

(2010) 07 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 9255 of 2007 (T) and O.A. No. 7225 of 1999

P. Francis

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 02-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1)

Citation : (2010) 07 MAD CK 0099

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : K. Thennan, for the Appellant; V. Manoharan, GA, for the Respondent

Final Decision : Dismissed

Judgement

T. Raja, J.—The present writ petition has been filed challenging the order of removal from service imposed against the petitioner.

2. The petitioner was appointed as Record Clerk in Jail Department on 17.05.1969. He has put in nearly 15 years of service as Record Clerk.

During his service as Record Clerk, his service was regularised with effect from 17.05.1969 and his probation was also declared. After declaration

of his probation, he was promoted as Junior Assistant on 07.04.1984. From 07.04.1984 to 22.03.1997, he served as Junior Assistant in Central

Prison, Chennai. He applied for medical leave for his ill health from 22.11.95 to May, 1996. The petitioner, without taking prior permission,

remained absent from duty unauthorisedly. Therefore, the charges were framed against him under 17(b) of Tamil Nadu Civil Services (Discipline

and Appeal) Rules. After oral enquiry, the enquiry officer submitted his finding holding him guilty of all the charges. Again, he was given reasonable

opportunity to submit his final representation, but the petitioner did not submit his second explanation. However, the Superintendent of Central

Prison/3rd respondent herein, after examining the minutes of the enquiry officer with connected papers, awarded punishment of removal from

service with effect from 26.03.97. Aggrieved by the order of removal, the petitioner preferred an appeal to the Inspector General of Prison,

Chennai. But the same was also rejected on the ground that the petitioner had not put forth any fresh points. As against that, second appeal petition

was filed to the Inspector General of Prisons. But the same was also rejected by order dated 13.08.98, as there was no provision for second

appeal. Yet again, he has given an appeal to the Government on 28.08.98. In the meanwhile, the petitioner has filed the Original Application on the

file of the Tamil Nadu Administrative Tribunal challenging the order of removal.

3. Learned Counsel appearing for the petitioner submitted that the petitioner has rendered 27 years of service. Whiles, the major punishment of

removal from service for the alleged delinquents of unauthorised absence, is exorbitant punishment. Therefore, the same is liable to be set aside in

view of several judgments of Supreme Court, holding that the punishment should not be disproportionate to the alleged offence committed by the

delinquents.

4. In his further submission, it was contended that even in the Police Department also Director General of Police has passed an order in R.C. No.

243881/AP.1(1)/90 P.B. No. 681, Madras-4, dated 30.10.1990 directing that for the delinquency of unauthorised absence, major punishment

should not be imposed. Whiles, the present impugned punishment of removal from service for unauthorised absence is self-contrary to the orders

passed by the Director General of Police. Accordingly, the impugned order of punishment is liable to be set aside. Thirdly, it was contended that

even if the petitioner should be dismissed from service for unauthorised absence, by taking into account his long length of 27 years of service, in

order to avoid harm to the entire family of the delinquent, the order of removal from the service should be modified into one of compulsory

retirement, so that the family members would be in a position to receive the pensionary benefits, as he has put in 27 years of unblemished service.

5. Per contra, learned Counsel appearing for the respondents submits that the

petitioner was found guilty of the charges levelled against him by the enquiry officer. Therefore, the Superintendent of Central Prison/3rd respondent herein, after examining the connected records, awarded the punishment of removal from service with effect from 26.03.97. As against that, the petitioner has preferred an appeal to the Inspector General of Prisons, but the same was also dismissed. Aggrieved by the dismissal order passed by the appellate authority, the petitioner has filed the second appeal, but the same was again rejected on the ground that there is no provision for the second appeal. Again, he has given an appeal to the Government. But his appeal was rejected by confirming the order of removal from service. Therefore, the order of removal from service for his unauthorised absence having been confirmed by all authorities, cannot be disturbed by this Court. On that basis, prayed for dismissal of the present writ petition.

6. Heard the learned Counsel appearing on either side and perused the materials available on record.

7. The petitioner, after joining the service in Jail Department as Record Clerk on 17.05.1969, his services were regularised from that date.

Thereafter, he was also promoted as Junior Assistant from 07.04.1984. From 07.04.1984, when he was working as Junior Assistant in Central

Prison, Chennai, he applied for medical leave for his illness from 22.11.95 to May, 1996. As the petitioner went on medical leave without prior

permission, the 3rd respondent ordered for enquiry and accordingly, he was dealt with under Rule 17(b) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules for the following charges;

(i) He absented himself for duty unauthorisedly, without informing the higher officials, which led to violation of Rule 127 of the Tamil Nadu Prison

Manual Vol. II as well as Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

(ii) He was in the habit of proceeding on leave, without any intimation to the office, and that he unauthorisedly absented himself for duty on the following dates.

