



W.P.No.14378 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.14378 of 2020

P.Guna Sekaran

...Petitioner

-Vs-

1.Government of Tamil Nadu,
Represented by Secretary to Government,
Health and Family Welfare (D2) Department,
Secretariat, Chennai-600 009.

2.The Director of Public Health & Preventive Medicine,
Chennai-600 006. ...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, calling for the records of the First Respondent G.O.(D).No.250 Health and Family Welfare (D2) Department 28/02/2020 and proceedings of the 2nd respondent issued in Ref.No.51260/G1/10/S2 dated 30.01.2012 and quash the same and to direct the respondents herein to reinstate the petitioner in service and to grant him all consequential benefits within a limited time frame.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.K.Tippu Sulthan



W.P.No.14378 of 2020

Government Advocate

ORDER

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This writ petition is filed for issuance of a Writ of Certiorarified Mandamus, calling for the records of the First Respondent G.O.(D).No.250 Health and Family Welfare (D2) Department 28/02/2020 and proceedings of the 2nd respondent issued in Ref.No.51260/G1/10/S2 dated 30.01.2012 and quash the same and to direct the respondents herein to reinstate the petitioner in service and to grant him all consequential benefits within a limited time frame.

2. The case of the petitioner is that he was initially appointed in the year 1986 as Leprosy Inspector and posted to work at Kolachel, and after merger of the Leprosy wing with the Public Health Department, he was posted as Health Inspector, Grade-1. He was served Charge Memo by the Deputy Director of Health Services, Tirupur, under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules in Pro.No.2932/A3/09 dated 23.07.2010, for absence from duty from 11.02.2009. Challenging the order passed by the 2nd respondent dated 30.01.2012, removing the petitioner from service, the petitioner has come forward with the present writ petition.



W.P.No.14378 of 2020

3. The learned counsel for the petitioner would submit that the petitioner was attacked with cancer disease in the year 2009 and in order to undergo medical treatment for the same and he proceeded on admissible and eligible leave from 11.02.2009 and took treatment at various hospitals, after submitting leave application. Thereafter, due to continuous medical treatment, he was not able to rejoin duty on the expiry of the leave applied for. He was unable to send leave application for extension of leave after the first spell of leave as there was nobody to help the petitioner in this regard. Since his wife also fell sick during the relevant period, therefore, there is no possibility to submit his leave application. There were several family problems and he was suffering from mental stress.

4. The learned counsel for the petitioner would further submit that while the fact remains so, the Deputy Director of Health Services, Tirupur, issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules in Proc.No.2932/A3/03 dated 23.07.2010, levelling the following single charge against the petitioner.

"Thiru.P.Gunasekaran serving as Health Inspector at 15, Velambalayam Primary Health Centre, as abstained from duty without any



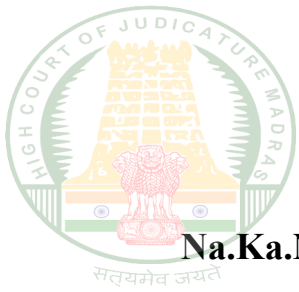
W.P.No.14378 of 2020

basis from 11/02/2009. In view of the same, he has caused prejudice to the Government work by not attending to duty without prior permission.

In the statement of allegation at **Annexure-2**, it has been stated that the letter of the Block Medical Officer, Primary Health Centre, Perumanallur in his letter proceedings No.159/2009 dated 15.06.2009 sent by registered post had sought for an explanation from Thiru.P.Gunasekaran, Health Inspector Grade-I for absenting from duties from 11/02/2009 and as Thiru P.Gunasekaran, Health Inspector, Grade-I, was not staying at the said address, the above said memo have been returned by the Postman."

5. The learned counsel would further submit that in the statement of allegations at **Annexure 2** to the said Charge Memo that the said P.Gunasekaran, Health Inspector, Grade-I, has absented himself from 11.02.2009 and caused prejudice to the Government Work.

