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WP No. 26438 of 2009



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2026

CORAM

THE HONOURABLE MR.JUSTICE T. VINOD KUMAR

WP No. 26438 of 2009

B.A.Sirajudeen

Petitioner

Vs

1. The Commissioner of Rural
Development and Panchayat Raj,
Chennai-600 015.

2.The Collector,
Nagapattinam, Nagapattinam District.

3.The Divisional Development Officer,
Mayiladuthurai, Nagapattinam District.

Respondents

PRAYER Writ Petition filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first Respondent in R.C.No.9124/09/DPC I-1 dated 30.09.2009 confirming the order passed by the Second Respondent in No.10008/93/RD/A.3 dated 12/11/1996 removing the Petitioner from service and quash the same and direct the Respondents to reinstate the Petitioner in service with all attendant benefits.

For Petitioner: Mr.V.Jyothishankar for
Mr.P.Rajendran

For Respondents: Mr.L.S.M.Hasan Fizal,
Additional Government Pleader



ORDER

Head the learned counsel for the petitioner and learned Additional Government Pleader appearing for the Respondents and perused the records.

2. The petitioner by the present writ petition, has assailed the action of the 1st respondent in passing the order, dated 30.09.2009 confirming the order of the 2nd respondent, dated 12.11.1996, removing the petitioner from service.

3. The case of the petitioner is that he was working as a Record Clerk in Divisional Development Office, Mayiladudurai; that in the year 1991, he had applied for leave from 21.10.1991 to 30.11.1991 for undergoing medical treatment on account of ill health; that the leave application was accepted by the 2nd respondent and the said leave treated as medical leave; that as he could not recover from his illness and also affected mentally, he had sent further leave applications on 01.12.1991 and 01.12.1992, seeking one year leave; and that was unable to report duty after expiry of leave on 01.12.1993.

4. It is the further case of the petitioner that in the meantime, the 2nd respondent claims to have sent two registered letters dated 15.03.1993 and 10.04.1993 requiring him to produce medical certificate for the aforesaid leave applications; that the aforesaid letters were returned with endorsement 'Not in



station' and as 'Unclaimed' as he was out of station, for taking medical medical treatment; that the 3rd respondent thereafter had issued a charge memo, dated 10.07.1997, under Rule 17(b) of the The Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (in short D & A Rules, 1955) containing three articles of charges; that the aforesaid charge memo was not served on him in person, but was served on his father; that he had recovered from his illness in September 1996 and reported to duty immediately before the 3rd respondent; that he was not allowed to join the duty and was informed that charges were pending against him and asked to await for final orders to be passed in the disciplinary proceedings initiated against him; that thereafter on 12.11.1996, the 2nd respondent issued an order removing him from service with effect from 01.12.1991; that the 2nd respondent before passing impugned orders, did not conduct any enquiry as mandated under Rule 17 (b) of the D & A Rules, 1955, for visiting him with major penalty of removal from service; and that he was not given any opportunity to defend himself against the charges framed; and thus, the order is vitiated.

5. The petitioner contends that aggrieved by the aforesaid order of the 2nd respondent imposing penalty of removal from service, he had preferred an appeal before the Director of Rural Development, Chennai (now redesignated as 1st respondent); that the 1st respondent vide proceedings, dated 05.07.1997,



rejected the appeal filed by him on 20.01.1997; that aggrieved by the aforesaid order of the 1st respondent, confirming the order of the 2nd respondent, the petitioner had approached the Tamilnadu Administrative Tribunal, Chennai by filing O.A.No.7615 of 1997; that after the abolition of the Tribunal, the said O.A. was transferred to this Court and renumbered as W.P.No.28564 of 2006; that the aforesaid writ petition was disposed of by this Court by passing final orders on 27.04.2009; that this Court was pleased to set aside the order of the 1st respondent dated 05.07.1997 and directed the 1st respondent to dispose of the appeal in accordance with law and also on merits, within a period of twelve weeks from the date of receipt of a copy of the order without reference to the limitation, as the 1st respondent had rejected the appeal earlier solely on the ground of belated one.

6. The petitioner further contends that the 1st respondent thereafter by the impugned proceedings, rejected the appeal filed by him and confirmed the order of removal from service passed by the 2nd respondent; that the 1st respondent while rejecting the appeal, did not consider the grounds raised by him in the appeal and passed a non speaking order without going into the merits of the case and thus, the impugned order is contrary to law, illegal, unjust and unfair and cannot be sustained in Law.



