BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P(MD)No.24048 of 2022
and
W.M.P(MD)No.18149 of 2022

H.Abzal Sheriff ... Petitioner

Vs.

1.The Principal Secretary /
Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

2.The Additional Chief Secretary /
Commissioner of Commercial Taxes,
Chepauk,
Chennai.

3.The Joint Commissioner,
Office of the Joint Commissioner
Enforcement, Trichy,
Commercial Taxes Department,
Trichy District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings in Proc.No.EE1/25415/2014, dated 09.07.2022 and confirming the order passed by the second respondent in his proceedings in Proc.No.EE1/25415/2014, dated 18.04.2022 and confirmed the same order passed by the third respondent vide his proceedings R.C.No.1010/2014/A2, dated 28.10.2020 and quash the same as illegal and consequently to direct the respondents to reinstate the petitioner in the service taking into consideration of long length of his service within the time that may be stipulated by this Court and pass such further order or others.

For Petitioner	:	Mr.H.Mohammed Imran for M/s.Ajmal Associates
For Respondents	:	Mr.M.Senthil Ayyanar Government Advocate

ORDER

The case of the petitioner is that he was appointed on 06.09.1993 and have rendered nearly more than 20 years of impeccable service without any charges. He had gone abroad without proper intimation due to un-expected situation. Thereafter, the impugned disciplinary proceedings, dated 28.10.2022 has alleged that the petitioner gave a letter, dated 21.03.2015 stating that he was not in a position to continue his employment. Since the petitioner was not in India and on his behalf, his wife gave such a letter. The impugned order of dismissal is not on the basis of the petitioner's letter, but it was solely on the basis of the charge memo.

2. The petitioner applied for passport through his agent and due to inadvertence mistake, he did not obtain the permission from the respondents as required under the rules and the same is neither willful nor wanton. The Appellate Authority has also not considered his length of impeccable service and oblivious of the same. The first and second respondents have rejected his appeal and he has also supplicated the respondents 1 and 2 to consider his appeal sympathetically but the same was evoked. The petitioner is the sole bread winner of his family and as the situation had gone beyond his control, the above said mis-conduct had occurred. The petitioner was not given sufficient opportunity to defend his case effectively and was also not given sufficient time to prepare and submit his initial explanation or further representation and the entire proceedings were held *ex parte* in his absence. The petitioner has also applied for medical leave and the same is also an admitted fact. Hence, he prays to quash the orders passed by the first and second respondents and to allow the writ petition.

3. The counter affidavit is also filed on behalf of the respondents on 17.04.2023. The learned Government Advocate appearing for the respondents would submit that the petitioner while working as Assistant in the office of the Joint Commissioner (Enf.), Trichy vide his letter, dated Nil, had applied for Extra Ordinary Leave (EOL) for 90 days from 24.03.2014 through speed post and proceeded to Dubai on 25.03.2014 without obtaining prior permission from the authority concerned and without intimating his travel. After expiry of the leave, the petitioner did not join duty and as the petitioner did not join duty on expiry of the leave, the Joint Commissioner (Enf.), Trichy vide memo No. 1010/2014/A1, dated 23.06.2014 called for his explanation. Instead of giving his explanation to the Memo, the individual extended his EOL for another 90 days from 23.06.2014 to 20.09.2014, from Dubai and this is evidence from the particulars submitted by the Immigration Office vide letter, dated 06.08.2014 as follows:

Sl.No.	Name of the Pax	Passport No.	Arrival/Departue Details
01.	Hameeth Sheriff Abzal Sheriff DOB: 15/06/1974	Indian H 3588971	Departure - 25/03/2014 to Dubai (IX 611) Arrival - 27/07/2014 from Dubai (IX 612)

4. He further submitted that Bureau of Immigration in its letters, dated 28.01.2019 and 26.07.2021, informed the travel particulars of the petitioner from 25.03.2014 to 29.11.2020 as follows:

Departure (from India) Details:

