



W.P(MD).No.3455 of -----

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2023

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THE HONOURABLE **MR. JUSTICE M.DHANDAPANI**

W.P(MD).No.3455 of 2018

and

W.M.P(MD).No.3603 of 2018

R.Kannan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Through its Principal Secretary,
Municipal Administration and Water
Distribution Department,
St., George Fort,
Secretariate, Chennai.

2.The Corporation Commissioner,
Madurai Corporation, Madurai.

3.The Chief Health Officer,
Madurai Corporation,
Madurai District.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings bearing No.The.ma.Ni1/926/2000 dated .3.2004 issued by the second respondent and the subsequent appeal order bearing G.O.(Pa).No.162, dated 13.03.2015 issued by the first respondent and quash the same and consequently direct the respondents to reinstate the petitioner in to service with all consequential benefits.



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For Petitioner : Mr.M.Gnanagurunathan

For Respondents : Mr.K.ChristyTheboral (for R1 & R3)
Additional Government Pleader
No appearance (for R2)

ORDER

This Writ Petition has been filed to quash the impugned proceedings bearing No.The.ma.Ni1/926/2000 dated .3.2004 issued by the second respondent and the subsequent appeal order bearing G.O.(Pa).No.162, dated 13.03.2015 issued by the first respondent and consequently, direct the respondents to reinstate the petitioner into service with all consequential benefits.

2. The case of the petitioner is that the petitioner was appointed as Sanitary Inspector in the year 1991 in the respondent Corporation. He had worked as Sanitary Inspector in Ward No.40 of the Madurai Corporation. While so, the petitioner suffered a mild stroke and availed leave from 08.10.2001 to 21.11.2001 for which the petitioner produced proper medical leave certificate before the third respondent and the same was forwarded to the Medical Board. However, the respondent corporation has not permitted the petitioner to join duty. Thereafter the Medical Board also vide its report dated 02.01.2002 had regularized the said leave period from 08.10.2001 to 02.01.2002 for 87 days . The



petitioner approached the Assistant Commissioner of South Division, Madurai Corporation on 03.01.2002 seeking permission to join duty. The Assistant Commissioner after verifying the Medical Board's Report had recommended the third respondent for issuing order to join the duty. However, the third respondent has not allowed the petitioner to join duty.

3. The further case of the petitioner is that again the petitioner made an application to the third respondent on 11.09.2003 seeking leave from 03.01.2002. However, without taking steps to issue rejoining order, the petitioner was called for enquiry before the Assistant Commissioner of Corporation West Division on 07.11.2002 and 10.11.2002. Even though the petitioner submitted an explanation after regularization of leave, the third respondent has not issued an order of rejoining duty. Thereafter, the petitioner was allowed to join duty only on 13.02.2003 without passing final order on the enquiry. Again the petitioner sought medical leave from 26.06.2003 and produced the medical certificate for the same on 30.06.2003. Once again he submitted the leave application on 15.07.2003 to 11.09.2003 only on the aforesaid medical ground. Hence, the second respondent dismissed the petitioner from service by impugned proceedings dated 03.03.2004. The second respondent passed impugned order as if the petitioner availed leave without medical certificate from 15.07.2003 to 11.09.2003 and the petitioner was taking leave frequently even after earlier charge. The



second respondent failed to see that earlier leave period of 87 days were regularized by the Medical Board. However the second respondent failed to see that the petitioner availed leave only by giving application and it is not absent from the duty. As against the order passed by the second respondent, the petitioner preferred an appeal before the Council and the Council also rejected the same by resolution dated 08.11.2005. As against the same, the petitioner filed an appeal before the Secretary, Health and Family Welfare Department, on 27.02.2003 and the same was not considered. Hence, the petitioner filed a writ petition before this Court in W.P(MD) No.11826 of 2004 to consider his appeal and pass appropriate order. This Court vide its order dated 18.08.2014 issued a direction to the first respondent to pass appropriate order. Pursuant to which, the first respondent passed impugned G.O confirming the order passed by the second respondent. Challenging the concurrent findings, the present writ petition is filed.

4. The learned counsel for the petitioner would submit that though the petitioner initially took leave from 08.10.2001 to 21.11.2001 and the said absent period was regularized on the report of the Medical Board vide order dated 02.01.2002. Thereafter, the petitioner approached the official respondents for rejoining the duty. The petitioner was allowed to rejoin duty only on 13.03.2003. Again the petitioner made an application for medical leave on 15.07.2003 to 11.09.2003. However the said medical leave was not regularized by the



respondents even though the petitioner was entitled to avail the leave on submitting the leave application along with medical certificate. The petitioner has rendered service from 1991 to 2001 more than 10 years. However, the respondents without considering the past services rendered by the petitioner, mechanically passed the order of removal, which is major punishment and the same cannot be allowed to continue and further, the present alleged lapses committed by the petitioner is not grievous one warranting an extreme punishment. The unauthorized absence can be viewed leniently. The order of dismissal from service is a major punishment, which deserves to be interfered. In support of his contention, the learned counsel for the petitioner relied upon decisions of this Court, wherein it has been consistently held the gravity of the charge should be the determinant factor in imposition of punishment. However, the disciplinary authority without taking lenient view inflicted the major punishment, which is unsustainable. Accordingly, he prayed for allowing this writ petition.

