

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

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THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.A.No.2209 of 2011

E.Shankaran

... Appellant

vs.
The Secretary to Government,
Labour & Employment PP1 Department,
Fort St. George,
Chennai -9. ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 28.04.2011 passed by a learned Single
Judge of this Court in WP.No.8792 of 2006.

PRAYER WP.8792/06:

Petition filed seeking for a unit of Certiorariried
mandamus calling for the records of the respondent in connection
with the impugned order passed in G.O. D No.128 Labour &
Employment (PP1) Dept. dt. 27.2.2006 and quash the same and
further direct the respondent to reinstate the petitioner into
service and grant him all consequential service and monetary
benefits.

For Appellant : Mr.M.Muthappan
For Respondent : Mr.P.S.Sivashanmuga Sundaram, SGP

JUDGMENT

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Challenging the correctness of the order passed by a
learned Single Judge in WP.No.8792 of 2006, the writ petitioner
has preferred the present writ appeal.

2.For the sake of convenience, the parties are referred
to as per their rank in the writ petition.

3.A few facts, which are relevant for disposal of this
writ appeal, are as follows:

The petitioner joined as an Instructor in the Government
Industrial Training Institute in the year, 1979. Thereafter, he

was selected to the post of Principal, by direct recruitment, through the Tamil Nadu Public Service Commission and was appointed as such, in the year, 1994. While he was serving as Principal in the Government Industrial Training Institute, he placed orders for the purchase of the materials from certain firms, which were not in the list of approved firms. Hence, he was issued with a charge memo on 22.1.2003, containing eight charges. One of the main charges levelled against the petitioner was that he has allowed the Store Keeper to purchase the materials from unapproved firms and that certain materials had been purchased in numbers, which were more than the required quantity, thereby causing financial loss to the Government. After conducting an enquiry, the Enquiry officer submitted a report holding that all the charges, except the 7th charge, had been proved against the petitioner. Based on the same, the petitioner was imposed with the major punishment of compulsory retirement from service, by the Government Order in G.O.Ms.No.128, Labour and Employment (PP1) Department, dated 27.2.2006. Challenging the said G.O, the petitioner preferred WP.No.8792 of 2006, which was dismissed by the learned Single Judge, by the order impugned herein. Hence, this writ appeal by the petitioner.

4.Learned counsel for the petitioner would contend that the petitioner had no knowledge about the placing of the orders, for the purchase of the materials, from certain firms, whose names were not found in the list of approved firms, as it was based on the list given by the Store Keeper. As such, the petitioner was not directly responsible for the purchase of the materials from unapproved firms. Learned counsel would further contend that for the same delinquency committed by one Sabapathy, who succeeded the petitioner, as the Principal of the Government Industrial Training Institute, he was given a lenient punishment viz., imposing a cut in pension of Rs.100/- per month for a period of five years and he was allowed to retire from service, with all service and monetary benefits, whereas, the petitioner was imposed with the major punishment of compulsory retirement from service. Such approach of the respondent, which was affirmed by the learned Single Judge, is arbitrary and discriminatory in nature. Learned counsel would also contend that there is no allegation of misappropriation of funds of the State Government or that the petitioner had committed the irregularity, intentionally.

5.On the other hand, learned Special Government Pleader appearing for the respondent would contend that considering the grave nature of the charges proved against the petitioner, it cannot be said that the punishment awarded to the petitioner was either excessive or disproportionate to the charges proved against him. Hence, the learned Single Judge has rightly passed

the impugned order, dismissing the writ petition filed by the petitioner and confirming the punishment imposed on him, which warrants no interference by this Court.

6. We have carefully considered the rival submissions and perused the materials placed before us.

7. Incontrovertibly, for the charges found established against the petitioner, he was imposed with the punishment of compulsory retirement from service, whereas, for the same delinquency committed by one Sabapathy, who had succeeded the petitioner, as the Principal of the Government Industrial Training Institute concerned, he was awarded a lenient punishment of cut in pension.

8. It is the specific plea of the petitioner that one Ravichandran, Store Keeper, who had by-passed the Administrative Officer and the Office Manager, had obtained the approval from the petitioner, for the purchase of the materials from certain firms, which were not in the list of approved firms and hence, the petitioner was not directly responsible for the irregularities committed by the said Store Keeper. Further, the petitioner had rendered unblemished service for nearly 27 years, which has not been taken into consideration before passing the order of punishment. This Court finds considerable force in the plea so raised by the petitioner.

9. That apart, it is not a case of misappropriation of funds, thereby causing financial loss to the Government exchequer. The only allegation levelled against the petitioner is that he has not followed the relevant procedure for the purchase of the materials. Further, when the petitioner's successor viz., Sabapathy has been inflicted only with a relatively minor punishment, this Court is at a loss to understand as to why the petitioner should be slapped with a major punishment, which does have a far reaching consequence on his terminal benefits. सत्यमेव जयते

10. Under such circumstances, this Court is of the view that the punishment of compulsory retirement imposed on the petitioner is too harsh, shocking the conscience of this Court and grossly disproportionate to the charges proved against him and the same needs to be modified.

11. At this stage, learned counsel for the petitioner submitted that the petitioner has reached the age of superannuation.

12. Taking note of the submission made by the learned counsel for the petitioner, the order passed by the respondent, imposing the punishment of compulsory retirement is modified as

follows:

The respondent shall take into consideration the entire period of the petitioner's service i.e, till the date of actual retirement of the petitioner, had he not been compulsorily retired, only for the limited purpose of pensionary benefits. However, it is made clear that he is not entitled to any backwages for the period, during which, he was not working, applying the principles of 'no work no pay'.

13. Accordingly, the order of the learned Single Judge is modified and the writ appeal is disposed of. No costs.

Sd/-

Assistant Registrar (CS-iv)

//True Copy//

Sub Assistant Registrar

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To

The Secretary to Government,
Labour & Employment PP1 Department,
Fort St. George,
Chennai -9.

+1cc to Mr.M.MUTHAPPAN, Advocate, S.R.No. 79226
+1cc to the Government Pleader, S.R.No.79902

W.A.No.2209 of 2011

AD(CO)
TR(11/01/2018)

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