



WEB COPY



WP No. 1840 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No. 1840 of 2023

R. Boopathi

.. Petitioner

Versus

1. The Registrar General
High Court, Madras - 104.

2. The Principal District Judge
Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in R.O.C. No. 53706/2020/C1 dated 19.03.2021 and quash the same.

For Petitioner	:	Mr. M. Raja Sekhar
For Respondent	:	Mr. B.Vijay

ORDER

(Order of the Court was made by R. MAHADEVAN, J)

The petitioner has come forward with this writ petition challenging the order dated 19.03.2021 passed by the first respondent, rejecting the appeal preferred by him against the order of discharge dated 27.04.2019 passed by the second respondent.



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2. Heard Mr. M.Raja Sekhar, learned counsel for the petitioner and Mr. B.Vijay, learned counsel taking notice for the respondents and perused the materials placed on record, apart from the pleadings of the parties.

3. The petitioner was appointed as Office Assistant by direct recruitment on 09.02.2018. He was posted in the Sub Court, Salem where he joined duty on 12.02.2018. The petitioner's probation was not declared, rather, it was extended for a further period of six months on 04.02.2019.

4. During the course of the service of the petitioner, on 12.03.2019, two show cause notices were issued to him. In the first show cause notice, it was stated that the petitioner is habitually attending the office beyond the office hours and inspite of repeated instructions, he continued to attend the office at 10.10 hours in the morning, instead of 09.00 hours.

5. In the second show cause notice, it was stated that the petitioner is not carrying out the instructions given to him by his superior and that he is exhibiting insubordination and evading his duties. Therefore, by the show cause notices dated 12.03.2019, the petitioner was called upon to show cause as to why disciplinary proceedings should not be initiated against him under



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Rule 17 (a) of the Tamil Nadu Subordinate Services (Discipline and Appeal)

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6. Notwithstanding the show cause notices dated 12.03.2019, a further notice dated 21.03.2019 was issued to him seeking his explanation under Section 31 (1) (ii) of the Tamil Nadu Government Servants (condition of service) Act, 2016

7. On receipt of the notices referred to above, the petitioner submitted his explanation dated 03.04.2019 stating that his sister, who was given in marriage, was deserted by her husband and therefore, he and his mother were constrained to take care of his sister and his two children. According to the petitioner, due to such family situation, he was constrained to attend his duties late. Therefore, it was submitted that it is not his intention to come late to the office and that he will be very careful in attending his duties in future.

8. Not satisfied with the explanation offered by the petitioner, the second respondent passed an order in Roc.No.3807/2019 dated 27.04.2019 relieving him from the services as Office Assistant with effect from 27.04.2019.

Challenging the same, the petitioner filed an appeal before the first respondent



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and it was also rejected on 19.03.2021. Therefore, the petitioner has filed this writ petition questioning the correctness of the order dated 19.03.2021 of the first respondent, affirming the order of the second respondent, discharging him from the post of Office Assistant.

9. The learned counsel for the petitioner only submitted that the second respondent did not take note of the family circumstances projected by the petitioner. It is also submitted that the petitioner has assured that he will attend to his duties promptly in future, but that was not considered by the second respondent. According to the learned counsel, the respondents ought to have sympathetically considered the explanation offered by the petitioner before relieving him from the post of Office Assistant. In any event, given the facts and circumstances of the case, the second respondent ought not to have imposed major punishment of relieving the petitioner from the post of Office Assistant. The learned counsel further submitted that even the first respondent did not consider the grounds raised by the petitioner in the Appeal Petition and therefore, the orders impugned herein are liable to be set aside. Thus, the learned counsel appearing for the petitioner prayed for allowing this writ petition.



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10. On the other hand, the learned counsel for the respondents submitted that the petitioner was on probation and therefore, the employer is having every right to discharge him from service, if his services are not satisfactory. Moreover, before passing the order of discharge, show causes notices were issued to the petitioner and his explanation was sought. After considering the explanation offered by the petitioner, he was discharged from the post of Office Assistant by expressing dissatisfaction over his performance. Even the appeal petition filed by the petitioner was also elaborately considered by the first respondent and rejected the same on 19.03.2021. In such circumstances, the learned counsel for the respondents prayed for dismissal of the writ petition.

11. We have heard the learned counsel for the petitioner as well as the learned standing counsel for the respondents and also perused the material records.