13.02.95 to 19.2.95 (7 days)

06.03.95 to 15.3.95 (10 days)

18.03.95 to 09.04.95 (23 days)

17.04.95 to 30.04.95 (16 days)

01.05.95 to 31.05.95 (31 days)

01.06.95 to 30.06.95 (30 days)

01.07.95 to 31.07.95 (31 days)

01.08.95 to 31.08.95 (31 days)

01.09.95 to 03.09.95 (3 days)

14.09.95 to 10.10.95 (27 days)

22.11.95 to 21.03.97 (16 months)

After receiving the charge memo, the petitioner submitted his explanation on 20.09.96. As his explanation was not satisfactory, the Additional

Superintendent of Central Prison was appointed as enquiry officer and the oral enquiry was conducted on 20.09.96. The enquiry officer, submitted

his report holding him guilty of all the charges levelled against him. Thereafter, he was given an opportunity for submitting his explanation on the

minutes of the enquiry officer. But, he did not submit any explanation. The disciplinary authority/3rd respondent herein, after examining the minutes

of the enquiry officer with the connected records, awarded the punishment of removal from service with effect from 26.03.97. Aggrieved by the

said order of removal from service, the petitioner preferred an appeal to the Inspector General of Prisons, Chennai, challenging the punishment of

removal from service. After carefully examining the appeal with the connected records, the Inspector General of Prisons, rejected the appeal of the

petitioner on the ground that there was no fresh points put forth in the appeal petition. Again, he made a second appeal to the Inspector General of

Prisons. As there was no provision for entertaining the second appeal, the same was also rejected.

8. Learned Counsel appearing for the petitioner relied on various judgments of this Court as well as Apex Court, seeking modification of the

impugned punishment from removal into one of compulsory retirement on the ground that the petitioner has rendered 27 years of unblemished

service, while dealing with the nature of charges levelled against the petitioner on the basis of the record. However, I am not able to agree with the

submissions made by the learned Counsel appearing for the petitioner. If the

petitioner absented himself for duty for a day or a week or a month

for any extraordinary reason, one can understand the same and consider the modification of punishment on the ground that the petitioner has

rendered long length of service for about 27 years. Since the petitioner was in police department having frequently absented himself from duty, the

submission made by the petitioner for modification of the punishment from removal into one of compulsory retirement, does not warrant

acceptance by this Court.

The record further shows that the petitioner frequently remained unauthorisedly absent, that is, almost in every month he used to go on leave for 7

days or 10 days. In the month of February, 1995, the petitioner remained absent without any prior permission for 7 days. In the month of

March, 1995, the record shows that he again remained absent for 10 days. In the month of June, 1995, again, the petitioner went on unauthorised

leave for 30 days. Again, in the month of July, 1995, the record shows that he went on unauthorised leave for about 31 days and repeated the

same misconduct by keeping away from office for about 31 days. Totally, for about 16 months, the petitioner remained unauthorisedly absent.

9. Even a cursory glance at the record of the petitioner clearly shows that he was chronic absentee. Further, when hundreds of prisoners confined

in the prisons are to be taken care of and provided with all basic amenities round the clock and the Ministerial services being backbone of the

office to administer the day to day needs of the inmates in the prison, if a ministerial staff applies for leave well in advance, suitable alternative

arrangements can be made to look after the duties of the concerned staff. In the present case, the petitioner did not give prior intimation to the

prison administration about his medical leave, but remained on leave for indefinite period. Since the long unauthorised absence of the petitioner

affected several important works in the central prison, creating embarrassing situation to the staffs as well as inmates, the disciplinary authority, by

taking into account his long unauthorised absence from duty, has rightly passed the order of removal from service under Rule 20(1) of the Tamil

Nadu Government Servants Conduct Rules, which also deals with integrity of a Government servant. Further, unauthorised absence committed by

the petitioner also contravenes the provisions of the Rule 127 of the Tamil Nadu

Prison Manual Vol. II. As per Rule 18(3) of the Fundamental Rules as amended in G.O.Ms. No. 477, P&AR Department, dated 21.11.90, if a Government servant does not resume duty after remaining on leave for a continuous period of 6 months or 1 year, he shall be removed from service after following the procedure laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Since the punishment of removal from service imposed against the petitioner being commensurate with the Rule 18(3) r/w G.O.Ms. No. 477, dated 21.11.90, this Court while exercising power of judicial review under Article 226 of the Constitution of India, is not inclined to interfere with the quantum of punishment. Accordingly, the present writ petition deserves to be dismissed and the same is dismissed. No Costs.