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# R. Natarajan Vs Commissioner an Director of Survey and Settlement and Assistant Director of Survey and Land Records

## W.A. No. 2149 of 2012 and M.P. No. 1 of 2012

**Court:** Madras High Court

**Date of Decision:** Nov. 27, 2013

**Hon'ble Judges:** R. Mahadevan, J; N. Paul Vasanthakumar, J

**Bench:** Division Bench

**Advocate:** R. Malaichamy, for the Appellant; R. Ravichandran, AGP, for the Respondent

**Final Decision:** Disposed Off

## Judgement

N. Paul Vasanthakumar, J.
This Writ Appeal is filed against the Order dated 19.7.2012 made in W.P. No. 23330 of 2008, wherein the

appellant challenged the order of the 2nd respondent in proceedings Na.Ka.Aa4/3633/2007 dated 1.9.2008 cancelling the leave of 809 days on

medical grounds from 23.6.1997 to 9.9.1999 and the consequential termination order passed on 1.9.2008 and direct the respondents to reinstate

the appellant in service with all consequential benefits. It is the case of the appellant before the learned single Judge that he was appointed as a

Surveyor-cum-Draftsman under Updating Registry Scheme on 15.9.1983 along with several thousands of persons under the said Scheme. The

said Scheme was introduced to update the Registry by duly measuring and identifying the owners of the land. The Government noticing the long

number of years of service of the persons employed thought it fit to regularise their services either as Surveyor or as Draftsman based on seniority

in the regular time scale and after accommodating the people in the Survey Department, the remaining people would be employed either as Junior

Assistant or Typist in other Departments on redeployment basis in time scale. Based on the said decision, the Government issued G.O.Ms. No.

95, Personnel and Administrative Reforms Department, dated 11.4.1997 permitting to fill up the vacancies based on the statewide seniority. The

appellant, though was Senior, was overlooked and his juniors were appointed as Surveyors in the Survey Department and the appellant was

drafted to Commercial Taxes Department as Junior Assistant by Order dated 9.10.1997. The said Order was challenged by filing O.A. No. 9829

of 1997 on the ground that there are vacancies available in the Survey Department and sending the appellant to Industries and Commerce

Department is contrary to the Government Order above referred. The Tribunal granted interim order. Based on that, the appellant was appointed

as Surveyor in Survey Department on 9.2.1999 with a condition that the seniority in the cadre of Surveyor would be reckoned from the date of

joining i.e., from 9.2.1999. The probation of the appellant was declared by Order dated 12.10.2004. By G.O.Ms. No. 242, Revenue Department

dated 24.5.2004, the Government ordered regularisation of 82 persons, who were originally not included from among 1936 persons and the

appellant''s name is also found in the said list, wherein the Government Ordered to grant regularisation of the appellant''s service from 9.9.1999.

After completion of two years, the appellant''s service was also confirmed. In the year 2007, the leave sanctioned to the appellant from 23.6.1997

to 9.9.1999, during which period the appellant was in temporary employment, was cancelled on the directions of the Special Commissioner and

Director of Land Survey and Land Settlement by Order dated 23.2.2007. It was also implemented by the Assistant Director of the District Land

Records, Kancheepuram District by Order dated 25.4.2007. The said Order was challenged by the appellant initially in the Writ Petition W.P.

No. 23330 of 2008 and during the pendency of the Writ Petition, the appellant was terminated from service based on the charges relying on the

cancellation of the leave by Order dated 25.4.2007. Hence, the appellant amended the prayer in the writ petition to quash the termination order

with consequential reinstatement with all service benefits. The said Writ Petition was dismissed by the learned single Judge, against which, this writ

appeal is filed.

2. Learned counsel for the appellant submitted that the medical leave of the appellant was sanctioned by the Assistant Director, District Land

survey Records Department, Kancheepuram in his proceedings Na.Ka.E3/4393/99 dated 24.11.2000 and after a period of 7 years, the said

leave already sanctioned was cancelled without issuing any notice purported to be under Rule 36 of the Tamil Nadu Civil Services (Discipline and

Appeal) Rules, which contemplates suo motu revision. In the said Rule, it is stated that the Head of the Department can revise the order within a

period of six months and the Government can exercise suo motu revision at any time. Here in this case, the Head of the Department, having chosen

to give direction on 22.3.2007 can exercise his suo motu power, which was implemented by the Assistant Director of Survey and Land Records,

dated 25.4.2007. The initiation of proceedings itself is barred by limitation in terms of Rule 36(4). The learned counsel further submitted that even

assuming the said Officer has got jurisdiction to exercise suo motu revision power, before cancelling the leave already sanctioned in the year 2000,

no notice or opportunity of hearing was given to the appellant, which is in violation of the principles of natural justice. Learned counsel further

submitted that cancellation of leave is attached to civil consequence and therefore the issuance of notice is mandatory to comply with the principles

of natural justice and the Order dated 25.4.2007 having been passed without issuing any notice and the proceedings initiated based on the leave

cancellation viz., issuance of charge memo, conduct of enquiry and the termination order are all unsustainable.

3. Learned Additional Government Pleader on the other hand submitted that the appellant availed leave from 23.6.1997 to 9.9.1999 when he was

serving as a temporary staff, for which maximum leave of six months alone is permissible. Therefore, the Head of the Department exercised his suo

motu power and cancelled the erroneous sanction of leave by the Assistant Director, District Land Survey Records Department, Kancheepuram

by order dated 24.11.2000. Learned Additional Government Pleader has further submitted that under Rule 36, no opportunity need be given to

the appellant before passing the revised order cancelling the leave granted to the appellant. Therefore, the procedure adopted by the Head of the

Department to cancel the leave is sustainable.

4. We have perused the Order passed on 25.4.2007. Even though no provision of law is mentioned in the said Order, in the counter affidavit filed

by the Department before the learned single Judge, it is stated that the said Order was passed in exercise of power conferred under Rule 36 of the

Rules. As rightly contended by the learned counsel appearing for the appellant, Head of the Department has exercised the suo motu revision, which

can be exercised only within six months. Admittedly, the Government has not exercised the power of suo motu revision. Therefore, the appellant is

entitled to succeed on that ground. Secondly, even assuming that the power of review is available beyond six months no notice was issued to the

appellant before cancelling the leave already sanctioned which is also provided under proviso to Rule 36(4). Even assuming that the said proviso is

not applicable, the cancellation of leave has civil consequence to the appellant which is also proved in this case i.e., by issuing charge memo and his

service itself was terminated. Therefore, in compliance of the principles of natural justice, the Head of the Department is bound to issue notice

before cancelling the leave already sanctioned. Learned counsel appearing for the appellant submitted that the appellant is going to retire on

31.5.2014 and if liberty is given to the respondents to issue notice and pass fresh orders to cancel the leave, which was already sanctioned in the

year 2000, the petitioner would be put to serious prejudice and he may not be in a position to get the retirement benefits. Taking into consideration

of the over all view of the matter, we are of the view that the interest of justice would be met by setting aside the order dated 25.4.2007 as well as

the order of dismissal dated 1.9.2008 with a direction to the respondents to reinstate the appellant without back wages, but with continuity of

service and other benefits, within a period of four weeks from today. On reinstatement, the appellant is entitled to get the notional increments and

salary fixed from the date of reinstatement.

With the above observation, the Writ Appeal is disposed of. However, there is no order as to costs. Consequently, the connected miscellaneous

petition is closed.