6. In the list of documents in **Annexure 3** to the Charge Memo, the only document marked was the aforesaid show cause notice issued by the Block Health Officer, Perumanallur in and by proceedings



W.P.No.14378 of 2020

Na.Ka.No.159/2009 dated 15.06.2009 alone was marked as documents. In

Annexure No.4 to the Charge Memo under the caption the list of witnesses against the petitioner, it has been clearly stated as "Nil".

7. The learned counsel would further submit that the petitioner inflicted with a highly serious ailment of carcinoma bladder and systemic hyper tension simultaneously his wife also suffering from serious ailments. Thereafter, the disciplinary proceedings was initiated against the petitioner and one Dr.Vijayalakshmi, Deputy Director of Health Service, Tirupur was nominated as Inquiry Officer to conduct oral inquiry and personal hearing and the inquiry was conducted on 04.02.2011 at DHS Office, Tirupur. The petitioner had attended the enquiry and once again he submitted written representation and requested permission to rejoin duty to the Deputy Director, Health Services / PRP. Admittedly even in his personal statement dated 04.02.2011, the petitioner had requested for permission to rejoin duty from DDHS/PRP, BMO, **Perumanallur no communications were received by the petitioner and ultimately without even any witness the Inquiry Officer seems to have rendered a finding that the charge is proved and finally the 2nd respondent herein in and by proceeding**



W.P.No.14378 of 2020

No.5/260/DA/10/S2 dated 30.01.2012 the petitioner was removed from service.

8. He would further submit that the petitioner could have filed appeal against the order impugned 'removal from service' and after prolonged treatment, he was able to recover from his illness during the early part of the year 2018 and it is only he came to know the order of punishment of removal from service and he submitted a representation dated 28.05.2018 to the Director of Public Health and Preventive Medicine, Chennai-6, to reconsider the order of removal and reinstate his in service. the Director of Public Health and Preventive Medicine, Chennai-6, by order dated 06.10.2018 in Pro.No.50715/DA/S3/18, rejected the petitioner's request by a non-speaking order. Thereafter, the petitioner submitted a Revision Petition dated 15.12.2018 to the Secretary to Government, Health & Family Welfare, Chennai-9, narrating the above facts and stating that his absence as such from 11.02.2009 was not willful or wanton but due to bonafide reasons and hence, taking into account his unblemished service record of about 24 years, a lenient view has to be taken since the delinquency is not grave in nature, involving moral turpitude and in such circumstances, the major penalty of



W.P.No.14378 of 2020

removal from service is harsh and unjust. Since the same has not revoked any response, the petitioner had preferred W.P.No.18736 of 2019 on the file of this Court and this Court, by judgment dated 31.10.2019 directed the 1st respondent to consider the review petition filed by the petitioner on 16.02.2018 and pass orders on the same in accordance with law within a period of 12 weeks from the date of receipt of a copy of the order. Thereafter, the 1st respondent had referred the matter to Tamil Nadu Public Service Commission for seeking opinion and the TNPSC on a misconception of facts as of the petitioner had received an order dated 07.09.2011 directing him to rejoin duty as Block Medical Officer at Erisanampatty Primary Health Centre, he had not joined the duty, till date and on a misconception of law seems to have opined that the order of removal from service has to be confirmed. The 1st respondent also had for the very same reason more importantly his alleged non rejoining duty in pursuance of 07.09.2011 proceedings inference was drawn that he was not interested to continue in the Government service and his irresponsible attitude at work. The 1st respondent by order dated 28.02.2020 had chosen to reject his appeal against the punishment of removal from service imposed on the petitioner by the 2nd respondent as devoid of merits and Government had confirmed the order of



W.P.No.14378 of 2020

penalty. The petitioner attained the age of superannuation on 31.10.2020.

