

W.P.No.40080 of 2016

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.40080 of 2016
and
W.M.P.No.34124 of 2016

K.Paulraj,
S/o.Koundasamy

... Petitioner

Vs.

- 1.The Director,
Survey and Settlement,
Chepauk, Chennai – 5.
- 2.The Additional Director,
Survey and Land Records,
Chepauk, Chennai – 5.
- 3.The Regional Director,
Survey and Land Records,
Chepauk, Chennai – 5.
- 4.The Assistant Director,
Survey and Land Records,
Chepauk, Chennai – 1.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 4th Respondent in Na.Ka.A4.6035/08 dated 13.01.2011, 3rd Respondent in



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Na.Ka.A3.1358/11 dated 05.06.2013, 2nd Respondent in Na.Ka.La1/32148/13 dated 14.03.2014 and 1st Respondent in Na.Ka.Gna2/19694/2014 (Ne.A) dated 05.02.2015 and quash the same and consequently direct the Respondents to pay the terminal benefits due to the Petitioner.

For Petitioner : Mr.S.Vijay Anand

For Respondents : Mr.K.Suresh
Government Advocate

ORDER

This Writ Petition is filed against the dismissal of the Petitioner from service by the 4th Respondent as a disciplinary authority vide the Impugned Order dated 13.01.2011, which was confirmed by the 3rd Respondent by rejecting the appeal of the Petitioner vide Impugned Order dated 05.06.2013 and the revision preferred by the Petitioner against the Order dated 05.06.2013 was also dismissed by the 2nd Respondent vide Impugned Order dated 14.03.2014 by confirming the Impugned Orders of the 3rd and 4th Respondents.

2. Aggrieved by the Order dated 14.03.2014, the Petitioner preferred revision before the 1st Respondent which was also dismissed by the 1st Respondent vide Impugned Order dated 05.02.2015.



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3. The facts on record reveal that the Petitioner who was serving as a Surveyor at the Respondents Department from 10.07.2008 was subjected to the disciplinary proceedings pursuant to a Charge Memo dated 11.02.2009.

4. The charge against the Petitioner in the Charge Memo dated 11.02.2009 was that the Petitioner had wilfully absented himself from duty between 12.01.2009 and 13.01.2011. The charges framed against the Petitioner vide Charge Memo dated 11.02.2009 as is evident from the Affidavit filed in support of this Writ Petition, are as follows:-

1. For staying away from duty from 12.01.2009 without any intimation to the Office.
2. For submitting leave application only from 26.11.2008 to 11.01.2009 and thereafter remaining absent from duty without any intimation.
3. Non submission of monthly diary for the months of October 2008, November 2008, December 2008 and January 2009.
4. Habitually absenting himself from duty without submitting any leave letters.
5. For violating the Government Servant Conduct Rules.
6. For being detrimental to the Government Service.

5. It is the case of the Petitioner although the Charge Memo dated 11.02.2009 states that the Petitioner had been wilfully absented between the



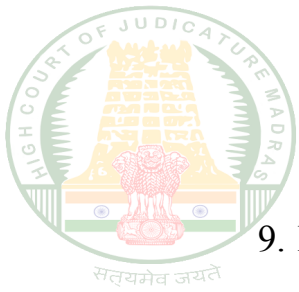
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aforesaid two dates, the actual date of the Petitioner being absent was only from 12.01.2009 to 01.03.2009 and thereafter the Petitioner was reinstated in service on 02.03.2009 and the Petitioner however absented for a period of 7 months thereafter before the date of his superannuation on 31.01.2011.

6. It is fairly conceded by the learned counsel for the Petitioner that in entirety, the Petitioner had been absent for about 529 days from duty during his service at the Respondents Department.

7. The specific case of the Petitioner is that although the Petitioner had absented from duty, the Petitioner was suffering from Intermediate Epilepsy and other age related ailments and that the Petitioner had to take care of his daughter who was suffering from Microcephaly, a medical condition which stuns the growth of the brain and therefore the Petitioner's daughter required continuous care.

8. The further case of the Petitioner is that the Petitioner was taking treatment from local traditional medical practitioners and therefore his absence from the duty for about 529 days was neither wilful nor wanton.



