



W.P.(MD).No.13986 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.13986 of 2023

and

W.M.P(MD)Nos.11807 & 11808 of 2023

K.Kanmani,
Field Investigator,
Population Research Centre (PRC),
Gandhigram Institute of Rural Health and
Family Welfare Trust,
Ambadurai Post,
Soundram Nagar,
Gandhigramam,
Dindigul District.

... Petitioner

Vs.

The Director,
Gandhigram Institute of Rural Health and
Family Welfare Trust,
Ambadurai R.S.,
Gandhigram Post,
Dindigul District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent vide his proceedings in



W.P.(MD).No.13986 of 2023

Ref.GIRH/ESTT/2023-24/0117, dated 11.05.2023 and quash the same as illegal.

For Petitioner : Mr.S.Mohamed Suhail

For Respondent : Mr.V.Karthikeyan
for Mr.V.Vijayashankar

ORDER

The present writ petition is for a Writ of Certiorari, calling for the records relating to the impugned order passed by the respondent vide his proceedings in Ref.GIRH/ESTT/2023-24/0117, dated 11.05.2023 and quash the same as illegal.

2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent and carefully perused the materials available on record.

3. The petitioner was appointed as Field Investigator in the respondent Institution vide appointment order, dated 28.12.2022. In terms of her appointment order, she has to under-go probation for a period of two years with a continuation of three years. She was orally deputed for a departmental training held at Goa for the period from 31.03.2023 to 19.04.2023. Accepting



W.P.(MD).No.13986 of 2023

the same, she reported for training on 31.03.2023. While undergoing training on 04.04.2023, she received an emergency call from her husband informing the ailing medical condition of her 1 year, 4 months old baby. On such emergency situation, orally intimating her situation to the Chief Officer, who attended training along with her, namely, one Dr.Kavitha, the petitioner immediately came back from training to attend her child. She reported duty to the respondent Institution on 06.04.2023. However, she was not permitted to attend her work by treating the training period as un-authorised absence. Hence, she consistently attempted to meet the respondent in person. Though she attended the office hours daily in the morning, she was not permitted to place her signature in the Attendance Register. While so, on 27.04.2023, the respondents by means of an office notice instructed the petitioner to join duty within 7 days of receipt of the said notice. Promptly responding to the same on 28.04.2023, the petitioner joined duty. Following which, on 02.05.2023, the respondent issued a show cause notice seeking her explanation for suddenly leaving the training place without intimation. For which, on 03.05.2023, the petitioner submitted a detailed explanation. On receipt of the explanation, the respondent issued another show cause notice, dated 04.05.2023, seeking her explanation. The petitioner submitted her further explanation on 08.05.2023. On 27.04.2023,



W.P.(MD).No.13986 of 2023

the respondent issued one month termination notice to the petitioner. For one month notice, she gave an explanation on 06.05.2023. Without accepting the said explanation and even without conducting a preliminary enquiry, the impugned relieving order, dated 11.05.2023 relieving the petitioner from the services of the Institute with effect from 10.06.2023 came to be passed. Assailing the same, this writ petition came to be filed.

4. The learned Counsel for the petitioner vehemently submitted that the respondent ought to have conducted at least a preliminary enquiry and after considering the explanation of the petitioner, should not have relieved her from service and her circumstances as a mother and the emergency condition under which she was compelled to leave the training ought to have been considered and on that grounds he relied upon the order passed by the Hon'ble Apex Court in the case of ***Inspector Prem Chand Vs. Government of NCT of Delhi and Others reported in (2007) 4 SCC 566***, dated 05.04.2007. In the said case, favorable order was passed in favour of the petitioner and the relevant portion of which is extracted as follows:

“9. Before advertng to the question involved in the matter, we may see what the term “misconduct” means.



WEB COPY

10. In *State of Punjab Vs. Ram Singh, Ex-Constable* it was stated: (SCC pp.57-58, para 5)

“5. Misconduct has been defined in *Black's Law Dictionary*, 6th Edn. at p.999, thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness.'

Misconduct in office has been defined as:

'Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.'”

11. In *P.Ramanatha Aiyar's Law Lexicon*, 3rd Edn., at p. 3027, the term “misconduct” has been defined as under:

“The term 'misconduct' implies a wrongful intention, and not a mere error of judgment.

Misconduct is not necessarily the same thing as conduct involving moral turpitude.

The word 'misconduct' is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or



WEB COPY

statute which is being construed. 'Misconduct' literally means wrong conduct or improper conduct."

(See also Bharat Petroleum Corporation Limited Vs. T.K.Raju.

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behavior in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct."