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9. The learned counsel would further submit that the respondents ought to have taken into consideration that the subject matter of disciplinary proceedings did not involve major allegations such as corruption, bribery, causing loss to the Government with dishonest motive, accumulating disproportionate wealth or any other allegations involving moral turpitude which alone would warrants major penalty as provided by the Government in Government circular dated 11.03.1993. In the absence of such grave allegation and in the absence of any witness, the Disciplinary Proceeding itself would ought not to have been initiated as major penalty proceedings. The respondents have failed to consider that the imposition of major penalty was out and out harsh, unjust and conscience shocking. The respondents have failed to consider that the order of penalty was shockingly disproportionate to the proved charge. The respondents have failed to consider that even in an exparte enquiry all the witnesses have to be examined and the documents could be marked only through witnesses and the charge has to be necessarily proved.



W.P.No.14378 of 2020

10. In the given case there was no witness at all and there is nothing on record to disprove the statement of the petitioner that his over stayal of leave or absent was beyond his control and there was nothing on record to prove that the absent was wanton or wilful.

11. He would further submit that the petitioner has never been served with the proceeding permitting him to rejoin duty. The proceedings dated 07.09.2011 as referred by Tamil Nadu Public Service Commission in his opinion and Government in its order dated 28.02.2020 allegedly reposting the petitioner at Government Primary Health Centre, Amaravathi Nagar was never served on the petitioner.

12. Later the respondents have failed to consider that such a letter dated 07.09.2011 was never a subject matter of the inquiry and the enquiry officer had completed his enquiry on 15.06.2011 itself and even in his enquiry report dated 01.08.2011 there is no reference to any such order of reposting of the petitioner in his enquiry report. While the order of reposting dated 07.09.2011 was never served on the petitioner neither a copy of the document nor the acknowledgement of receipt of the same were marked



W.P.No.14378 of 2020

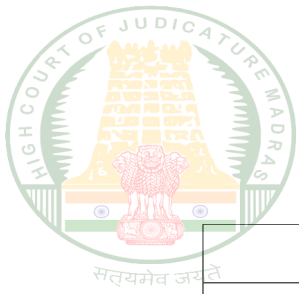
during the enquiry nor have been referred to in the enquiry officer's report.

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13. The 2nd respondent in the order of punishment had mainly based his decision on a premise as if the petitioner was again given posting and even thereafter he was failed to rejoin his duty and he had exhibited utter disregard to his duty and thereby accepted the findings of the Enquiry Officer and imposed major penalty of removal from service.

14. The learned counsel would further submit that the same Department had imposed appropriate penalties for the other employees who are unnecessary absent whereas the petitioner alone had been implicated with such major penalty exposing that the act of the respondents and the impugned proceedings suffers from the vise of selective discrimination and malice in law. the respondents have taken lenient view and granted punishment which are as follows:

Name	Period of Unauthorised	Quantum of Punishment	
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W.P.No.14378 of 2020

	Absence		
Tmt.P.Rajalakshmi Perumanallur	1992 to 01/09/1998	Stoppage of increment for 2 years without cumulative effect	1702/A2/09 dated 13/03/2013
Thiru.N.Kanniappa n	1992 to 31/12/1993	Stoppage of increment for 2 years without cumulative effect	D) No.8773 H&SW Department dated ____ / 2011
Tmt.D.Tamilarasi	2005 to 2011	Stoppage of increment for 3 years without cumulative effect	127387/DA/S4/ 09 dated 14.03.2014
Tmt.Anajalin Pramavathi	1993 to 17/08/2003	Stoppage of increment period exactly not known	4610/A2/09 dated 12/12/2012

15. He would further submit that Rule 18(3) of the Fundamental Rules uniformly directing imposition of removal from service for unauthorised absence for a period of more than one year has once and for all being removed from the Statutory Book.

16. Counter affidavit is filed on behalf of the 1st respondent.

17. The learned Government Advocate appearing for the



W.P.No.14378 of 2020

respondents submitted that in order to provide adequate opportunity to the petitioner herein, the Inquiry Officer Dr.V.Vijayalakshmi then Deputy Director of Health Services, Tirupur has been appointed to conduct inquiry into the charges framed against him. The Inquiry Officer has conducted the inquiry on 04.02.2011 at the Office of the Deputy Director of Health Services, Tirupur. The petitioner herein in the inquiry held, has admitted the charges framed against him and stated that the petitioner and his wife were not well and so he was on unauthorised absent from his duties from 11.02.2009 and further stated that he will produce the clinching medical documentary evidences in due course pertaining to the petitioner herein and for his wife for having undergone treatment at a Hospital in Coimbatore. But the petitioner herein had not produced any evidence to prove the same.

