

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

WP.No.31836 of 2012

S.Adbul Kareem

.... Petitioner

Versus

- 1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Tambusamy Road,
Kilpauk, Chennai- 600 010.
- 2.The General Manager (Administration),
Tamil Nadu Civil Supplies Corporation,
No.12, Tambusamy Road,
Kilpauk, Chennai- 600 010.
- 3.The Regional Manager,
Tamil Nadu Civil Supplies Corporation,
Namakkal Region,
Behind Office of the Collectorate -Namakkal Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Certiorari to call for the records of the first respondent in proceedings Sa.Mu.A.No.AD4/31260/12 dated 03.10.2012 and the second respondent in proceedings AD1/807/2004 dated 24.06.2011 and the third respondent in proceedings Na.Ka.No.E2/44/2001 dated 06.11.2003 and to quash the same.

For Petitioner : Mr.R.Thirugnanam
For R1 to R3 : Mr.L.P.Shanmughasundaram

ORDER

The petitioner has approached this Court seeking the following relief:

"To issue a Certiorari to call for the records of the first respondent in proceedings Sa.Mu.A.No.AD4/31260/12 dated 03.10.2012 and the second respondent in proceedings AD1/807/2004 dated 24.06.2011

and the third respondent in proceedings Na.Ka.No.E2/44/2001 dated 06.11.2003 and to quash the same''.

2.The case of the petitioner is as follows:

The petitioner joined the service of the respondent Corporation as Packer in the year 1975. Thereafter, he was promoted as Bill Clerk, Junior Assistant, Assistant and Superintendent over a period of time. While working in Salem Region, he had applied for permission on 05.11.1993 to go abroad for a period of three years from 01.11.1994. Though, the Corporation did not pass any orders on his application, however, the petitioner had gone abroad during the period when he sought permission. It is also relevant that no permission was granted earlier and the leave was sanctioned for a period of his absence and the administration was aware of the fact that the petitioner had gone abroad.

3. Thereafter on return from abroad, the petitioner joined duty on 10.02.1997. For the second occasion, the petitioner had applied for permission to go abroad for a period of two years from 01.08.1997. Even in this application, no order has been passed and therefore, the petitioner had gone abroad as scheduled. When the petitioner was to leave abroad, he was given to understand that the sanction orders will be passed eventually. While the petitioner was away from the country, he was issued with a charge memo dated 26.02.1998, charging that the petitioner failed to obtain permission to go abroad and he was unauthorizedly absent during the said period. Pursuant to the charge memo, an enquiry was conducted and the report was also submitted on 30.06.1999 holding that the charges proved against him.

4. Thereafter, the order of dismissal was passed against the petitioner, against which, an appeal was preferred to the first respondent. The first respondent by proceedings dated 14.12.2000, set aside the order of dismissal and remanded the matter for a fresh disposal, since no opportunity was given to the petitioner to participate in the enquiry.

5. Thereafter, the petitioner joined as Assistant on 09.01.2001, subsequently, fresh charges were framed on 25.09.2001 and once again an enquiry was held and the charges were proved and a punishment was imposed by the disciplinary authority withholding the increment for a period of 5 years without cumulative effect. Aggrieved by the said order, the petitioner filed an appeal and thereafter, the petitioner has approached this Court in W.P.No.22293 of 2004 and this Court, by order dated 03.11.2010 disposed of the writ petition and directed the appellate authority, the second respondent herein to decide the appeal on merits.

6. In pursuance of the above direction, the second respondent passed an order in the appeal by modifying the original penalty of stoppage of increment for a period of 5 years without cumulative effect into stoppage of increment with cumulative effect vide order dated 24.06.2011. In the meanwhile, the original order of punishment by the disciplinary proceedings dated 06.11.2003, was implemented in the year 2009.

7. After modification of the order by the appellate authority, further appeal was preferred by the petitioner to the first respondent on 18.04.2012 and once again a writ petition was filed for dismissal of the said appeal dated 18.04.2012 and on the basis of a direction issued by this Court in the said writ petition the so-called appeal dated 18.04.2012, came to be rejected by proceedings dated 03.10.2012. The petitioner is now before this Court challenging the order passed by the appellate authority modifying the punishment withholding the increment for a period of three years with cumulative effect dated 24.06.2011 and the rejection order of the first respondent dated 03.10.2012.

