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**(2015) 04 MAD CK 0404**  
**In the Madras High Court**  
**Case No : Writ Petition No. 18196 of 2012**

D. Umapathi

APPELLANT

Vs

The Commissioner of Municipal Administration and Others

RESPONDENT

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**Date of Decision :** 08-04-2015

**Acts Referred:**

**Citation :** (2015) 04 MAD CK 0404

**Hon'ble Judges :** D. Hari Paranthaman, J

**Bench :** Single Bench

**Advocate :** M. Pari, for the Appellant; S. Gunasekaran, Govt. Advocate, Advocates for the Respondent

**Final Decision :** Disposed off

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## Judgement

D. Hari Paranthaman, J—Heard both sides. With the consent of both sides, this writ petition itself is taken up for final disposal.

2. The petitioner was appointed as a Computer-cum-Clerk on 01.02.1989 by the Commissioner of Municipal Administration in Avadi Municipality. He was transferred from Avadi Municipality to Tambaram Municipality.

3. While he was working in the second respondent Municipality, he applied for Medical Leave for 30 days from 16.05.1994. After the expiry of the leave, he did not join duty. Hence, a notice dated 06.07.1994 was issued by the second respondent to the petitioner stating that he should have joined duty on 15.06.1994 on the expiry of 30 days leave, but he did not join duty and he also did not give any application for extension of leave and hence, he was directed to give explanation, otherwise, disciplinary action would be taken.

4. Thereafter, the second respondent issued a charge memo under Regulation 8(1) of the Tamil Nadu Municipal Services (Discipline and Appeal) Regulations, 1970 (hereinafter referred to as "the Regulations").

5. There are five charges in the charge memo dated 14.12.1994. The crux of the

charges is that he was unauthorisedly absented from duty from 15.06.1994. The petitioner gave his explanation dated 24.03.1995 that he was not able to join duty on expiry of leave due to his family circumstances and he was mentally upset due to the family problems and he expressed regret for the same. He stated that he may be permitted to join duty from 17.04.1995. He requested to treat the period as leave without wages.

6. He also sent another explanation dated 10.4.1995 on the same lines. While so, a memo dated 22.12.1995 was issued to him stating that he did not give any explanation and he was asked to fill up an questionnaire form. The questionnaire form requires him to state as to whether he needs any oral enquiry. He filled up the questionnaire form stating that no enquiry is necessary and he tendered unconditional apology for his absence, as the same took place due to his mental condition on account of the family circumstances, and it was not due to any deliberate action. He stated that the absence was only due to his mental condition that he was mentally affected due to family problems and he requested to drop the charges and to permit him to join duty.

7. Thereafter, he wrote a letter dated 28.07.1997 to the second respondent seeking permission to join duty. Again, he sent another letter through registered post with acknowledgment due on 16.10.1998 requesting the second respondent to permit him to join duty. No final decision was taken on the charge memo dated 14.12.1994 and representations.

8. On the other hand, a fresh charge memo dated 15.03.2012 in ROC No. 4656/94/H3, under Regulation 8(2) of the Regulations was issued and the earlier charge memo, which was issued by the second respondent under Regulation 8(1) of the Regulations, was cancelled.

9. The petitioner sent a letter dated 02.05.2012 to the first respondent to provide him employment. He stated that the request made by him with the second respondent to give him employment did not bring any result. He sent the letter dated 02.05.2012 to the first respondent through registered post and the postal acknowledgment is enclosed. Thereafter, he filed this writ petition seeking for a direction to the first respondent to dispose of his representation dated 02.05.2012.

10. A counter-affidavit is filed by the respondent. In the counter-affidavit filed by the second respondent, the facts are broadly admitted. It is stated in paragraph 8 of the said counter-affidavit that no vacant post of Computer cum Clerk is available in the second respondent municipality. Since the unauthorised period of absence has not been regularized, the benefits of the petitioner cannot be finalized without finalizing the disciplinary action.