7. Counter affidavit on behalf of the 2nd respondent, is filed.

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8. The 2nd respondent by the counter affidavit contended that the petitioner while serving as Record Clerk in the office of the 3rd respondent, applied for unearned leave for 41 days i.e., from 21.10.1991 to 30.11.1991 enclosing medical certificate; that on expiry of the above medical leave, the petitioner sought for further leave from 01.12.1991 to 01.12.1992 (one year) and subsequently extended the leave from 01.12.1992 for another year without submitting any medical certificates; that as the petitioner did not enclose any medical certificate along with his leave application submitted on 01.12.1991 and 01.12.1992, the 3rd respondent vide letter dated 15.03.1993 and 10.04.1993, directed the petitioner to submit necessary certificate for availing medical leave for the aforesaid period; that the aforesaid Memos / letters were sent to the petitioner's address by Registered post with acknowledgment due; that the aforesaid registered letters were returned undelivered with postal endorsement "Left India" and 'whereabouts were not known'; and that the 3rd respondent vide letter dated 21.06.1993 submitted report informing the 2nd respondent the aforesaid fact.

9. The 2nd respondent contended that as per G.O.Ms.No.1046, Personnel and Administrative Reforms Department, dated 13.11.1987, a Government



Servant (Permanent on approved Probation) does not resume duty after remaining on leave or absence for a continuous period of either six months or one year in case of Medical grounds as the case may be, he may be removed from service, following due process of law; that the 2nd respondent taking note of the contents of the letter of the 3rd respondent dated 21.06.1993, had instructed the 3rd respondent to initiate disciplinary action against the petitioner.

10. The 2nd respondent further contended that following the aforesaid instruction, the 3rd respondent had initiated disciplinary proceedings and issued charge memo dated 10.07.1993 to the petitioner under Rule 17(b) of D & A Rules, 1955; that the charge memo was sent to the petitioner by Registered post, but the same was returned as undelivered with postal endorsement “Left India”.; that as the said charge memo was returned undelivered, the same was sent through special messenger and served on the father of the petitioner on 07.08.1993; that as no explanation was submitted to the charge memo, the respondents proceeded as if no explanation offered and visited him by imposing major penalty of removal from service and thus, the claim of the petitioner that no enquiry was conducted before imposing major penalty, is incorrect.

11. It is also contended by the respondents that after effecting the service of the charge memo on the father of the petitioner through special messenger,



the father of the petitioner after two months from the date of the service of the charge memo, had sent a letter dated 06.10.1993, stating that the petitioner was away for taking treatment and requested three months time to submit explanation; that though the 3rd respondent waited for the explanation from the petitioner, no explanation or reply was filed; that as no explanation was submitted, the 3rd respondent appointed an enquiry officer to enquire into the charges framed against the petitioner; and that the Enquiry officer conducted enquiry wherein the petitioner did not take part.

12. The 2nd respondent contended that the petitioner has neither informed his whereabouts from 01.12.1991 to 04.10.1996 nor joined the duty; that due to continuous absence of the petitioner for four years 10 months and the petitioner having not given any explanation to the Memos sent by the 3rd respondent, the 2nd respondent as per the provisions contained in G.O.Ms.No.1047, P & AR Department, dated 13.11.1987, had passed order of removal from service with effect from 01.12.1991 vide proceedings dated 08.11.1996 and served the said order on the petitioner through the 3rd respondent on 18.11.1996.

13. It is further contended by the 2nd respondent that aggrieved by the aforesaid order, the petitioner had preferred an appeal before the Director of Rural Development and Panchayat; that on the aforesaid appeal being rejected



by the respondents as having been filed belatedly the petitioner had approached the Tamilnadu Administrative Tribunal by filing O.A.No.2599/1997; that on the aforesaid appeal being transferred to High Court on abolition of Tribunal, this Court had directed the 1st respondent to consider and pass appropriate orders on merits from the date of receipt of a copy of the order; that the 1st respondent thereafter considered the appeal filed by the petitioner on merits; and that taking note of the pleas taken and after perusing the records and the lapses on the part of the delinquent officer, dismissed the appeal.

