

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.6615 of 2013
& MP.No.1 of 2015

P.Arokiasamy

.. Petitioner

Vs.

1. The State of Tamilnadu,
Rep. by its Secretary to Government,
Housing and Urban Development (Nava 2(1))
Department, Secretariat,
Chennai-9.

2. The Director/Commissioner of Town and
Country Planning,
Anna Salai,
Chennai-2.

...respondents

Petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records connected in Pro.Na.Ka.No.26029/2007/K3, dated 28.01.2010 of the second respondent and also the Government order in G.O.(Ms.)No.74, Housing and Urban Development (Nava.2(1)) Department, dated 21.03.2012 passed by the first respondent and quash the same and direct the respondents to reinstate the petitioner into service with all benefits.

For Petitioner .. Mr.G.Elanchezhiyan

For Respondents .. Mr.A.Zakkir Hussain, G.A.

ORDER

The petitioner has approached this Court seeking for the following relief:

'to issue a writ of Certiorarified Mandamus, to call for the records connected in Pro.Na.Ka.No.26029/2007/K3, dated 28.01.2010 of the second respondent and also the Government

order in G.O.(Ms.)No.74, Housing and Urban Development (Nava.2(1)) Department, dated 21.03.2012 passed by the first respondent and quash the same and direct the respondents to reinstate the petitioner into service with all benefits.

2.Heard Mr.G.Elanchezhiyan, learned counsel appearing for the petitioner and Mr.A.Zakkir Hussain, learned Government Advocate appearing on behalf of the respondents.

3.The case of the petitioner is as follows:

The petitioner was initially appointed as Assistant Draughtsman under the control of the second respondent herein on 21.06.1982. He was promoted as Draughtsman Grade-III in the year 1999 and transferred and posted to O/o. the Regional Deputy Director of Town and Country Planning, Chengalpattu and thereafter to Sivagangai Regional Deputy Director of Town and Country Planning Office vide transfer order dated 14.12.2007. The transfer order was served on the petitioner on 17.12.2007 and he was relieved from service to enable him to join in the transferred post. However, the petitioner would not join in the transferred post, in view of certain compelling domestic reasons. In the said circumstances, the petitioner was forced to apply leave on various spells as his presence in Chennai became necessary. However, no order has been passed in his leave applications.

4.While matter stood thus, a charge memo was issued against the petitioner under Rule 17(a) of the Tamil Civil service (D&A) Rules on 04.06.2008. The charge against the petitioner was that he was in unauthorised absence and also failed to obey the transfer order passed against him. The petitioner has submitted his explanation on 18.06.2008, explaining the reasons for not joining the transferred post and for his absence. While 17(a) charges are pending, he was advised by the administration by proceedings dated 08.07.2008, to go and join duty in the transferred post, failing which, a punishment of stoppage of increment will be imposed. On this the petitioner submitted a representation on 05.11.2008 to the first respondent and a copy of which was also marked to the Hon'ble Minister concerned, requesting for placing him in and around Chennai City. However, there was no reply to his representation. As he was waiting for a positive response from the Government, to the petitioner's surprise, an order was issued by the second respondent on 11.02.2009, placing the petitioner under suspension, pending enquiry into grave charges thereafter, on 13.04.2009, the second respondent had issued a charge memo dated 04.06.2008 under Rule 17(b) of the Tamil Civil Service (D&A) Rules framing 3

charges against the petitioner. The charges which were framed under Rule 17(b) were similar as that of the charges which were originally formed part of 17(a) proceedings initiated against the petitioner vide charge memo dated 04.06.2008. In response to the said charge also, the petitioner has submitted a representation denying the same. However, an enquiry was conducted, in which, no witnesses were examined nor any document marked. The enquiry officer however ultimately held the charges proved and the disciplinary authority eventually imposed the punishment of dismissal from service on 28.01.2010. Against which, the petitioner preferred an appeal to the first respondent on 09.06.2010. However, the same was not disposed of by the first respondent. In such circumstance, the petitioner was constrained to approach this Court by way of writ petition in W.P.No.19802 of 2010 dated 30.08.2010. In the said writ petition, this Court has given a direction to the first respondent to dispose of the appeal of the petitioner dated 09.06.2010 within a specified period. In response to the direction, the first respondent namely the appellate authority has passed a rejection order dated 21.03.2012 in the appeal. The orders passed by the disciplinary authority as well as the appellate authority are under challenge in the present writ petition.