18. The learned Government Advocate would further submit that the petitioner has chosen to attend the inquiry after a lapse of two years and at the time of inquiry, petitioner herein has not submitted any proper explanation for his unauthorised absence for more than two years and failed to submit any clinching evidence for having undergone medical treatment. However, taking a lenient view, the request of the petitioner herein had been



W.P.No.14378 of 2020

taken into consideration and necessary reposting orders have been issued by the Director of Public Health and Preventive Medicine/2nd respondent herein vide R.No.39615/MPIV/S2/2011, dated 30.05.2011 and the said orders were communicated to the petitioner herein by the Deputy Director of Health Services, Tirupur to his last known address vide his R.No.29321/A3/2011, dated 07.09.2011. However, the said communication had been returned by the postal authorities with remarks as, "Left".

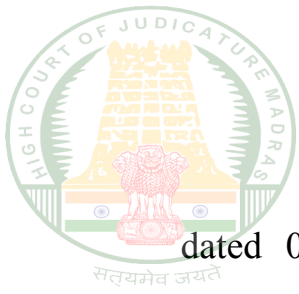
19. It is also submitted that in the meanwhile in the disciplinary case initiated against the petitioner herein, the Inquiry Officer concluded her Inquiry Report duly holding the charges framed against the petitioner as Proved herein, which had been communicated to him, vide R.No.51260/DA/S2/2010, dated 07.04.2011, with instructions to submit his further representation on the Inquiry Officer's report. On having informed by his co-workers, the petitioner herein had attended Primary Health Centre, Perumanallur in person and received the said communication on 15.06.2011. It is respectively submitted that the petitioner herein has not submitted any further representation, to prove his side. Hence, it is submitted that the Director of Public Health and Preventive Medicine/2nd respondent herein



W.P.No.14378 of 2020

being the competent disciplinary authority for the post of Health Inspector has concluded the disciplinary case initiated against the petitioner by imposing the order of removal from service vide his Proc.R.No.51260/DA/10/S2, dated 30.01.2012. The said final orders were received by the petitioner on 23.02.2012 in person. The petitioner has been informed in the final order that appeal against the above punishment imposed lies with the Government in Health and Family Welfare Department, Fort St.George, Chennai and he can prefer appeal within the period of two months from the date of receipt of the above order. However, the petitioner has not preferred any appeal to the Government at that time.

20. He would further submit that the petitioner did not turn up for a long spell of six years and chosen to make an appeal only in the year of 2018. The petitioner in his mercy petition given to the 2nd respondent, the Director of Public Health and Preventive Medicine has not adduced any new valid points to defend himself from the charges framed against him and has not produced any clinching documentary evidences related to his unauthorised absence for having undergone medical treatment. Therefore, the 2nd respondent in his Proceedings R.No.50715/DA/S3/18,



W.P.No.14378 of 2020

dated 06.10.2018 has rejected the petition preferred by the petitioner.

Thereafter, after a lapse of 6 years, the petitioner preferred an appeal on 13.12.2018 to the Government without adducing any fresh or valid grounds or submitted any clinching documentary evidences for having undergone treatment for his major ailment as quoted by him the reason for his unauthorised absence. Therefore, the appeal had been rejected by the 1st respondent herein vide G.O.(D) No.250, Health and Family Welfare Department, dated 28.02.2020.