5. The second respondent has filed a counter affidavit, stating that vide the Government Order dated 13.03.2015, the Directorate of Municipal Administration, rejected the appeal only after perusing the records and the investigation done by the Enquiry Officer on 31.07.2002 and 07.11.2002 and the statements, which are all recorded by the enquiry officer with respect to the termination of service. The reason stated by the petitioner for unauthorized



absence is not acceptable and the charges were proved. Thereafter, based on the enquiry report the petitioner was dismissed from service on 30.03.2004. It is the duty of the Government servant to attend to his duty regularly. But the petitioner has attended his duty irregularly, since the petitioner was a sanitary inspector and the entire sanitation of his ward depends on him. He was continuously absent for four years. Since the reason stated by the petitioner was not satisfactory, the dismissal from service was confirmed by the respondent herein in the appeal.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents 1 and 3 and perused the material on records.

7. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service in the year 1991. After rendering 10 years of service, he was absent from duty on 08.10.2001 to 21.11.2001. The petitioner claims that he suffered a mild stroke, thereby, he availed medical leave. Further, the petitioner claimed that the Medical Board had recommended regularisation of the petitioner's leave from 08.01.2001 to 02.01.2002 for the period of 87 days. Again the petitioner was allowed to join duty on 13.02.2003. Thereafter, the petitioner was absent from 15.07.2003 to 11.09.2003 on the very same medical ground. However, the fact remains that immediately after availing the medical



leave, the petitioner has not made an application before the competent authority for approving his medical leave. In the present case, the earlier and subsequent leave was taken by the petitioner without due authorisation. The petitioner, without giving any leave application unauthorizedly was absent from duty for 87 days and subsequent periods. Though the petitioner claimed that he sent an application along with medical certificate, no proof has been filed before this Court. Admittedly, the petitioner has not made any application earlier and subsequently before the authority and without submitting the medical leave application, annexing the medical certificate, this Court can easily arrive at a conclusion that the petitioner was unauthorizedly absent for a period of 87 days and subsequent periods. Hence, the charge of dereliction of duty stands proved and therefore, imposition of punishment cannot be found fault with.

8. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-



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“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)



9. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

10. In the case on hand, the records reveal that the respondents have followed the procedure contemplated for proceeding with the disciplinary enquiry. Further, there is no quarrel that there is any procedural irregularity in the disciplinary proceeding. However, the only ground on which the petitioner assails the impugned order is that the petitioner is entitled to the leave and even if the charge stands proved, in the facts of the case, the punishment of removal from service is not warranted, as the same is disproportionate to the charges levelled against the petitioner.

11. There can be no quarrel that the petitioner had availed leave without proper authorisation and without submission of leave letter. However, the fact stands established that really the petitioner was medically incapacitated from attending office, which resulted in the Medical Board opining in favour of the petitioner at the first instance. However, during the subsequent period as well, the



petitioner has not submitted leave letter before proceeding on leave. Therefore, it is clear that the petitioner is a chronic defaulter in not submitting application for leave, yet proceeding on leave. In that backdrop, the service of the petitioner as a sanitary inspector resulted in the respondents deciding to do away with the service of the petitioner as the duty assigned to him would come to a grinding halt, if the petitioner is not available for duty. However, the charge of unauthorised absence is not so grave enough warranting the extreme punishment of removal from service. Definitely, the said punishment is disproportionate to the charge and there is no material on which this Court could conclude that the punishment is not disproportionate. The petitioner has put in more than 10 years of unblemished service, but for the unauthorised absence, there is no other stigma attached with the petitioner's record and the present scar on the petitioner cannot be a case of outright rejection by terminating the petitioner from service. The past service ought to have been taken into account while imposing punishment on the petitioner.

12. Considering the factual matrix as a whole and on the basis of the materials available on record, this Court is of the considered view that the punishment of removal from service imposed on the petitioner requires to be modified and instead the petitioner shall stand compulsorily retired from service. In view of the above modification in punishment, the petitioner would stand



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entitled for all the terminal and pensionary benefits in consonance with the service rendered by him.

13. Accordingly, this Writ Petition is allowed in part by modifying the punishment of removal from service to one of compulsory retirement and the petitioner will stand entitled for all the terminal and pensionary benefits. The respondents are directed to calculate the service of the petitioner from the date of his entry into service till the date of his absents from work and calculate the terminal benefits and other benefits, including pension, if any, payable to him and disburse the same within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.02.2023

Index : Yes / No
Internet : Yes / No
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To
1.The Principal Secretary,
State of Tamil nadu,
Municipal Administration and Water
Distribution Department,
St., George Fort,
Secretariate, Chennai.



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M.DHANDAPANI, J.

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2.The Chief Health Officer,
Madurai Corporation,
Madurai District.

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