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W.P. No.24753 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.P. No.24753 of 2022

C. Varadharajan

Petitioner

v

1 The Registrar General
High Court of Judicature at Madras
Chennai 600 104

2 The Principal District Judge
Salem

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records and quash the impugned order in proceedings in ROC No.77210/2016;C1 dated 19.06.2019 passed by the first respondent and to direct the first respondent to treat the period from 28.11.2014 till the date of disposal of this writ petition as on duty.

For petitioner	Ms. S. Kalpana
For respondents	Mr. B. Vijay Standing Counsel



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ORDER

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This writ petition has been filed challenging the proceedings dated 19.06.2019 of the first respondent modifying the punishment of dismissal from service imposed by the second respondent into one of removal from service.

2 The petitioner was working as Office Assistant in the District Munsif Court, Salem. Owing to his chronic absence, he was dismissed from service by the second respondent, who is the disciplinary authority, *vide* order dated 28.11.2014, which was appealed against by him before the first respondent, the appellate authority, who modified the punishment of dismissal from service into one of removal from service.

3 The learned counsel for the petitioner contended that the petitioner was affected by diabetes, due to which, he had to remain absent for long and his chronic absence is the reason for his dismissal from service by the disciplinary authority, the second respondent herein. Further, according to the learned counsel, the appellant authority has not assigned any reason for modifying the order of the disciplinary authority and hence, the order of the appellate authority is liable to be quashed.



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4 A reading of the dismissal order passed by the disciplinary authority would show that the petitioner joined the services as Office Assistant in the Family Court, Salem on 07.07.2010; he was transferred to the District Court, Salem, on 13.09.2010, where, he worked upto 19.10.2010; thereafter, he was on loss of pay from 20.10.2010 to 16.11.2010; subsequently, he worked upto 02.12.2010; for his absence between 22.11.2010 and 23.11.2010, he was called upon to explain for his absence from duty and not satisfied with his explanation, he was placed under suspension with effect from 03.12.2010; later, a domestic enquiry was conducted against him and his suspension was revoked; he resumed duty on 09.04.2013 in the Labour Court, Salem; thereafter, he was transferred to the Family Court, Salem, where, he worked from 19.04.2013 to 26.11.2013 and during the said period, he stayed away from work for 30 days from 01.10.2013 to 06.10.2013 and 10.10.2013 to 03.11.2013; he joined duty in the Principal District Munsif Court at Salem on 26.11.2013 and there also, he absented himself for 42 days *i.e.*, between 30.11.2013 and 01.01.2014 and again, from 11.01.2014 to 19.01.2014; he was again placed on suspension with effect from 23.01.2014 without prejudice to the right to pass final orders and the suspension was revoked on 06.06.2014.



5 Admittedly, the petitioner was a probationer and his probation was not declared. During the probationary period, he was not regular in duty. Taking into account his chronic absence, that too, during his short stint as Office Assistant from the date of his temporary appointment, *i.e.*, 07.07.2010, the disciplinary authority imposed the punishment of dismissal from service with effect from 28.11.2014 and the Principal District Munsif, Salem, was directed by the disciplinary authority, *viz.* The Principal District Judge, Salem, to ensure that the petitioner is not paid salary on the principle of “no work, no pay”.

6 Aggrieved by the said order, the petitioner filed a writ petition being W.P.No.36767 of 2015, which was disposed of by this Court *vide* order dated 19.11.2015 reserving liberty to the petitioner to take recourse to appellate remedy. Hence, the petitioner filed an appeal, in which, the appellate authority, by the order impugned, modified the punishment of dismissal from service into one of removal from service.

7 No doubt, the order of the appellate authority is not a detailed order. But, to be noted, the order passed by the disciplinary authority is an elaborate one. Even assuming for a moment that we interfere with the order of the appellate authority, the original order of the disciplinary authority will have to be restored



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as we find that there is no error in the order of the disciplinary authority. In case, we remand the matter to the appellate authority, it is open to him to pass fresh orders and while doing so, he can even confirm the order of the disciplinary authority. That apart, it may be true that the petitioner is severely affected by diabetes. But, in our opinion, he cannot be permitted to remain unauthorisedly absent for days on end.

8 In view of the above discussion, we find no infirmity in the orders passed by the disciplinary authority and the appellate authority.

In the result, this writ petition stands dismissed as bereft of merits, sans costs.

(S.V.N., J.) (K.R.S., J.)

13.07.2023

cad

To

- 1 The Registrar General
High Court of Judicature at Madras
Chennai 600 104
- 2 The Principal District Judge
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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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