21. Heard the learned counsels for both sides and perused the materials available on record.

22. The petitioner was on unauthorised absence from 11.02.2009 and the Charge Memo was served to the petitioner on 21.08.2010, he has not submitted his defence statement on the charge memo issued on him. Even in the inquiry held on 04.02.2011, the petitioner herein did not submit his defence statement for the charges framed against him. Thereafter the Inquiry Officer Dr.V.Vijayalakshmi then Deputy Director of Health Services, Tirupur has been appointed to conduct inquiry into the charges framed



W.P.No.14378 of 2020

against him. The Inquiry Officer has conducted the inquiry on 04.02.2011 at the Office of the Deputy Director of Health Services, Tirupur. The petitioner herein in the inquiry held, has admitted the charges framed against him and stated that the petitioner and his wife were not well and so he was on unauthorised absent from his duties from 11.02.2009 and further stated that he will produce the clinching medical documentary evidences in due course pertaining to the petitioner herein and for his wife for having undergone treatment at a Hospital in Coimbatore. But the petitioner herein had not produced any evidence to prove the same.

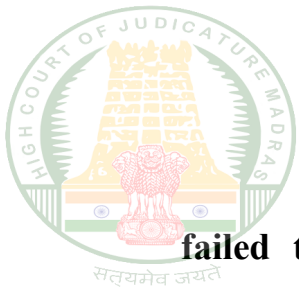
23. The petitioner has not submitted any documentary evidence that he was undergone treatment for his illness as reasons stated by him for his unauthorised absence. The petitioner was on unauthorised absence from 11.02.2009 and he was removed from service on 30.01.2012 by proceedings of the 2nd respondent. **Even though the petitioner was given reposting orders by the 2nd respondent dated 30.05.2011, which was communicated by the Deputy Director of Health Services, Tirupur, on 07.09.2011, the said communication was returned by the postal authorities with remarks as, "Left". It cannot be construed that the petitioner having received the said letter and he has not chosen to join duty. Hence, the contention of**



W.P.No.14378 of 2020

the respondents that despite reposting order, the petitioner was not inclined to join duty is unsustainable and untenable in law. It is pertinent to note that the petitioner has worked for 23 years and he was on unauthorised absence from service from 11.02.2009 due to ailment and according to him, he was suffering from Cancer and his wife also not well. But, there was no documentary proof submitted by the petitioner that he was undergone treatment in the hospital at Coimbatore. Though the petitioner was given opportunity for producing the medical documents he has not produced the same to prove that he has taken treatment in hospital at Coimbatore.

24. Since the communication sent by the Deputy Director of Health Services, Tirupur, dated 07.09.2011, asking the petitioner to join the duty in view of reposting order issued by the 2nd respondent dated 30.05.2011 **the communication sent was returned with endorsement "Left". In such case, the respondents authority ought to have served the same to the petitioner by finding out the whereabouts of petitioner by enquiring in the locality and with the neighbours of the petitioner's previous address. The respondents have not taken any steps and they have miserably**



W.P.No.14378 of 2020

failed to do so which cannot be put against the petitioner. If the communication of the Deputy Director of Health Services dated 07.09.2011 was served to the petitioner, he would have joined the duty and the period of unauthorised absence would have been from 11.02.2009 to 07.09.2011 for a period of two years. The petitioner would have attend the age of superannuation on 31.10.2020. Taking a lenient view that the petitioner was on unauthorised absence from 11.02.2009 was due to the bonafide/genuine reasons that he was suffering from some ailment like Cancer, he should have been reinstated into service. No prudent person will be staying at home without attending the duties, it will be unauthorised absence and he knows the implications of the same and in this case, it is pertinent to note that it is due to his ailment of Cancer and other diseases, eventhough he has not submitted any medical records for undergoing treatment at hospital hence in this case by taking lenient view, the petitioner is entitled for reinstatement. This writ petition was filed on 22.09.2020, whereas the petitioner has reached the age of superannuation on 31.10.2020, just one month later.

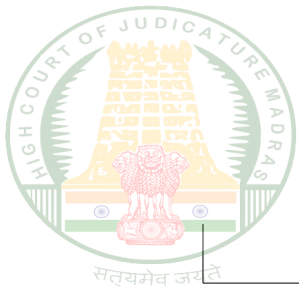


W.P.No.14378 of 2020

25. Though the appeal was filed belatedly after six years, the first respondent has not rejected the same on the ground of delay, it was rejected only for non-submission of documentary evidences and no fresh or valid grounds raised by the petitioner for unauthorised absence.