8. The learned counsel for the petitioner would submit that when the original order of punishment passed by the disciplinary authority had been implemented in the year 2009, the order of the appellate authority dated 24.06.2011 modifying the same cannot be sustained in law, since no proper procedure has been valid while modifying the penalty to the detriment of the petitioner. According to the learned counsel for the petitioner, that modifying the penalty with cumulative effect will have far reaching implication for the petitioner throughout his life, particularly in view of the fact that the petitioner stood retired from service on 30.04.2013 and as such the order would have adverse effect on his pension.

9. Upon notice, Mr. L. P. Shanmugasundaram, learned counsel entered appearance for the respondents 1 to 3. The learned counsel would submit that the relief sought for in this writ petition cannot be granted on the ground that the appellate authority was right in modifying the penalty on the basis of nature of charges proved against the petitioner. In the said circumstances, he would vehemently submit that no interference is called for.

10. This Court has considered the rival submissions of the learned counsel appearing for the parties and perused the materials and the pleadings placed on record. This Court, at the outset, is of the view that once the disciplinary authority had taken a conscious decision in imposing a penalty as early as on 06.11.2003, unless there was a compelling and strong reasons, the appellate authority cannot modify the penalty to the disadvantage of the employee concerned that too after a

period of seven years. The order of the appellate authority dated 24.06.2011, does not disclose any such strong or compelling reasons for modifying the penalty. Although the so-called appeal dated 18.04.2012 was not a statutory appeal. However, there was no proper consideration of the said appeal by the first respondent by taking into consideration the original order passed by the disciplinary authority as early as on 06.11.2003. More over, the original punishment itself had been implemented and completed during the service period of the petitioner and also subsequent to the modification of the penalty.

11. In view of the above discussion, this Court has no hesitation in allowing the writ petition. In the said circumstances, the impugned orders passed in Sa.Mu.A.No.AD4/31260/12 dated 03.10.2012 and in No.AD1/807/2004 dated 24.06.2011 are set aside and the original order of penalty dated 06.11.2003, which was already implemented shall remain intact for all purposes.

12. The writ petition is ordered accordingly. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

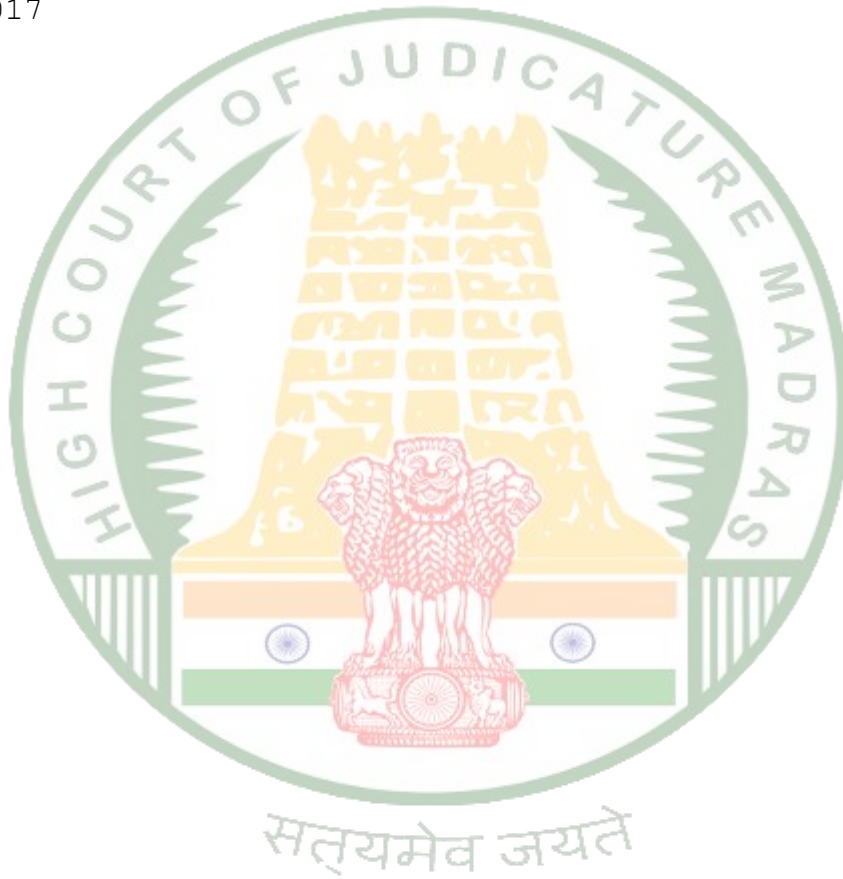
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To

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Behind Office of the Collectorate -Namakkal

+1 cc to Mr.R.Thirugnanam Advocate sr 78037
+1 cc to Mr.L.P.Shanmugasundaram Advocate sr 78711

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