



W.P.No.27922 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 14.03.2024**

CORAM:

**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.No.27922 of 2012**

K.Rajaiah Nadar

...Petitioner

-Vs-

1.The State of Tamil Nadu,  
Represented by its Secretary,  
Youth Welfare and Sports Development (YW) Department,  
Secretariat,  
Chennai.

2.The Director of N.C.C.,  
N.C.C., Directorate,  
Tamil Nadu, Pondicherry & Andaman,  
Fort St.George,  
Chennai.

3.The Commanding Officer,  
11, (T.N) BN, N.C.C.,  
66, Water Tank Road,  
Nagercoil.

...Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus call for the entire records connected with the proceedings of the 1<sup>st</sup> respondent in G.O.(ID)No.20 dated 03.11.2009 confirming the order of removal in memo No.113/C, dated 14.03.1986 passed by the 3<sup>rd</sup> respondent and consequently direct the respondents to pay pensionary and other benefits



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to the petitioner and pass such further orders.

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For Petitioner : Mr.K.Thilageswaran  
For R1 : Mr.M.Rajendran  
Additional Government Pleader  
For R2 & R3 : No appearance

### **ORDER**

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the 1<sup>st</sup> respondent in G.O.(ID)No.20 dated 03.11.2009 confirming the order of removal in memo No.113/C dated 14.03.1986 passed by the 3<sup>rd</sup> respondent and consequently direct the respondents to pay pensionary and other benefits to the petitioner.

2. The case of the petitioner is that he served as Lancenaick in the Indian Army, Crops of Engineering from 25.05.1963 to 02.06.1972 and he was discharged with the recommendation “fit to seek civil employment”. Thereafter, he was re-employed as a boat-keeper in 5(TN) Naval NCC, Nagercoil on 19.03.1973. Thereafter, he was transferred to 32(TN) INDP/INF/COY/NCC and since both of the above said units were disbanded, he was posted as Lascar in 11(TN/BN) NCC Nagercoil. Though the petitioner was discharged his duty without any blemish and to the utmost



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satisfaction of the authorities due to inadequate pay and availability of driver post in the unit, he desired for conversion of his job from Lascar to driver.

The petitioner applied for one year on loss of pay with effect from 15.03.1983. However, due to unavoidable circumstances and the sudden cardiac illness of his wife, he was forced to extend the leave to 16<sup>th</sup> march 1985 and thereon. Though he was permitted to take leave upto 16<sup>th</sup> march 1985 the subsequent leave application made by him was not replied by the respondents. Due to economical crisis, illness of his wife and other unexpected circumstances he suffered with mental illness and could not even understand what was happening in and around him. Though he slowly recovered from the said situation and approached the 3<sup>rd</sup> respondent office in July 1987 to his shock, he was informed that he had been removed from service from 16.03.1985 without prejudice to his entitlement to receive any benefit from the Government that might have accrued during his service up to 15<sup>th</sup> march 1985.

3. Learned counsel for the petitioner submitted that Rule 18(2) of the Fundamental Rule permits a Government servant to avail leave of any time not exceeding 5 years. He had not been availed of the same despite the above said situation. The said order of removal was passed without any



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notice or enquiry and much against the rules contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules and against the principles of natural justice and settled principles of service jurisprudence.

4. Learned counsel further submitted that the petitioner preferred an appeal to the XI Battalion NCC Nagercoil and the Director of NCC, Chennai. However, without going into the merits and without even considering the facts and circumstances of the said order, it was confirmed by the Appellate Authority. Thereafter, he preferred an appeal on 01.12.2008 to the 1<sup>st</sup> respondent. The same was also dismissed by the 1<sup>st</sup> respondent by order dated 03.11.2009 in G.O.(ID)No.20 as if the punishment imposed on him namely removal from service by the competent authority is found to be in order.

5. Learned counsel further submitted that the petitioner has rendered 9 years of service in the Military from 25.02.1963 to 02.06.1972 and 12 years of service in N.C.C under the 3<sup>rd</sup> respondent. While passing the order of removal, the 3<sup>rd</sup> respondent also observed that the said order of removal would not prejudice his entitlement to receive any benefit from Government that might have been approved during his service up to March



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1985. He made several representations including his representation dated 04.01.2001 and sought to provide him the pensionary benefits.

