

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.9294 of 2008

G.Santhanakrishnan

... Petitioner

Vs

1.The Deputy Director,
Tamil Nadu Fire and Rescue Services,
North-West Region,
Vellore.

2.The Director,
Tamil Nadu Fire and Rescue Services,
Chennai 600 008.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the first respondent in connection with the impugned orders passed by him in Rc.No.5161/B1/2007, SO No.254/2007 dated 20.12.2007 and confirmed by the 2nd respondent in Rc.No.23336/B4/07 dated 31.12.2007 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits and grant him such other relief as this Court may deem fit in the circumstances arising out of the case.

For Petitioner : Mr.T.Ayngaraprabhu

For Respondents : Mr.S.V.Duraisolaimalai,
Additional Government Pleader

O R D E R

Heard Mr.T.Ayngaraprabhu, learned counsel for the petitioner and Mr.S.V.Duraisolaimalai, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorari, to call for the records of the first respondent in connection with the impugned orders passed by him in Rc.No.5161/B1/2007, SO No.254/2007 dated 20.12.2007 and confirmed by the 2nd

respondent in Rc.No.23336/B4/07 dated 31.12.2007 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits and grant him such other relief as this Court may deem fit in the circumstances arising out of the case."

3. The case of the petitioner is as follows:-

The petitioner joined the Tamil Nadu Fire and Rescue Services as Fireman in the year 1974. He was promoted as leading Fireman in the year 1985 and further promoted as Station Fire Officer in the year 1998. According to the petitioner, he has rendered 33 years on unblemished service and received 32 rewards and also received Chief Minister Medal for good service. While so, the petitioner was issued with the charge memo on 17.04.2006, the charge being framed by the Tribunal for Disciplinary Proceedings, since the charge pertain to demand of illegal gratification by the petitioner.

4. The Tribunal for Disciplinary Proceedings vide its findings dated 26.07.2007, had held the charges proved and submitted a report to that effect to the Government. Thereafter, a copy of the enquiry report was furnished to the petitioner. On receipt of the enquiry report, the petitioner submitted his representation dated 17.12.2007. The Disciplinary authority notwithstanding the legitimate explanation offered by the petitioner about his non-involvement in the illegal demand, imposed a penalty of removal from service vide order dated 20.12.2007. As against the said penalty, an appeal was filed and the same was rejected on 31.12.2007.

5. The learned counsel for the petitioner would submit that there was no acceptable evidence in establishing the charge of demanding illegal gratification against the petitioner, since the trap which was laid by the Vigilance Official was unsuccessful and therefore, the ultimate finding rendered by the Tribunal for Disciplinary Proceedings was flawed and perverse. Therefore, he would submit that the ultimate penalty imposed by the Disciplinary Authority cannot be countenanced both in law and on facts.

6. The learned counsel for the petitioner would also submit that even otherwise both the Disciplinary Authority and the Appellate Authority have passed a non-speaking order without proper consideration of the infirmities pointed out by the petitioner in the conduct of the enquiry and findings rendered thereon. The learned counsel for the petitioner would also submit that the petitioner had rendered blemishless record of service over 30 years and was in receipt of more than 30 rewards including Chief Minister Medal for his meritorious service. He would therefore, submit that the punishment of removal from

service imposed on the petitioner is excessive, considering the fact, meritorious past service apart from the enquiry finding being perverse and the orders passed by the Disciplinary Authority and the Appellate Authority were non-speaking orders.

7. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit. The learned Additional Government Pleader would submit that the charge framed against the petitioner was very serious in nature and in the matter of corruption by the officials, strict view must be taken while imposing the penalty on proving the charges. In the instant case, the Tribunal for Disciplinary Proceedings, after giving an opportunity to the petitioner, had held the charges proved and therefore, the authorities concerned have passed an order of removal from service which was rightly confirmed by the Appellate Authority. He would further submit that no lenient view could be taken in the matters of corruption. Therefore, the punishment of removal from service is proportionate to the gravity of misconduct alleged against the petitioner.