14. It is contended by the 2nd respondent that though the petitioner claimed of he having submitted medical certificate for availing medical leave, the said medical certificate is only for the period from 21.10.1991 to 30.11.1991 and the petitioner did not submit any medical certificate for the extended leave sought by him thereafter; that the notices sent to him by Registered post having been rejected with postal endorsement “Left India”, the petitioner did not produce any medical certificate for taking medical treatment within or outside India as claimed by the petitioner’s father while seeking extension of time to submit explanation to the charge memo.

15. The 2nd respondent further contended that since, the petitioner remained absent from duties unauthorizedly, without being sanctioned leave, the



2nd respondent by following the provisions of G.O.Ms.No.1046, P & AR Department, dated 13.11.1987 had passed the order and inasmuch as the petitioner did not adduce any additional materials before the 1st respondent; that the 1st respondent as per Rule 23 of the D & A Rules, 1955, considered the case of the petitioner and did not find any valid reason to interfere with the punishment / penalty imposed on the petitioner. Contending as above, the respondents seek for dismissal of the writ petition.

16. I have taken note of the respective submissions.

17. Though the petitioner had claimed of he having taken medical treatment during the period of his unauthorised absence, the petitioner except for short period of leave availed by him on medical ground i.e., 41 days from 21.10.1991 to 30.11.1991, did not produce any medical certificate for his continued further absence from December 1991 till 08.11.1996 i.e., the date of passing of the impugned order, though claimed of he availing medical treatment.

18. Further, the charge memo issued to the petitioner under Rule 17(b) of D & A Rules 1955 was served on the father of the petitioner as the charge memo sent through Registered post in the name of the petitioner was returned with



postal endorsement “Left India”, and the petitioner’s father vide his letter dated 06.10.1993, though had claimed of petitioner being away for taking treatment, and sought three months time, no details were given as to where and what treatment the petitioner is taking nor any reply is filed within the time sought.

19. As per G.O.Ms.No.1047, P & AR Department, dated 13.11.1987, an employee is permitted to be remain absent for a period beyond six months only on medical grounds and since, the petitioner claimed of he taking treatment, it is incumbent on him to produce the relevant medical certificates while seeking for grant of medical leave. The petitioner without enclosing any medical certificate, at the first instance had sought for grant of medical leave from 01.12.1991 to 30.11.1992 thereafter again from 01.12.1992 for another year i.e., 30.11.1993. The petitioner not only did not submit any medical certificate in support of the medical leave sought for by him for the aforesaid period, but continued to remain absent by his own admission till September 1996. No explanation has been offered by the petitioner for his continued further absence.

20. Coupled with the fact of the Registered letters sent to the address of the petitioner being returned with postal endorsement “Left India” and the petitioner except claiming of taking medical treatment, having not substantiated the said claim, the unauthorised absence by the petitioner from December 1991



till passing of the order by the 2nd respondent visiting him with major penalty of removal from service would have to be considered as unauthorised absence.

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21. The 2nd respondent taking note of such long period of unauthorised absence, having initiated disciplinary action by issuing charge memo containing three articles of charges and appointing an enquiry officer and based on the enquiry report, having passed the order, removing the petitioner from service and petitioner having not adduced any materials to substantiate his claim even before the 1st respondent also, this Court is of the view that the action of the 2nd respondent as affirmed by the 1st respondent cannot be said either as illegal or in violation of principles of natural justice.

22. The petitioner having chose to walk out of his duties without valid sanction of leave and due intimation to the respondents, cannot walk into a public office and seek for continuation of his employment as and when he chooses. Since, the petitioner failed to substantiate his unauthorised absence for a period of 4 years 10 months, the 2nd respondent is left with no option except to visit the petitioner with major penalty of removal from service, so also the 1st respondent confirming the said order.



23. It is trite law that in a Writ Petition filed under Article 226 of the Constitution of India, against the action of disciplinary Authority, the Court would not undertake the exercise of re-appreciating or reevaluating the evidence on record nor examine as to whether the disciplinary authority could have imposed lesser punishment, unless the punishment imposed shocks the conscience of the Court.

24. In the facts of the present case as noted above, since, the petitioner had remained absent from his duties, which are public duties, for a period of more than 4 years 10 months, this Court is of the view that neither the impugned order of the 1st respondent nor the order of the 2nd respondent, visiting the petitioner with major penalty of removal from service, calls for any interference.

25. Accordingly, this writ petition as filed is devoid of merits and is dismissed. No costs.

25-03-2026

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Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No



To

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2.The Collector,
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