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W.A. No.1251 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2024

CORAM

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. No.1251 of 2024 and C.M.P. No.9153 of 2024

1 The Special Commissioner and Commissioner of
Revenue Administration
Chepauk
Chennai 600 005

2 The Collector
Dharmapuri
Dharmapuri District

3 The Personal Assistant (General)
to the Collector, Dharmapuri
Dharmapuri District

Appellants

v

S. Narayanappa

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 17.12.2019 passed in W.P. No.35258 of 2004.

For appellants

Mr. Haja Nazirudeen
Additional Advocate General
assisted by Mr.M.Venkateswaran,
Special Government Pleader

For respondent

Mr. R. Bharath Kumar



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W.A. No.1251 of 2024

JUDGMENT

(delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order dated 17.12.2019 passed by a learned Judge in W.P. No.35258 of 2004.

2 A bird's eye view of the facts which led to the filing of this writ appeal is as follows:

2.1 The respondent was appointed as Office Assistant under the Revenue Inspector in the year 1981. Due to his indisposition, he remained absent from 01.03.1997 to 13.10.1997, *i.e.*, for over seven months.

2.2 Hence, on 09.12.1997, a memo levelling three charges, all relating to absenteeism, was issued to him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for violation of F.R.18(3), as per which, a Government servant should not remain absent for a continuous period of six months.

2.3 Since no reply was given by the respondent, an Enquiry Officer was appointed who held all the three charges as proved *vide* his report dated



W.A. No.1251 of 2024

08.01.1999. Upon being served a copy of the enquiry report, the respondent stated that he had nothing more to offer. On 20.09.1999, he was called for an enquiry, in which also, he stated that since he was down with paralytic attack, he could not attend office and that he had nothing more to offer.

2.4 Hence, the Disciplinary Authority, the third appellant, accepting the report of the Enquiry Officer, *vide* order dated 27.03.2003, slapped the punishment of removal from service on the respondent.

2.5 Thereagainst, the respondent preferred an appeal before the second respondent, who, *vide* proceedings dated 01.11.2003, stating, *inter alia*, that the respondent was called on 13.10.2003 for personal enquiry, wherein, he did not say anything as his defence, confirmed the punishment of removal from service.

2.6 Challenging the aforesaid order passed in the appeal, the respondent filed the writ petition being W.P. No.35258 of 2004, in which, the learned Judge, *vide* order dated 17.12.2019, observed that the Disciplinary Authority had imposed the punishment of removal from service by not considering the case of the respondent in a proper perspective and that the said punishment had been mechanically confirmed by the Appellate Authority.



W.A. No.1251 of 2024

However, the learned Judge, further noticing that though the respondent had submitted leave letters, he had proceeded on leave sans the approval from the authority concerned, set aside the order impugned and allowed the writ petition holding that:

- the punishment of removal from service inflicted on the respondent is disproportionate to charges levelled against him;
- the respondent's period of absence from 01.03.1997 to 13.10.1997 shall be treated as *dies non*;
- the respondent will not be entitled to any pay and it will have impact on his pension; and
- the respondent shall be reinstated in service and notional benefits and retirement benefits be paid to him as if he continued in service, except for the service cut.

2.7 The aforesaid order of the learned Judge is put to challenge in this writ appeal by the respondents in the writ petition.

3 Heard the learned Additional Advocate General for the appellants and the learned counsel for the respondent and also perused the materials available on record.

4 The respondent's continuous absenteeism from 01.03.1997 to 13.10.1997 is not in dispute. It is also not the case of the appellants that the respondent was not indisposed, which is manifest from the order passed by the



W.A. No.1251 of 2024

Disciplinary Authority as well the Appellate Authority, inasmuch as, there is no whisper regarding the indisposition of the respondent.

5 The main ground of attack of the appellants, as could be seen from the memorandum of grounds is that the respondent did not send leave letter at all for his absence from duty. This ground, in the considered opinion of this Court, should be treated to be stated only to be rejected, for, in the report of the Enquiry Officer, there is a categorical admission to the effect that the respondent had sent the leave application belatedly which was returned by the Tahsildar, Denkanikottai and that the respondent did not follow up the matter by sending any representation to the higher officials. Further, when it is the stand of the respondent that he was suffering from paralytic attack and hence, he could not submit his leave application in time, as rightly noted by the learned Judge, if the appellants had doubted his *bona fides*, nothing prevented them from receiving the belated leave application from the respondent and referring him to the Medical Board, which has not been done for the reasons best known to them. Given the seriousness of the respondent's indisposition, the appellants need not have hinged on technicalities and returned his leave application and take a stand that he did not submit leave application at all.



W.A. No.1251 of 2024

6 At the same time, though the factum that the respondent is a sexagenarian had weighed in the mind of the learned Judge, it was rightly observed in the order impugned that the respondent had proceeded on leave sans the approval of the authority, which is indeed a misconduct.

7 Hence, considering the respondent's unauthorized absence for over seven months, on the one hand, and his indisposition, on the other, to meet the ends of justice, the learned Judge has modified the punishment as stated in paragraph 2.6, *supra*, with which, this Court is in complete agreement.

8 In view of the aforesaid discussion, this Court finds no ground to interfere with the order passed by the learned Judge.

Ex consequenti, this writ appeal fails and is accordingly dismissed. Costs made easy. Connected C.M.P. stands closed.

cad

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