12. On careful consideration of the pleadings as well as the orders passed by the respondents, it is clear that the petitioner did not attend the duties on time. Further, he did not carry out the duties and responsibilities assigned to him by his superior. In the show cause notices issued to him, it



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was clearly stated that the petitioner attended the office only at 10.10 am instead of 9.00 am. Even in the explanation given by the petitioner, he has not denied having come late to the office. Rather, he has projected his family circumstances as a reason for being late to the office. It is also evident that the probation of the petitioner has not been completed and it was extended only by another six months, when the second respondent passed the order dated 27.04.2019, relieving him from service, he was under probation.

13. In similar circumstances, the Division Bench of this Court in the case of **Tmt. M. Priya vs. The Registrar General, High Court, Madras** reported in **2019 (2) Writ Law Reporter 745 = 2020 (1) CTC 138** has dealt with an identical case where the petitioner therein was under probation and she was relieved for dereliction of duties. In Para Nos. 33 and 34, it was observed as follows:-

33. A person who is appointed to a government service will be on probation for a period of two years. The entitlement of such person appointed to get all the benefits attached to the post such as annual increment, promotion etc., depends first on getting his probation declared. In other words, such appointment will be construed as temporary in nature and only if probation is declared, the appointee will get entitled to all the service benefits attached to the post. The regularisation of the temporary service is technically termed as declaration of probation. During the period of probation, the appointing authority is bound to assess, evaluate and adjudge the



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potentiality of such employee to continue in service, his basic understanding to the work assigned to him, the efficiency with which he could complete the tasks assigned, the manner in which he coordinates with other employees to get the work done, the behaviour towards the superiors, punctuality in attending the office etc, The two years probation period from the date of initial appointment will be a testing time for the government servant, within which time, he has to prove his potentiality and capability to discharge his work efficiently and honestly and thereby inspire the confidence of the employer. In the absence of possession of the above qualities during the period of probation, the appointing authority cannot be expected to mechanically declare the probation of a government servant on completion of two years. Therefore, before declaring the probation, the appointing authority will normally get the feed back relating to the employee from his immediate superiors, the conduct of the employee during the discharge of the work and thereafter form an opinion as regards the suitability of the employee to continue in service. The potentiality or suitability of the employee appointed to a government service is an important factor for declaration of probation. For assessing the same, the appointing authority is given a discretionary power. It is sufficient for the appointing authority to merely say that the performance of an employee during the course of his probation is satisfactory or not satisfactory and the appointing authority need not elaborate reasons for coming to such conclusion. On the contrary, if any allegation of misconduct is made, during the period of probation, then the appointing authority, even before declaring the probation, is bound to conduct a disciplinary proceeding to prove the charges levelled against the employee.

34. In the present case, the appointing authority has come to a conclusion that the petitioner is unsuitable for continuance in the government post, to which she was appointed. In the order of discharge, there was no allegation of misconduct levelled against the petitioner. The appointing authority has simply formed an



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opinion based on the reports given by the III Additional District Judge, Salem and Subordinate Judge, Attur and independently examined the past performance of the petitioner to conclude that the discharge of duty by the petitioner is not satisfactory and refused to declare the petitioner's probation and discharged her from service. In such circumstances, the order of discharge, which is impugned in WP No. 21566 of 2018, is only an order simpliciter and it is not attached with a stigma, as has been contended by the counsel for the petitioner.

14. Applying the above observation to the present case, wherein, the second respondent/appointing authority has come to the conclusion that the petitioner has neither attended the office on time nor discharged his duties properly. The petitioner also, in his explanation, did not deny having come to the office late. The second respondent, on the basis of the report received against the petitioner from his immediate superiors, formed an opinion that he is unsuitable to continue in the post of Office Assistant. As the petitioner was under probation, the second respondent, as an appointing authority, is having every right to relieve the petitioner from his duties upon recording dissatisfaction over his performance. The first respondent also, upon considering his appeal petition, has rightly concluded that the petitioner's performance is not satisfactory and accordingly rejected the appeal. We find no reason to interfere with such an order of the first respondent, which is impugned herein.



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15. In the result, the writ petition fails and it is dismissed. No costs.

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[R.M.D., J.] [M.S.Q., J.]

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Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non-Speaking Order

Maya/rsh

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