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W.P.No.31934 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2022

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31934 of 2014

C.Jagadeesan

...Petitioner

..Vs..

1.Additional Director General of Police,
Economic Offences Wing,
Anna Nagar, Chennai – 40.

2.Superintendent of Police,
Economic Offences Wing,
Anna Nagar, Chennai – 40.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent herein in his proceedings C.No.A2/PR No.3/Appeal/2012 dated 23.01.2013 and the order of dismissal from service passed by the second respondent herein in his proceedings Tha.Pa.3/2012 dated 07.11.2012 and quash the same and direct the respondents herein to reinstate the petitioner into service together with all consequential service and monetary benefits within a time frame.

For Petitioner : Mr.G.Bala
for M/s.G.Bala and Daisy

For Respondents : Mrs.S.Anitha
Special Government Pleader



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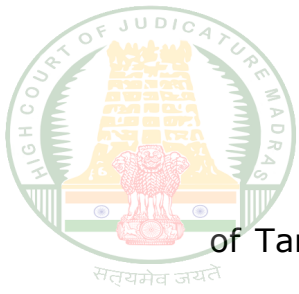
ORDER

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The order of dismissal from service which was confirmed by the Appellate Authority is under challenge in the present writ petition.

2. The writ petitioner joined as Grade II Police Constable on 12.09.1986 and was promoted to the post of Grade I Police Constable on 22.07.1997. He was further promoted to the post of Head Constable on 22.07.2002. The petitioner has served about 25 years in the Department. On 22.05.2009 while the petitioner was on duty he fell ill due to severe chest pain and entered on medical leave. The petitioner was taken to a nearby private hospital for immediate treatment. The petitioner was unconscious and the Doctors diagnosed as Chronic Peptic ulcer. Thereafter, the petitioner took Ayurvedic treatment in his native place. The petitioner submitted medical report for the purpose of extension of medical leave. The leave applications were received by the competent authorities. The said leave period was regularized by the Superintendent of Police in proceeding dated 03.04.2012.

3. Thereafter, the Department directed the petitioner before the Medical Board and on obtaining the fitness certificate, the petitioner joined duty. Thereafter, the charge memo was issued under Rule 3(b)



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of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules on 12.04.2012. The petitioner denied the charges by stating that he submitted leave applications properly and his leave period was also regularized. Without considering the said facts, an enquiry was ordered and the Enquiry Officer also failed to consider these documents and submitted his report on 18.07.2012 and thereafter a second show cause notice was issued. The petitioner submitted his further objections on 11.10.2012 and thereafter, disciplinary authority issued the impugned order of dismissal from service in proceedings dated 07.11.2012. The petitioner preferred an appeal on 13.12.2012 and the said appeal was rejected by the Appellate Authority on 23.01.2013. Thus, petitioner is constrained to move the present writ petition.

4. The learned counsel for the petitioner mainly contended that the mis-conduct, if at all alleged by the respondent, the same did not exist as on the date of issuance of charge memorandum, as entire leave period was regularized by the competent authority namely Superintendent of Police in proceedings dated 03.04.2012. Once the period of medical leave was regularized in accordance with leave Rules in force and the petitioner joined Government service on obtaining fitness certificate from the competent Medical Board,



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initiation of further disciplinary proceedings is unsustainable and therefore consequently the punishment is liable to be set aside.

5. In respect of the said contention, the learned counsel for the petitioner relied on the judgment in the case of **Dr.G.Rajendran Vs. The Secretary to Government, Health and Family Welfare Department** reported in **(2006) 2 M.L.J 686**, wherein the following observations are made in paragraphs 6 & 7 which are extracted hereunder;

"6. The point in issue is, whether the respondents are entitled to take disciplinary action after sanction of leave for which the petitioner applied.

7. Admittedly, the petitioner had applied for leave and the same was also sanctioned and salary for the said date was also paid. A similar issue arose before this Court in the decision reported in 2000 WLR 848 ([K.Orlanto v. The Managing Direct Tamil Nadu Rubber Corporation Ltd., & another](#)) wherein this Court set aside the order of dismissal from service imposed against a Teacher on the ground that after sanctioning of medical leave, it is not open to the department to issue charge memo, continue the disciplinary proceedings and punish the Teacher. The learned single Judge in para 15 of the judgment held as under,

"15. It is unfortunate that having passed an order on 13.3.1995 accepting her case and



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regularising those periods, in the counter affidavit, the very same officer has stated that either "there is no question of petitioner's absence being regulari sanctioning of leave on loss of pay, and in fact the entire period of absence was unauthorised absence". The said statement is directly contrary to the conclusion arrived at by the very same officer in Na.Ka.No.4911/89 Ka, dated 13.3.1995."