6. Learned counsel further submitted that since his representations were not considered, he approached this Court by way of writ petition in W.P.No.15548 of 2011 and sought for a direction against the respondents to pay his pension for the qualified service that he had already rendered.

7. When the writ petition came up for admission, he was advised to challenge the order dated 03.11.2009 in which his appeal against the order of removal passed by the 3<sup>rd</sup> respondent was dismissed by the 1<sup>st</sup> respondent. The order of removal passed by the 3<sup>rd</sup> respondent is not sustainable under law and due to the said order of removal, he could not even get his pensionary benefits for the qualified service that he had already rendered.

8. Learned counsel further submitted that the order of removal could not be passed under the leave rule, as the leave rule would be applicable only for minor punishment. No disciplinary action is maintainable under 17(a) or 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. No domestic enquiry was conducted and he was also not



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given any opportunity. The petitioner was given only 7 days to give his explanation for the charges alleged against him and the said charge memo had also not been served to the petitioner. The petitioner did not claim any leave with salary but he only asked for unearned leave on loss of pay since he was eligible for the same. The respondents without considering the representation made by the petitioner mechanically and without any proof removed the petitioner from service for the alleged reasons of gainful employment. Aggrieved by the same, the petitioner has come forward with the present writ petition.

9. A counter affidavit was filed by the respondents on 28.09.2015.

10. Learned Additional Government Pleader appearing for the 1<sup>st</sup> respondent submitted that the petitioner during his tenure at 11 (TN) BN NCC, Nagercoil, had availed leave of various kinds, namely, earned leave for 108 days, medical leave for 199 days, unearned leave on private affairs for 67 days and leave on loss of pay for 274 days up to 15.03.1983. Besides the above, he had again applied for leave for one more year from 16.03.1984 to 15.03.1985 and again applied for an extension of leave for one more year from 16.03.1985, which was rejected by the 3<sup>rd</sup> respondent herein. Thus, the



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petitioner has been away from duty continuously for years together.

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11. Learned Additional Government Pleader further submitted that due to the exigency of services, his application for extension of leave was refused and he was instructed to join duty as a forthwith by CO, 11 (TN) BN NCC, Nagercoil, vide letter No.105/1/SC-131 dated 19.03.1985. However, the petitioner neither joined duty nor adduced any reasons for having absented himself from duty for years together. Therefore, Commanding Officer, 11 (TN) BN NCC, Nagercoil, the 3<sup>rd</sup> respondent herein had framed the following charges against the petitioner vide proceedings memo No.113/C dated 23.08.1985:-

- a) absenting without leave
- b) disobeying orders

12. Learned Additional Government Pleader further submitted that the petitioner was asked to state whether he desired to be heard in person or an oral enquiry should be carried out. He was further informed that if no reply was received before 31.08.1985 it would be presumed that he had nothing to offer in support of his defence and the disciplinary proceedings



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would be finalised ex-parte. Though the above proceedings memo was served to the petitioner, he had neither turned up for duty nor had submitted his statement of defence but had intentionally stayed away from duty, utterly disregarding his obligations to the organisation where he has been employed as Lascar and paying for the same.

13. Learned Additional Government Pleader further submitted that the petitioner was examined by the 1<sup>st</sup> respondent in detail. As per rule 67 of the Fundamental Rule of the Government of Tamil Nadu, the leave cannot be claimed as a right. When the exigencies of the public service require discretion to refuse or revoke leave of any description, it is reserved to the authority empowered to grant it. Therefore, after taking into consideration every material fact involved in the appeal petition, the 1<sup>st</sup> respondent was constrained to reject the appeal petition dated 15.02.2008 preferred by the petitioner vide G.O.(1D)No.20, Youth Welfare and Sports Development (YW) Department, dated 03.11.2009 and not otherwise.