Date of Travel	Immigration Post (Departure)	Flight Details
25/03/2014	Tiruchirapalli	IX-611 (Dubai)
07/08/2014	Tiruchirapalli	IX-611 (Dubai)
22/03/2015	Tiruchirapalli	IX-611 (Dubai)
10/09/2015	Tiruchirapalli	IX-611 (Dubai)
23/08/2017	Tiruchirapalli	IX-613 (Sharjah)

Arrival (to India) Details:

Date of Travel	Immigration Check Post (Arrival)	Flight Details
27/07/2014	Tiruchirapalli	IX-612 (Dubai)
15/03/2015	Tiruchirapalli	IX-612 (Dubai)
14/07/2015	Tiruchirapalli	IX-612 (Dubai)
31/07/2017	Tiruchirapalli	IX-614 (Sharjah)
29/11/2020	Tiruchirapalli	IX-1614

5. It is known from the above that the petitioner had obtained a passport on 15.09.2009 without getting prior permission from the Head of the Department, which is mandatory, as per Rule 24-A of the Tamil Nadu

Government Servants' Conduct Rules, 1973. The petitioner has while applying for passport he had failed to intimate the passport authorities about his profession of being a Government Servant and the petitioner had willfully committed the offence of travelling to a foreign country viz., Dubai on 25.03.2014 and returned to India on 27.07.2014 without getting prior permission and prior sanction of leave from the Head of the Department.

6. The learned Government Advocate would further submit that as a result of this disciplinary action was initiated against the petitioner and charge memo was issued by the Joint Commissioner (CT) (Enf.), Trichy vide his memo No.A1/1010/2014, dated 11.08.2014 and as the petitioner was out of India as known from the travel particulars furnished by the Immigration Office, the charge memo was served to his wife on 18.08.2014. Thereafter, the inquiry officer was appointed to inquire into the charges on 13.11.2014 and the inquiry officer summoned the petitioner on various dates viz., 28.01.2015, 24.03.2015 and 23.07.2015, but the petitioner did not appear before the inquiry officer and again extended his leave from 20.12.2014 to 07.03.2015. The petitioner after extension of leave period, did not submit any leave application from 08.03.2015 to 20.03.2015 but submitted his resignation letter on 21.03.2015. In the affidavit filed in support of the writ petition, the petitioner has stated that as he was not in India, his wife submitted his resignation letter on his behalf, since the officials often knocked his residential house.

7. He further submitted that since the disciplinary action was pending against the petitioner, the petitioner's resignation letter was not accepted by the Joint Commissioner (ST) (Int.), Trichy vide memo No.1010/2014/A1, dated 26.03.2015. The petitioner failed to appear before the inquiry officer in spite of several summons and the inquiry officer was forced to pass an *ex parte* order on 31.08.2015, holding that all the charges framed against the individual as "proved". The inquiry report was communicated to the individual on 12.11.2015, 20.11.2015 and 11.01.2016 but he did not submit his further representation on the inquiry report even after providing three opportunities by the respondents.

8. Thereafter, the Joint Commissioner (Enf.), Trichy vide her letter, dated 31.12.2018 had requested the Director, Foreigners Regional Registration Office (FRRO), Chennai about the travel particulars of the petitioner for the period from 01.01.2014 to 31.12.2018 and the same was received on 28.01.2019, which revealed that the petitioner had gone to UAE on 23.08.2017 and did not return to India till the final order was passed by the Joint Commissioner (CT) (Enf.), Trichy vide her proceedings No.1010/2014/A2, dated 28.10.2020.

9. The learned Government Advocate appearing for the respondents would further submit that before passing the final order, another charge memo was issued to the individual by the Joint Commissioner (ST) (Int.), Trichy vide memo No.1010/2014/A1, dated 09.07.2019 for remaining under continued unauthorized absence and for suppression of facts before the passport authorities about his employment in State Government and for undertaking frequent trips to foreign countries without prior sanction from the concerned authorities.

