



WEB COPY

W.P.No.31288 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.31288 of 2023
and
WMP.No.30896 of 2023

S.Hemalatha

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Petitioner

..VS..

1. The Registrar General,
High Court of Madras,
High Court Building,
Chennai-104.
2. Disciplinary Authority,
The Principal District Judge,
Erode
Erode - District.
3. The District Munsiff,
Gobichettipalayam,
Erode- District.
4. The Sub Judge,
Bhavani,
Erode-District.

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Respondents



Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the files of the 2nd respondent pertaining to its order in D.P.No.08/2022 dated 31.08.2023 to quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Petitioner : Ms.Esairani Narasimhan

For Respondents : Mr.P.Kannan Kumar

ORDER

(Order of this Court was made by ***S.VAIDYANATHAN, J***)

This writ petition impugns the order dated 31.08.2023 passed by the 2nd Respondent in D.P.No.08/2022, whereby and whereunder, she was removed from service, and for a consequential direction to the Respondents to reinstate the petitioner in service with all monetary and service benefits.

2. According to the Petitioner, she was appointed as Night Watchman on 15.12.2021 and she joined duty on 20.12.2021. While so, she got infected with Covid-19, due to which, her health got affected badly and therefore, she was constrained to



avail leave from 08.02.2022 to 13.02.2022 and again from 21.02.2022. According to her, she had multiple health issues, after she was affected by Covid-19 not once but twice. She submitted an explanation on 11.03.2022 along with an application for leave from 21.02.2022 to 20.03.2022, without pay, by way of post. Taking note of her absence without prior permission, a Charge Memo under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued. Thereafter, a detailed enquiry was conducted wherein documents were produced by the petitioner to show that she was affected with Covid-19, which were accepted by the Enquiry Officer and in the enquiry, it was held that the charges levelled against the petitioner are not proved. However, the disciplinary authority disagreed with the findings of the Enquiry Officer and imposed a punishment of removal from service against the petitioner on 31.08.2023. Aggrieved, the present Writ Petition has been filed for the relief stated in the opening paragraph.

3. The learned counsel for the Petitioner submitted that the disciplinary authority, without considering the explanation and records produced by the petitioner, as well as the Enquiry Officer's report, has wrongly passed an order of removal from service against the Petitioner.



4. The learned counsel appearing for the Respondents submitted that though the Petitioner has got a right of Appeal, circumventing the Appeal remedy, the present Writ Petition has been filed.

5. According to the petitioner, she was infected with Covid twice and she was also on probation during the relevant point of time. She has also submitted copious records in this regard. The reason given by the disciplinary authority in the order impugned cannot be found fault with. But, this Court cannot lose sight of the fact that the entire country was struck by Covid-19 and the 2nd wave that swept our Country left a deleterious effect.

6. Normally, this Court cannot substitute the views of the disciplinary authority and come to a different conclusion, more so when the petitioner has got a right of Appeal. However, the Hon'ble Supreme Court in the Judgment reported in **(2015) 2 SCC Page 610** (Union of India and others Vs.P.Gunasekaran) in paragraph 13 has held as follows:

“13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can*



be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

7. Therefore, when the punishment imposed is shockingly disproportionate, this Court can interfere with the same.

8. In the case on hand, as the petitioner's probation is yet to be declared and the petitioner has joined the services during Covid period, none would like to forsake his or her job during the initial period, merely because of the fact that he or she had absented. We were also informed during the course of arguments that unable to withstand mental agony, the petitioner had even tendered her resignation, notwithstanding her intention to continue in service. Taking note of the totality of circumstances, as an exceptional case, we are inclined to interfere with the order of the disciplinary authority and permit the petitioner to join service.

9. In view of the same, the order of the 2nd Respondent dated 31.08.2023 is set aside. The petitioner shall be permitted to join service within a period of two weeks from the date of receipt of a copy of this order and she shall be treated as a probationer



W.P.No.312



S. VAIDYANATHAN,J.,
and
K.RAJASEKAR,J
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and depending upon her services, it is for the authority to decide accordingly.

With the above directions, this Writ Petition is disposed of. Consequently,
connected Miscellaneous Petition is closed.

[S.V.N., J.] [K.R.S., J]
02.11.2023

Index: Yes / No

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Note: Issue order copy on **17.11.2023**

To

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