26. It is pertinent to note that in some of the cases of unauthorised absence, the respondents have taken lenient view and granted punishment which are as follows:

Name	Period of Unauthorised Absence	Quantum of Punishment	
Tmt.P.Rajalakshmi Perumanallur	1992 to 01/09/1998 (6 years)	Stoppage of increment for 2 years without cumulative effect	1702/A2/09 dated 13/03/2013
Thiru.N.Kanniappan	1992 to 31/12/1993 (1 years)	Stoppage of increment for 2 years without cumulative effect	D) No.8773 H&SW Department dated ____ / 2011
Tmt.D.Tamilarasi	2005 to 2011 (6 years)	Stoppage of increment for 3 years without cumulative effect	127387/DA/S4/09 dated 14.03.2014
Tmt.Anajalin Pramavathi	1993 to 17/08/2003 (10 years)	Stoppage of increment period not	4610/A2/09 dated 12/12/2012



W.P.No.14378 of 2020

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27. The petitioner has to be reinstated for the following reasons:

i) The petitioner has worked for 23 years with unblemished service.

ii) The only delinquency committed by the petitioner is the unauthorised absence for the period of two years from 11.02.2009.

iii) The petitioner has not committed any delinquency during his 23 years long service from 1986 to 11.02.2009 except this period on unauthorised absence from 11.02.2009.

iv) The petitioner was on unauthorised absence due to his ailment Cancer and some other diseases and though he was undergone treatment in hospital, but no medical documents were produced to that effect.

v) The letter dated 07.04.2009 issued by the Deputy Director of Health Services, Tirupur, informing the petitioner about his reposting the communication cover was returned by the postal Department with an endorsement person "Left".



W.P.No.14378 of 2020

vi) If the respondents have taken some sincere efforts to locate the address of the petitioner since he has left the place of residence, since the petitioner was not residing the address which he has mentioned or given in the office record, the respondents would have served the communication to the petitioner by enquiring his whereabouts with the erstwhile neighbours of the locality as a result he would have join in duty.

vii) The respondents would have published a notice in the local Tamil daily informing the petitioner to join the duty which they failed to do so.

viii) The respondents would have imposed punishment for stoppage of increment for three years or five years as it was done in the case of similarly persons stated supra rather than imposing major penalty of removal from service.

ix) The punishment imposed on the petitioner is highly disproportionate to the delinquency committed by the petitioner i.e., unauthorised absence for the period of two years.

28. In view of the factual matrix of the case and for the reasons



W.P.No.14378 of 2020

stated above, the order passed by the First Respondent G.O.(D).No.250

Health and Family Welfare (D2) Department 28/02/2020 and proceedings of the 2nd respondent issued in Ref.No.51260/G1/10/S2 dated 30.01.2012 are **liable to be quashed and accordingly, the same is quashed.**

29. The respondents are directed to reinstate the petitioner in service and to grant him all consequential benefits within a period of three months from the date of receipt of a copy of this order.

30. In the result, this writ petition is allowed with the above observations and directions. No costs.

10.01.2025

ssn

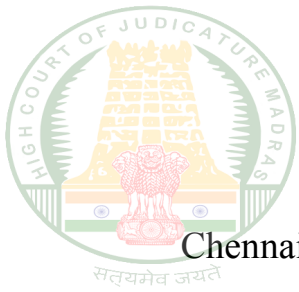
Index : Yes

Speaking/Non Speaking order

To

1.The Secretary to Government,
Government of Tamil Nadu,
Health and Family Welfare (D2) Department,
Secretariat, Chennai-600 009.

2.The Director of Public Health & Preventive Medicine,



Chennai-600 006.

WEB COPY



W.P.No.14378 of 2020

J.SATHYA NARAYANA PRASAD, J.,

ssn

W.P.No.14378 of 2020



WEB COPY



W.P.No.14378 of 2020

10.01.2025