5.Upon notice, Mr.A.Zakkir Hussain, learned Government Advocate entered appearance on behalf of the respondents and filed counter affidavit.

6.Mr.G.Elanchezhiyan, the learned counsel for the petitioner would submit that for the same set of allegations two charge memos were issued against the petitioner, one under 17(a) and another under 17(b) of the of the Tamilnadu Civil Service (D&A) Rules and therefore, the second charge issued under Rule 17(b) cannot be sustained in law. On the explanation submitted earlier for the charge memo dated 04.06.2008 issued under Section 17(a), no order was passed. Even otherwise, the learned counsel would submit that Rule 17(b) enquiry enquiry was not conducted as per the procedure contemplated in the Rules since admittedly, no witnesses were examined nor documents were marked in the enquiry. In the absence of any witness, the enquiry held and the charges proved thereon cannot be valid. The findings of the enquiry is not a reasonable one but the same was unsupported by any evidence and the same cannot be the basis for the eventual imposition of harsh penalty of dismissal from service. The disciplinary authority even though was aware of the fact that the enquiry was not conducted as per the procedure contemplated in the Rules for imposing the major penalty, has chosen to impose the penalty of dismissal from service on 28.01.2010. Although, it is incumbent upon the disciplinary authority to give proper reasonings, for imposing

punishment, particularly a severest penalty of dismissal from service, the disciplinary authority as over looked the mandatory procedure contemplated in the Rules and obligated a statutory response while imposing a penalty of dismissal of removal from service. From the appellate authority's orders, it could be seen that there was no consideration of any of the infirmities in the conduct of the enquiry and the imposition of penalty by the Disciplinary Authority.

7. How so ever, the said appeal was filed by the petitioner on 09.06.2010, explaining the circumstances under which he accepted the enquiry report since the petitioner was given assurance that a lenient view would be taken in the matter. However, the appellate authority though appreciated the totality of circumstance, has mechanically rejected the appeal vide G.O (Ms) No.74, Housing and Urban Development Department dated 21.03.2012.

8. The learned counsel appearing for the petitioner would rely on several decisions passed by this Court and the decisions of the Hon'ble Supreme Court of India, while assailing the manner in which the enquiry was conducted, the punishment orders issued proportionality of punishment imposed on the petitioner etc.

9. The learned counsel for the petitioner would rely on the decisions of the Hon'ble Supreme Court of India reported in 2008 (8) SSC 236 (State of Uttaranchal and Others and Kharak Singh), where in, the Supreme Court while confirming the order of the High Court holding that several infirmities were found in the conduct of the enquiry and the High Court has quashed the disciplinary action. Therefore, the learned counsel would submit that in the instant case, enquiry was not conducted in terms of the Rules for imposition of major penalty and therefore, the entire disciplinary action stands vitiated on that ground alone. The learned counsel also would brought to the attention of this Court the following decisions, regarding proportionality of punishment against the charge of unauthorised absence.

(i) 2009(8) MLJ 460 (Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others)

(ii) 2009(7) MLJ 1213 (V. Senthurvelan Vs. High Court of Judicature at Madras, rep. by the Registrar, High Court, Chennai-600 104 and Others).

(iii) 2012(4) MLJ 595 (Krushnakant B. Parmar Vs. Union of India and another)

(iv) 2013(3) MLJ 228 (S. Shanmugarajan Vs. State of Tamilnadu rep. by the Director General of Police, Mylapore, Chennai and Others).