10. The petitioner did not submit his explanation to the second charge memo also, following which, an inquiry officer was appointed on 03.12.2019 to inquire into the charges framed against the petitioner. In spite of the repeated summons, the delinquent did not attend the inquiry and left with no other alternative, the inquiry officer submitted his report "*ex-parte*" on 03.02.2020 holding all the charges framed against the individual as "Proved". Though the inquiry report on the second charge memo was communicated to the individual, he did not submit his further representation on the inquiry report. For the proven charges in both the disciplinary cases, the individual / petitioner was "dismissed from service" by the Joint Commissioner (ST) (Int.), Trichy vide proceedings No.1010/2014/A2, dated 28.10.2020.

11. Thereafter, against the dismissal order, the petitioner vide his letter, dated 25.12.2020 filed an appeal before the Commissioner of Commercial Taxes and for passing final order on the appeal petition, the travel details of the individual was called for and the same was furnished by the Bureau of Immigration on 28.01.2019 and 26.07.2021 which showed that the individual had travelled to Dubai and Sharjah and back to India without obtaining any permission from the Appointing Authority as stated *supra*. The details furnished by the Immigration Authorities shows that the petitioner was a frequent traveller to Dubai and Sharjah between 25.03.2014 and 29.11.2020 and during that period of 6 1/2 years, except for few days, he dwelled in those two countries for more than 6 years without intimating and without obtaining prior permission from his employer (i.e.,) the State Government. The long period of stay in a foreign country would put anyone to understand that he should have been under some employment in other countries. Moreover, the travel particulars show that the individual had lastly travelled to Sharjah on 23.08.2017 and returned to India only on 29.11.2020 after staying for a continuous period of over 3 1/2 years. The individual being unresponsive to all sorts of communications from the Joint Commissioner (Enforcement), Trichy office pertaining to charge memo, summons for appearance before the inquiry officer and inquiry reports, the individual finally found his time to respond to the dismissal order by way of an appeal to the Additional Chief Secretary / Commissioner of Commercial Taxes and after a careful examination of grounds stated in the appeal petition along with connected records, the petitioner's appeal was dismissed by the Additional Chief Secretary / Commissioner of Commercial Taxes vide proceedings No.EE1/25415/2014, dated 18.04.2022. Prior to the dismissal of his appeal petition, the petitioner / individual filed W.P(MD)No.9276 of 2021 before this Court to consider the appeal petition within a stipulated time and pass orders and the same was disposed by this Court by order, dated 03.02.2022 and the order copy was received by their office on 09.05.2022 with a direction "to consider the petitioner's appeal dated 27.12.2020 and pass appropriate orders, on its merits and in accordance with law, after affording due opportunity of hearing".

12. The learned Government Advocate appearing for the respondents would further submit that in order to comply with the above direction of this Court, the individual was offered a personal hearing on 27.05.2022 based on the contents made in his appeal petition and during the personal hearing, the individual / petitioner could not substantiate his claim made in the additional appeal petition and the explanation offered by him at the time of personal hearing contradicted with the points made in the additional appeal petition. Further, the individual had no answer to the question on his stay over a period of six years in Dubai / Sharjah. His additional appeal petition as well as his submission at the time of personal hearing offered no fresh grounds to reconsider the decision already taken in proceedings No.EE1/25415/2014, dated 18.04.2022 and the petitioner's additional appeal petition was dismissed by the Principal Secretary / Commissioner of Commercial Taxes vide proceedings No.EE1/25415/2014, dated 09.07.2022.

13. Heard the learned Counsel for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

14. In this case, there are two delinquencies committed by the petitioner. First one is that while applying for passport, he did not intimate to the authorities nor obtain the permission for applying the same. As per Rule 24-A of the Tamil Nadu Government Servants' Conduct Rules, 1973, it is mandatory that every Government Servant should get prior permission from the Head of the Department for applying the passport and in this case, it was not done by the petitioner. The second delinquency is that he went abroad (i.e.,) to Dubai on 25.03.2014 without getting prior permission and prior sanction of the leave from the Head of the Department. The above both delinquencies are admitted by the petitioner but the reason given by him is not satisfactory neither to the authorities nor to this Court. The petitioner has stayed in Dubai and Sharjah for nearly 6 1/2 years and his first trip to Dubai on 25.03.2014 and return to India on 27.07.2014. Even at that time, the petitioner did not chose to intimate or inform to the authorities that he has obtained the passport without permission and went abroad (i.e.,) to Dubai and it is only by the details given by the Bureau of Immigration, the authorities came to know that the petitioner had frequently travelled to Sharjah and Dubai and it is pertinent to extract the particulars submitted by the Immigration Office, which reads as follows:

Sl.No.	Name of the Pax	Passport No.	Arrival/Departue Details
01.	Hameeth Sheriff Abzal Sheriff DOB: 15/06/1974	Indian H 3588971	Departure - 25/03/2014 to Dubai (IX 611) Arrival - 27/07/2014 from Dubai (IX 612)

<u>Departure (from India) Details</u>:

Date of Travel	Immigration Post (Departure)	Flight Details
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22/03/2015	Tiruchirapalli	IX-611 (Dubai)
10/09/2015	Tiruchirapalli	IX-611 (Dubai)
23/08/2017	Tiruchirapalli	IX-613 (Sharjah)

<u>Arrival (to India) Details</u>:

Date of Travel	Immigration Check Post (Arrival)	Flight Details
27/07/2014	Tiruchirapalli	IX-612 (Dubai)
15/03/2015	Tiruchirapalli	IX-612 (Dubai)
14/07/2015	Tiruchirapalli	IX-612 (Dubai)
31/07/2017	Tiruchirapalli	IX-614 (Sharjah)
29/11/2020	Tiruchirapalli	IX-1614

15. Since the petitioner was out of the country, the charge memo was served to his wife on 18.08.2014 and the summons were also issued to the petitioner on various dates viz., 28.01.2015, 24.03.2015 and 23.07.2015 but the petitioner did not chose to appear before the inquiry officer and he submitted his resignation letter on 21.03.2015 through his wife, since he was out of India (i.e.,) in Dubai. The petitioner's letter was not accepted since the disciplinary action was pending against the petitioner and since the petitioner failed to appear before the inquiry officer in spite of several summons, the inquiry officer was compelled or forced to pass an *ex parte* order on 31.08.2015, holding that all the charges framed against the individual / petitioner as "Proved". The inquiry report was also communicated to the individual on 12.11.2015, 20.11.2015 and 11.01.2016 but the individual / petitioner did not chose to submit the further representation on the inquiry report. The travel details / particulars of the petitioner for the period from 01.01.2014 to 31.12.2018 was furnished by the Director, Foreigners Regional Registration Office (FRRO), Chennai, dated 28.01.2019, which revealed that the petitioner had gone to UAE on 23.08.2017 and did not return to India till the final orders were passed by the Joint Commissioner (CT) (Enf.), Trichy, dated 28.10.2020.

The second charge memo was also issued and the individual did not submit any explanation and in spite of repeated summons, the delinquent did not attend the inquiry and the inquiry officer was left with no other alternative except to submit a report "*ex-parte*" on 03.02.2020 holding that all the charges framed against the individual as "Proved" and this report was submitted prior to the passing of the final order on 28.10.2020 by which the petitioner was "dismissed from service". The appeal was also dismissed by the Additional Chief Secretary / Commissioner of Commercial Taxes vide proceedings No.EE1/25415/2014, dated 18.04.2022 and the additional appeal was also dismissed on 09.07.2022.

16. In view of the above factual matrix of the case, the impugned order passed by the first respondent in his proceedings in Proc.No.EE1/25415/2014, dated 09.07.2022 and confirming the order passed by the second respondent in his proceedings in Proc.No.EE1/25415/2014, dated 18.04.2022 and confirmed the same order passed by the third respondent vide his proceedings R.C.No. 1010/2014/A2, dated 28.10.2020 does not warrant any interference by this Court and the same is hereby confirmed.

17. In the result, the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

29.10.2024

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

To

1.The Principal Secretary /
Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

2.The Additional Chief Secretary /
Commissioner of Commercial Taxes,
Chepauk,
Chennai.

3.The Joint Commissioner,
Office of the Joint Commissioner
Enforcement, Trichy,
Commercial Taxes Department,
Trichy District.

J.SATHYA NARAYANA PRASAD, J.

BTR

W.P(MD)No.24048 of 2022

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