11. Heard both sides.

12. It is relevant to extract paragraphs 7, 8 and 9 of the counter-affidavit as hereunder :

"7. The Commissioner of Municipal Administration after scrutinizing, directed the Municipality to issue charges on 8(2) basis thereby cancelling the charges issued under 8(1) previously. Based on the instructions, charges under regulation 8(2) of the Tamil Nadu Municipal Services (D&A) Regulation, 1970 vide this office ROC No. 4656/94/H3, dated 15.03.2012. The petitioner has not furnished his defence statement. The Municipality is ready to finalize the case, as per Rules.

8. As now the long absent vacant post of Computer cum Clerk has been filled by the Commissioner of Municipal Administration no vacant post is available in the Municipality. Since the unauthorized period of absence has not been regularized the benefits of the petitioner can't be finalized without finalizing the disciplinary action.

9. The allegation that the service file relating to the petitioner is misplaced and that is why no further action taken is denied. As per the instructions of the first respondent who was considered all the materials, the earlier charge memo was withdrawn and fresh charge memo was issued as per Regulation 8(2) of the Tamil Nadu Municipal Services (D&A) Regulation, 1970 vide this office ROC No. 4656/94/H3, dated 15.02.2012. The petitioner has not submitted any explanation. The allegation that the Commissioner of the Municipality acted in an arrogant manner and threw the petitioner out of the office are denied. These allegations are baseless and are made with ulterior motive due to the fertile imagination of the petitioner."

13. In paragraph 9 of the counter-affidavit, it is admitted that the earlier charge memo was withdrawn. The earlier charge memo is nothing, but charge memo dated 14.12.1994, referred to above. The issuance of charge memo dated 14.12.1994 is also referred to in paragraph 3 of the counter-affidavit. It is also stated in paragraph 3 of the counter-affidavit that the petitioner gave reply dated 10.4.1995, which is enclosed in the typed-set of papers. In the said reply dated 10.04.1995, he expressed his regret for the absence and he stated that absence was due to the family problems and also due to his health problem. He also stated that he was mentally affected due to those problems and he requested to drop the charges and to give him employment.

14. While filling up the questionnaire form, he pleaded for providing him employment. It is also relevant to extract the reply of the petitioner in the questionnaire form :

15. The proceedings initiated under Regulation 8(1) of the Regulations is for minor misconduct and would result in imposition of minor punishment. If the proceedings is initiated under Regulation 8(2) of the Regulations, major punishment could be imposed. In this case, the matter was referred to the first respondent and the first respondent has now issued a fresh charge memo dated 15.03.2012 under Regulation 8(2) of the Regulations.

16. It is admitted in paragraph 9 of the counter-affidavit that the earlier charge memo was withdrawn and a fresh charge memo was issued. But the aforesaid

narration makes it clear that though the petitioner could be blamed for absence for an year, thereafter, from 1995 onwards it is solely due to the inaction on the part of the respondents, the petitioner is kept out of employment. Earlier, the disciplinary action initiated under Regulation 8(1) of the Regulations was not proceeded. Further, though he gave explanation dated 10.04.1995, thereafter, after 17 years of his reply, the charge memo dated 15.03.2012 was issued under Regulation 8(2) of the Regulations.

17. In the said circumstances, I am of the view that the entire disciplinary action based on the charge memo dated 15.03.2012 issued after 17 years cannot stand the scrutiny of law and is liable to be quashed.

18. The respondents cannot state that there is no vacant post in the Municipality, since the petitioner was already in service from 1989 to 1995 for a period of about six years and thereafter also he absented from duty for some period and a charge memo was issued, he gave explanation and pleaded for mercy, but no order was passed for 19 years. Hence, I am of the view that the respondents 1 and 2 should be directed to restore the petitioner into service without any delay.

19. Accordingly, the respondents 1 and 2 are directed to restore the petitioner into service immediately without any delay and to reappoint him to the post he held with continuity of service by granting notional fixation of pay within a period of four weeks from the date of receipt of a copy of this order.

20. The question as to whether the petitioner is entitled to the wages for the said period could be decided by the respondents in accordance with law.

21. With these observations, this writ petition is disposed of. No costs.