

(2011) 11 MAD CK 0311

In the Madras High Court

Case No : Writ Petition No. 49416 of 2006

S. Shaik Abdullah

APPELLANT

Vs

The Commissioner of Municipal Administration, Chepauk,
Chennai 600005 and The Commissioner, Mayiladuthurai
Municipality, Mayiladuthurai

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 — Rule 18(3)

Citation : (2011) 11 MAD CK 0311

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : Rm. Muthukumar, G.A for 1st Respondent and Mrs. R. Devi for 2nd Respondent, for the Respondent

Judgement

Honourable Mr. Justice D. Hariparanthaman

1. This writ petition has been filed to direct the respondents to call for the records of the second respondent in his Proceeding Na.Ka. No. 10695/97 C1 dated 13.07.1998 and Rc. No. 10695/97 C1 dated 29.08.2000 and quash the same and consequently direct the respondents herein to reinstate the petitioner in service, after treating interregnum period as duty period with all monetary and other attendant benefits.

2. The petitioner was employed as Junior Assistant on compassionate ground by the second respondent from 26.2.1988. His service was also regularised. He worked up to 15.7.1997. Thereafter, he remained absent. According to the petitioner, he fell ill. In such circumstances, the petitioner was removed from service by the impugned order dated 13.07.1998, based on G.O. No. 1046 (P&AR) department, dated 13.11.1987 as per the Tamil Nadu Municipal Service (Discipline and Appeal Rules) 1970 passed by the first respondent. Thereafter, the first respondent passed another order dated 29.8.2000 on the same lines removing the petitioner from service. The petitioner filed Original Application No.

4086 of 2001 (W.P. No. 49416 of 2006) to quash the said orders and to reinstate him with all service benefits.

3. The respondents have not filed counter affidavit. The learned counsel for respondents 1 and 2 have made their submissions based on the instructions.

4. No appearance for the petitioner.

5. Before passing the impugned order of removal, the petitioner was not heard and no enquiry was conducted on the complaint of his absence. In my view, impugned order was passed in blatant violation of principles of natural justice. In similar cases, the Tamil Nadu Administrative Tribunal in a batch of cases in O.A. No. 1120 of 1989 etc. allowed the Original Applications by its order dated 21.10.1999 holding that removing a Government Servant from service under the Fundamental Rule 18(3) straightaway without conducting the enquiry is not valid. Under such circumstances, the matters were remitted back to hold enquiry and pass appropriate orders.

6. In this case, since the petitioner is out of employment for more than 13 years, I am not remitting the matter back for holding enquiry by the respondents. On the other hand, I am of the view that if the petitioner is deprived of entire wages for the non-employment period that spreads over for more than 13 years, the same would be a sufficient punishment. Hence, while setting aside the impugned order, I hereby direct the respondents to reinstate the petitioner, without any backwages, but with continuity of service. The respondents are directed to reinstate the petitioner in service within a period of 12 weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of accordingly. No costs.