14. Learned Additional Government Pleader further submitted that as per rule 21 of the Tamil Nadu Pension Rules, 1978, dismissal or removal of a Government servant from a service or post entails forfeiture of his past



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service. Therefore, the petitioner is not entitled for payment of pension for the services rendered by him in the NCC Department prior to his removal from service. The amount standing to the credit of the petitioner in his GPF account was drawn and disbursed to him as per the order of removal issued by the 3<sup>rd</sup> respondent, wherein it was stated that the removal would not prejudice the petitioner from receiving such entitlements from the Government, and such entitlement certainly does not include pension benefits in view of rule 21 of the Tamil Nadu Pension Rules, 1978.

15. Heard both sides and perused the materials available on record.

16. In the case on hand, on perusal of the counter affidavit, it can be seen that the petitioner was on leave for a very long period from 09.01.1978 to 15.03.1983 which included earned leave for 108 days, medical leave for 199 days, unearned leave on private affairs for 67 days and leave on loss of pay for 274 days up to 15.03.1983. Besides the above, he had again applied for leave for one more year from 16.03.1984 to 15.03.1985 and again applied for an extension of leave for one more year from 16.03.1985, which was rejected by the 3<sup>rd</sup> respondent herein.



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17. The reason given by the petitioner for a long leave i.e. due to the cardiac illness of his wife, which is unsustainable. It is an admitted fact that the petitioner was on very long leave and due to the exigency of services, his application for extension of leave was refused and he was instructed to join duty as directed by the 3<sup>rd</sup> respondent. Hence the charge memo issued by the 3<sup>rd</sup> respondent dated 23.08.1985 for the following charges :

- a) absenting without leave
- b) disobeying orders

18. The petitioner is not given any reply to the charge memo dated 23.08.1985 which was received by the petitioner on 31.08.1985. Hence, the disciplinary authority/the Commanding Officer, 11, (T.N) BN, N.C.C, Nagercoil, vide proceedings memo No.113/C, dated 14.03.1986, after affording enough opportunities to proceed with his defence statement as finally passed in order proceedings memo No.113/C, dated 14.03.1986 removed the petitioner from service with effect from 16.03.1985 as per the provision of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner also preferred an appeal dated 15.02.2008 against the order passed by the 3<sup>rd</sup> respondent and the same was rejected by the 1<sup>st</sup> respondent vide G.O.(1D)No.20, Youth Welfare and Sports Development (YW)



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Department, dated 03.11.2009.

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19. In the impugned order passed by the 3<sup>rd</sup> respondent dated 14.03.1986 and the relevant portion is extracted hereunder for better appreciation and understanding:

*“10. Under the powers vested with the undersigned vide rule 14 of TN Civil Service, classification control and appeal rules it is hereby ordered that Thiu.K.Rajayya Nadar be removed from Tamil Nadu Government, State service and that the orders, will take retrospective effect from 16 March 85, without prejudice to his entitlement to receive any benefit from Government that might have accrued during his service up to 15 March 85.”*

20. In view of the above said order, the petitioner is entitled to receive any benefit from the Government that might have been approved during his service up to 15.03.1985. The present writ petition is filed to direct the respondents to pay pensions and other benefits to the petitioner. In regard to this prayer, the respondents in their counter affidavit stated that as per rule 21 of the Tamil Nadu Pension Rules, 1978, dismissal or removal of Government servant from the service or post entails forfeiture of his past service. Therefore, the petitioner is not entitled to the payment of pension for



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the services rendered by him in the NCC Department prior to his removal from service.

21. In view of the above factual matrix of the case, the order passed by the 1<sup>st</sup> respondent in G.O.(ID)No.20 dated 03.11.2009 by confirming the order of removal in memo No.113/C, dated 14.03.1986 passed by the 3<sup>rd</sup> respondent, does not warrant any interference by this Court and the same are hereby confirmed.

In the result, the writ petition stands dismissed. No costs.

14.03.2024

cda  
Index : Yes/No  
Speaking/Non Speaking order

To

1.The Secretary,



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State of Tamil Nadu,  
Youth Welfare and Sports Development (YW) Department,  
Secretariat,  
Chennai.

2.The Director of N.C.C.,  
N.C.C., Directorate,  
Tamil Nadu, Pondicherry & Andaman,  
Fort St.George,  
Chennai.

3.The Commanding Officer,  
11, (T.N) BN, N.C.C,  
66, Water Tank Road,  
Nagercoil.

**J.SATHYA NARAYANA PRASAD, J.**

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