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9. It is submitted that the law on the subject is clear and well-settled that non-wilful absence from duty cannot result any punishment in the form of dismissal from service under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

10. Learned counsel for the Petitioner has drawn attention to the following decisions of the Hon'ble Supreme Court and that of this Court:-

- i. **Shri Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others**, (2004) 4 SCC 560.
- ii. **R.Ramesh Vs. The Deputy Inspector General of Police, Kancheepuram Range, Kancheerpuram and another** in W.A.No.58 of 2011 dated 27.01.2011.
- iii. **S.Shanmugarajan Vs. The State of Tamil Nadu, Represented by the Director General of Police, Chennai and others** in W.A.No.1608 of 2011 dated 26.02.2013.
- iv. **C.K.Govindarajan Vs. The Deputy Commissioner of Police, Armed Reserve, Chennai City Police, Chennai and others** in W.P.No.34615 of 2013 dated 03.01.2014.
- v. **S.Vanitha Vs. The Joint Commissioner of Police, Central Zone, Chennai and another** in W.P.No.34356 of 2013 dated 24.01.2014.
- vi. **T.Suresh Kumar Vs. The Commandant, TN Special Police XI Battalion, Rajapalayam and others** in W.P.No.15712 of 2012 dated 24.06.2014.
- vii. **A.Aswathanaman Vs. The Inspector General of Police, Tiruvannamalai Range, Tiruvannamalai District and another** in W.P.No.34535 of 2016 dated 07.10.2016.

11. It is submitted by the learned counsel for the Petitioner that the consistent view of the Hon'ble Supreme Court which has been followed by the



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Division Bench of this Court is that there cannot be any justification in dismissing an employee from service which has adverse effect not only on the employee but also on the delinquent. Especially, where the delinquency is only relating to absence from duty.

12. Learned counsel for the Petitioner submits that the Petitioner was in service right from 24.07.1973 when he was appointed as a “Field Assistant” in the Survey Department and was promoted as a “Surveyor” on 10.02.1982 and thereafter as “Firka Surveyor” in the year 1983 and was later promoted as “Sub-Inspector of Survey” on 05.01.1984. Later, the Petitioner was reverted as a “Surveyor” on 10.07.2008.

13. It is submitted that dismissal of the Petitioner from service pursuant to the Impugned Order dated 13.01.2011 of the 4th Respondent has taken away all the vested rights which the Petitioner had earned as an employee in the Survey Department since his appointment as a “Field Assistant” on 24.07.1973.

14. Therefore, the learned counsel for the Petitioner submits that the Impugned Orders of the 4th Respondent in Na.Ka.A4.6035/08 dated 13.01.2011, 3rd Respondent in Na.Ka.A3.1358/11 dated 05.06.2013, 2nd Respondent in



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Na.Ka.La1/32148/13 dated 14.03.2014 and the 1st Respondent in

Na.Ka.Gna2/19694/2014 (Ne.A) dated 05.02.2015 are liable to be interfered with.

15. Defending the Impugned Orders of the Respondents, the learned Government Advocate for the Respondents submits that the scope of interference by Courts in service matters are limited.

16. It is submitted that the Petitioner had frequently absented from duty and therefore, was reverted as a “Surveyor” on 10.07.2008 even though the Petitioner was earlier promoted as a “Sub-Inspector of Survey” on 05.01.1984. Since the absence from work was wilful, the Respondents were justified in imposing major penalty under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Hence, prays for dismissal of the present Writ Petition.

17. Learned Government Advocate has also placed reliance on the recent decision of the Hon'ble Supreme Court in “**The State of Karnataka and another Vs. Umesh**” in Civil Appeal Nos.1763 and 1764 of 2022 rendered on 22.03.2022. A specific reference was made to **Paragraphs 22 and 23** from the



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said decision which are reproduced below:-

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22. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

- i. the rules of natural justice have been complied with;
- ii. the finding of misconduct is based on some evidence;
- iii. the statutory rules governing the conduct of the disciplinary enquiry have been observed; and
- iv. whether the findings of the disciplinary authority suffer from perversity; and
- v. the penalty is disproportionate to the proven misconduct.

23. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the enquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”



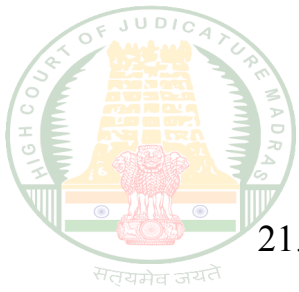
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18. I have considered the arguments advanced by the learned counsel for the Petitioner and the learned Government Advocate for the Respondents. I have also perused the records and also the decisions cited by both the learned counsel for the Petitioner and the learned Government Advocate for the Respondents.

19. In my view, the punishment of dismissal of the Petitioner from service vide Impugned Order dated 13.01.2011 of the 4th Respondent was disproportionate to the misconduct and therefore deserves an interference in the hands of the 3rd Respondent as an Appellate Authority.

20. Although the Petitioner had not produced any documents to substantiate the illness of the Petitioner or his daughter, the Counter Affidavit that has been filed on behalf of the Respondents before this Court does not disclose that the Respondents have got any contra evidence to show that the Petitioner was hale and healthy and that the Petitioner's daughter did not suffer from Microcephaly as averred in Paragraph 4 of the Affidavit filed in support of the Writ Petition.



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21. In any event, the imposition of such major punishment on the Petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 has to be construed as disproportionate in the light of the decision of the Hon'ble Supreme Court in “**B.C.Chaturvedi Vs. Union of India and others**”, (1995) 6 SCC 749 / AIR 1996 SC 484, which has been consistently followed by this Court.

22. This Court is also aware of the limitations while dealing with service matters as the scope of interference is limited to instances where there is a violation of Principles of Natural Justice or the punishment awarded is without jurisdiction or where the punishment awarded is disproportionate to the misconduct alleged to have been committed by the employer and proved in the disciplinary proceedings.

23. In this case, there is no dispute as far as the findings that the Petitioner was guilty for the misconduct stated in the Charge Memo dated 11.02.2009 issued against the Petitioner. At the same time, the punishment awarded by the Respondents to the Petitioner is disproportionate.

24. Therefore, the Impugned Orders of the 4th Respondent in



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Na.Ka.A4.6035/08 dated 13.01.2011, 3rd Respondent in Na.Ka.A3.1358/11

dated 05.06.2013, 2nd Respondent in Na.Ka.La1/32148/13 dated 14.03.2014 and

1st Respondent in Na.Ka.Gna2/19694/2014 (Ne.A) dated 05.02.2015 are partly quashed insofar as the imposition of punishment of dismissal of the Petitioner from service is concerned. That apart, the disciplinary proceedings were initiated by the 4th Respondent against the Petitioner on 11.02.2009 and the punishment was imposed only on 13.01.2011 i.e., two weeks before the date of superannuation of the Petitioner on 31.01.2011.

25. Whichever way one looks at it, the punishment awarded on the Petitioner is not sustainable and therefore, the punishment is modified to compulsory retirement.

26. The Respondents are therefore directed to workout the retiral and pensionary benefits of the Petitioner considering the fact that the Petitioner had served the Respondents Department since 1973 with effect from 24.07.1973.

27. The Petitioner was without pension from the year 2011. Therefore, the Respondents are directed to take steps to workout the retiral and pensionary benefits payable to the Petitioner and ensure that the pension is paid to the



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Petitioner immediately along with the arrears, within a period of sixty (60) days

from the date of receipt of a copy of this order.

28. This Writ Petition stands partly allowed in terms of the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

24.04.2025

Neutral Citation : Yes / No

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To:

- 1.The Director,
Survey and Settlement,
Chepauk, Chennai – 5.
- 2.The Additional Director,
Survey and Land Records,
Chepauk, Chennai – 5.
- 3.The Regional Director,
Survey and Land Records,
Chepauk, Chennai – 5.



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4. The Assistant Director,
Survey and Land Records,
Chepauk, Chennai – 1.

C.SARAVANAN, J.

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and
W.M.P.No.34124 of 2016

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