In all the above cases, both the High Court and the Hon'ble Supreme Court of India have held that removal or dismissal from service for unauthorised absence was excessive and harsh and thus the punishment came to be interfered with by the Courts.

10. Therefore, the learned counsel appearing for the petitioner would vehemently contend that in the instant case, even assuming that the charges were proved, the ultimate punishment imposed by the disciplinary authority on 28.01.2010 as confirmed in the appeal on 21.03.2012, has to be interfered with on the ground that the punishment being inappropriate to the gravity of the charges levelled against the petitioner.

11. Per contra, the learned Government Advocate appearing for the respondents would submit that the charge against the petitioner was not only for unauthorised absence, but also for dereliction of duty and also failure to obey the lawful orders passed by the superior officers in spite of repeated advice given to the petitioner to join in the transferred post. The petitioner remained adamant and refused to join the transferred post, under some pretext or other. The retention of the petitioner in service was not in the interest of administration and hence imposed the penalty of dismissal from service on the petitioner, therefore, such action on the part of the respondents, does not call for interference from this Court.

12. This Court has given its anxious consideration to the rival submissions of the learned counsel and perused the relevant materials and the pleadings placed on record. From the records, it emerges that the enquiry conducted against the petitioner, in respect of 17(b) charges did not satisfy the procedure contemplated in the Rules as admittedly, no witness were examined and no documents were marked in the enquiry. An enquiry report was submitted by the enquiry officer on the basis of certain records, which were not marked in the enquiry and without affording any opportunity to the petitioner for cross examining the witnesses, or for examining his own witness. In the absence of such procedure being followed as contemplated in the Rules, the findings of the enquiry officer cannot be held to be valid and the same has to be brushed aside as one of perverse findings.

13. Further, the disciplinary authority's orders imposing severe penalty of removal or dismissal from service without addressing infirmities on the conduct of enquiry and without addressing the explanation offered by the petitioner for his absence is once again vitiated by non consideration of materials by the disciplinary authority. The punishment eventually imposed on the petitioner is not only inappropriate but also contrary

to the Rules as per which, it is imperative on the part of the disciplinary authority to give sufficient and adequate reasons for imposing major penalties.

14. Although, the charges framed were not only for unauthorised absence but for dereliction of duty and for failing to obey the lawful orders passed by the superior, the other two charges are mere fall out of the principal charge being unauthorised absence. In the said circumstances, the punishment imposed on the petitioner is grossly disproportionate and cannot be countenanced in law in view of the decisions aforesaid.

15. While, holding that the imposition of dismissal from service is harsh and excessive, this Court has to take a call as to what punishment is to be imposed on the petitioner for his absence without permission for a long period and failed to join in the transferred post despite advise given to him repeatedly by his superiors. This Court after evaluating all the facts and circumstances of the case is of the considered view that the punishment of dismissal from service is to be modified as that of 'no work-no pay' from the date of dismissal from service on 28.01.2010 till the date of the petitioner attaining the age of superannuation. This order is passed after a submission was made that though during the pendency of the present writ petition, the petitioner had rendered 17 years of service and had attained the age of superannuation, taking into consideration, the peculiar facts and circumstance of the case, the respondents are directed to reinstate the petitioner in service with effect from 28.01.2010, with all other attendant benefits except the backwages from the period of dismissal from service and till the date when the petitioner attained the age of superannuation.

16. With this direction, the impugned order dated 28.01.2010 passed by the second respondent is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Housing and Urban Development (Nava 2(1))
Department, Secretariat,
Chennai-9.
2. The Director/Commissioner of Town and
Country Planning,
Anna Salai,
Chennai-2.

+1cc to Mr.G.Elanchezhiyan, Advocate, S.R.No.51260

W.P.No.6615 of 2013
& MP.No.1 of 2015

CS/23/10/17



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