8. On the other hand, the learned counsel for the petitioner would rely upon the order passed by the Hon'ble Division Bench of this Court, in the case of RM.Palaniappan Vs. The Transport Commissioner, Chepauk, Chennai and others, reported in (2006)1 MLJ 48, he would draw the attention of this Court to paragraphs 26 to 30 of the above judgment. The same is extracted below:-

"26. No doubt, the shameful act committed by the petitioner is so serious in nature. However, the extreme punishment of dismissal from service imposed on the petitioner, in our view, is disproportionate for the reason that the main object and thrust behind awarding of a punishment to an offender is only to mend him and not to strangle. Otherwise, the very purpose of awarding punishment would not be served.

27. Further, when most of the unemployed educated youth are searching for any kind of work for their livelihood even for a meagre salary irrespective of their educational qualifications, the attitude of the petitioner, who is in Government Service, abusing of his official position by engaging a tout to grab money illegally and in a shameful way from all walks of people, is really the worst disturbing feature.

28. Moreover, when the petitioner is vested with the power of issuing licenses to the persons and the vehicles as well, it cannot be expected of him that he would give licence to the persons who are eligible in all aspects or the vehicles fit for running on the road, when he has decided to mint money by engaging a tout. This is not a good omen to the civilized and democratic Society, when especially, the nature of

work of the petitioner directly plays a vital role with the lives of the people moving on the road.

29. Considering the above aspects, though we are disinclined to impose extreme punishment of dismissal from service, we are of the view that the imposition of stringent punishment on the petitioner would meet the ends of justice.

30. Accordingly, the first and the second respondents are directed not to give any effect to and pay Annual Increments, Dearness Allowance, Bonus, if any, and any other monetary benefits alike, due after the date of this order with cumulative effect and also any service benefits like considering his name for promotion etc., for five years from the date of this order. In other words, the petitioner has to go home with his monthly salary alone i.e., what is drawing as on date for five years from the date of this order. The orders of the first respondent as well as the Tribunal with regard to punishment are set aside."

9. According to the learned counsel for the petitioner that the facts of the above case were also identical, but still the Hon'ble Division Bench of this Court thought fit to interfere with the quantum of punishment imposed on the petitioner. The learned counsel would also rely on two other decisions of this Court, in the case of V.R.Palanisamy Vs. Director of Collegiate Education, Chennai and others, reported in (2009) 1 MLJ 1071 and in the case of T.Arumai Sounder Rajan Vs. State of Tamil Nadu, rep by its Secretary to Government, Transport Department, Chennai and others, reported in (2009) 1 MLJ 1283. In both the decisions, this Court has applied the principles of "shocking the conscience" theory and interfered with the quantum of penalty imposed on the petitioner.

10. As rightly contended by the learned Additional Government Pleader that in the matters of corruption, no lenient view could be taken and theory of "shocking the conscience" cannot be applied in the instant case. Nevertheless, it has to be seen that the petitioner had admittedly rendered blemishless record of service over 30 years and he was in receipt of several rewards as stated above. The past records always taken into consideration while considering the quantum of penalty ultimately imposed on the employee. As rightly held by the Hon'ble Division Bench of this Court in paragraph 26 of the above cited decision, that "the purpose of thrust of imposition of penalty of the delinquent is only to mend and not to strangulate".

11. In these circumstances, in the case of the petitioner, the punishment of removal from service is rather excessive and the same is not warranted for punishing the petitioner who had

otherwise rendered creditable service all through his tenure. It is represented by the learned counsel for the petitioner that the petitioner had attained the age of superannuation on 31.12.2007.

12. In the light of the above circumstances and the decisions, this Court is of the considered view that the punishment of removal from service shall be substituted as one of compulsory retirement in terms of the service rules on the date when the petitioner was removed from service by proceedings dated 20.12.2007. In view of the same, the impugned orders in Rc.No.5161/B1/2007, SO No.254/2007, dated 20.12.2007 and Rc.No.23336/B4/07, dated 31.12.2007, are set aside and the respondents are directed to pass orders of compulsory retirement of the petitioner from the date when he was originally removed from service and grant him all attendant benefits on such modified penalty imposed on the petitioner. The above direction shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsk
To

1.The Deputy Director,
Tamil Nadu Fire and Rescue Services,
North-West Region,
Vellore.

2.The Director,
Tamil Nadu Fire and Rescue Services,
Chennai 600 008.

+1 cc to Mr.M.Muthappan Advocate sr 86260
+1 cc to Govt Pleader sr 86867

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