The said Judgment was rendered following the Judgment of the Andhra Pradesh High Court reported in AIR 1996 AP 75(G.Papaiah v. Asst.Director, Medical Services). Further in para 16 the learned Judge held as under,

"16. In that case, charge No.2 relates to absence of the petitioner therein from duty for the period commencing from 16.5.1973 and ending with 25.5.1973. the Major, Officer Commanding in his order dated 18.6.1973, granted ten days EOL 16.5.1973 to 25.5.1973 (both days inclusive) to the petitioner to regularise his intentional absence for the period. An argument was made on behalf of the employer that notwithstanding the grant of extraordinary leave to the petitioner therein, he can be proceeded against for his absence from duty for that period. Rejecting the said contention learned single Judge has concluded as follows:



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I am unable to agree with the learned counsel for the respondent that notwithstanding the grant of the extraordinary leave to the petitioner, he can be proceeded against for his absence from duty for that period. Whether it is an extraordinary leave, ordinary leave, leave on pay, leave on half pay, medical leave, or casual leave, nonetheless it is a leave. The kind of nature of leave is not material but the substance of the matter is that the petitioner was granted leave. When once leave is granted to a public servant, in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period. In such a case, it is not permissible or open to the employer or any other authority to proceed against the public servant for absents from duty for the same period and punish him. The employer, either private or public cannot blow hot and cold. The authorities should have refused to grant leave of any kind to the petitioner and then proceeded to punish him after due and proper enquiry and after affording reasonable opportunity to him. When once leave has been granted, it cannot be said that the petitioner had absented himself from duty and thereby made himself liable to be punished. Hence, the second charge relating to the absence of the



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petitioner from duty from 16th May, 1973 to 25th May, 1973, both days inclusive, is not sustainable. I may add that the very order granting extraordinary leaves states that such leave has been granted to regularise the petitioner's intentional absence for the period. the very purpose of granting the leave being to regularise the petitioner's intentional absence, it is not open to the respondent to initiate any proceedings against the petitioner for his absence from duty for that period. Judged from any angle, the second charge must be quashed and it is not sustainable."

6. The said judgment was reflected in the orders of the Hon'ble Supreme Court of India in the case of ***Union of India and another Vs. R.K.Sharma*** in ***C.A.No.4059 of 2015***, wherein the Apex Court held that 'we are of the considered opinion that no misconduct can be attributed for the respondent for the periods he availed one or the other sanctioned leave.'

7. The learned Special Government Pleader opposed the contention by stating that the petitioner remained unauthorizedly absent for 976 days and therefore the departmental disciplinary proceedings were initiated. The procedures as contemplated were



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followed and the petitioner participated in the process of inquiry and thus, there is no infirmity in conducting the disciplinary proceedings and in view of the fact that the allegation of unauthorized absence is for about 3 years and the punishment of dismissal from service was imposed. Thus, the writ petition is to be rejected.

8. This Court is of the considered opinion that no doubt the period of absence was lengthy. In normal circumstances, such long absence will not be condoned by the competent authorities. When the Police Personnel is a chronic absentee or habitual absentee, then serious actions are to be initiated. However, once the authority competent, accepted the reasons for absence, considered the same and regularized the period of medical leave, thereafter the misconduct if at all committed become condoned and therefore the action cannot be sustained. In other words, the disciplinary action is permissible only if the misconduct exist and once the alleged misconduct was considered based on the explanations or otherwise and the period of leave has already been regularized then initiation of disciplinary proceedings cannot be held valid.

9. In the present case, even before issuing the charge memorandum under Rule 3(b), the period of absence was regularized



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by the competent authority namely District Superintendent of Police in proceedings dated 03.04.2012 and by that time, the petitioner rejoined for duty based on the medical fitness certificate issued by the Medical Board.

10. In view of the facts and circumstances, the period of absence was regularized by the competent authority, the punishment of dismissal from service is untenable and consequently the order impugned passed by the second respondent in proceedings No.Th.Pa.3/2012 dated 07.11.2012 and the appellate order passed by the first respondent in proceedings C.No.A2/PR No.3/Appeal/2012 dated 23.01.2013 are hereby quashed. The respondents are directed to reinstate the writ petitioner in service without backwages but with continuity of service.

11. With the above directions, the writ petition stands allowed.

No costs.

15.07.2022

mrm

Index: Yes/No
Internet: Yes/No
Speaking Order



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S.M.SUBRAMANIAM., J

mrm

To

- 1.The Additional Director General of Police,
Economic Offences Wing,
Anna Nagar, Chennai – 40.
- 2.The Superintendent of Police,
Economic Offences Wing,
Anna Nagar, Chennai – 40.

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