Yes/No
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J.NISHA BANU, J.,

sts/nvsri

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