5. Further the learned Counsel for the petitioner submitted that the petitioner's absence ought not to have considered as un-authorised absence in view of the fact that she immediately turned up to report before the respondent. However, she was not permitted to join duty only by the respondent. Even though she was not permitted to join, she attended duty on morning hours without signing the Attendance Register. He further relied upon the order passed by the Hon'ble Division Bench of this Court in the case of ***W.A.No.19 of 2020 (The Principal Secretary to Government, Home Department,***



W.P.(MD).No.13986 of 2023

Secretariat, Fort St. George, Chennai-600 009 and Others Vs.

A.Krishnamoorthy), dated 28.10.2022 a case of similar nature, where the Hon'ble Division Bench of this Court has held as follows:

“6. Learned Senior Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in the case of Krushnakant B.Parmar Vs. Union of India and another reported in (2012) 3 SCC 178, more fully relying upon paragraphs 18 and 19 of the said judgment, in support of the proposition that unless disciplinary authority finds unauthorised absence as wilful, imposition of punishment, that too, removal from service is unduly harsh.”

6. He also relied upon another case of this Court in ***W.P(MD)No.6197 of 2023 (Dhana Anthony Vs. The State represented by The Commissioner – cum- Director or Differently Abled Welfare and Others), dated 12.06.2023.***

The relevant portion of which is extracted as follows:

“6. The impugned order refers to the allegations and complaints received against the petitioner. It is true that the petitioner was appointed on consolidated basis in a temporary capacity. It is not necessary for the employer to hold an elaborate enquiry as done in the case of a regular employee but atleast summary enquiry ought to have been held. This is primarily because the impugned order is prima facie stigmatic. If a non



W.P.(MD).No.13986 of 2023

stigmatic order had been passed and the petitioner had been disengaged on administrative grounds, may be this Court would not have interfered. But where the order of termination casts a stigma on the employee even if he was only temporary employee, still compliance of principles of natural justice atleast at a minimal level is mandatory. On this ground I interfere.

7. The order impugned in this writ petition is set aside. The petitioner shall be reinstated as Mobile Van Assistant. The question of paying backwages for the intervening period does not arise. If the petitioner behaves in a proper manner after reinstatement, the respondents need not pursue the action originally initiated. If the petitioner does not conduct himself properly, it is always open to the authorities to hold a summary enquiry and show the door to the petitioner. With this liberty to the authorities, this writ petition is allowed.”

7. Relying upon the aforesaid judgments, the learned Counsel for the petitioner submitted that until and unless, the disciplinary authority finds unauthorised absence as a wilful, imposition of punishment that too removal from service is unduly harsh. In this case, the petitioner's absence was only because of the emergency medical condition to which her 1 year and 4 months old child was ailing at that point of time and hence, that kind of circumstance suffered by a young mother ought to have been dealt with in a considerate manner by the respondent authorities and moreover, the impugned relieving order is *prima*



W.P.(MD).No.13986 of 2023

facie stigmatic and considering the fact that she was relieved without conducting any preliminary enquiry, he pressed that the impugned order need to be quashed.

8. Per contra, the learned Counsel for the respondent has filed a counter and also vehemently submitted that all the submissions made by the petitioner with respect to the facts that she had informed about her absence to her higher officials are not true. Since there was no communication from the petitioner after 04.04.2023 and as she remained un-authorisedly absent, an email was sent from the respondent Institute to the petitioner on 17.04.2023. Another letter on 27.04.2023 calling upon the petitioner, to explain the reasons for her un-authorised absence explaining her sudden exit from the training programme was also sent. The petitioner reported for duty on 28.04.2023. She was in her probation period and her kind of behavior was fully without responsibility because she remained un-authorisedly absent even without considering the fact that she had been in probation period and hence, the relieving order passed by the respondent is in order and in terms of her appointment order, her service is purely temporary and terminable on a months notice on either side. Hence, the



W.P.(MD).No.13986 of 2023

impugned order need not be interfered and he pressed for dismissal of the writ petition.

9. However this Court is of the considered view that the petitioner is a young mother and her exit from the training was not wilful and the respondent ought to have considered that she left training only because of the emergency medical condition of her 1 year and 4 months old child. The respondent Institute ought to have been considerate about the circumstances under which she left training and the punishment of relieving from service is certainly shockingly disproportionate. On that ground alone, this Court hereby quashes the impugned order, dated 11.05.2023 as *per se* illegal and consequently direct the respondent to reinstate her in service within a period of one (1) week from the date of receipt of a copy of this order.

10. This writ petition stands allowed, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

09.08.2023



W.P.(MD).No.13986 of 2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Director,
Gandhigram Institute of Rural Health and
Family Welfare Trust,
Ambadurai R.S.,
Gandhigram Post,
Dindigul District.



WEB COPY



W.P.(MD).No.13986 of 2023

L.VICTORIA GOWRI, J.

BTR

W.P.(MD).No.13986 of 2023

09.08.2023