

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 25.10.2017

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.23990 of 2010

P.Vijayakumar

.. Petitioner

Versus

Tamil Nadu Khadi & Village Industries,
represented by Chief Executive Officer,
Kuralagam,
Chennai.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings vide No.28, dated 11.6.2008 issued by the respondent, quash the same and consequently, direct the respondent to confer all attendant and consequential benefits to the petitioner by treating the period from the date of removal from service from 3.6.2006 to the date of reinstatement on 11.6.2008 as one on duty for all purposes.

For Petitioner : Mr.R.Thiagarajan

For Respondent : Mr.S.K.Bose

ORDER

The present writ petition has been filed, seeking for the following relief:

Issue Writ of Certiorarified Mandamus, to call for the records relating to the proceedings vide No.28, dated 11.6.2008 issued by the respondent, quash the same and consequently, direct the respondent to confer all attendant and consequential benefits to the petitioner by treating the period from the date of removal from service from 3.6.2006 to the date of reinstatement on 11.6.2008 as one on duty for all purposes.

2. The petitioner was an employee of the respondent Board, having joined as Counter Assistant on 16.12.1987. He was promoted as Junior Assistant in the year 1994. He was charge sheeted in a criminal case and subsequently, a departmental charge memo dated 17.2.2004 was issued alleging three acts of misconduct. First being that he had unauthorizedly corrected the attendance register for the period from 14.10.2013 to 22.10.2003. The second being that he had come in a drunken state to the Office and behaved in an unbecoming manner by abusing his colleagues the third being that he had quarreled with public while discharging his duties. The petitioner submitted his explanation denying the charges. However, notwithstanding the denial of charges, an enquiry was conducted into the charges in which, according to the petitioner, no witnesses were examined, but a statement was obtained by the Enquiry Officer from the petitioner and concluded that the charges were proved against him. On the basis of enquiry report, the Chief Executive Officer passed an order dated 3.6.2006 dismissing the petitioner from service. Aggrieved by the order of penalty of dismissal from service, the petitioner preferred an appeal before the respondent Board. The Board, on consideration of the appeal filed by the petitioner, passed an order on 11.6.2008 setting aside the order of dismissal from service and modified the same into one of stoppage of increment for a period of two years with cumulative effect and the period between the date of dismissal from service and the order passed by the appellate authority, was ordered as non-duty period. The said order passed by the Board is put to challenge in this writ petition.

3. The learned counsel appearing for the petitioner would strongly contend that as regards the first charge is concerned, he had given a valid explanation stating that he was deputed to go out of station on special duty to Coimbatore from 14.10.2013 to 22.10.2013 for 'Deepavali Special Sale'. Although he was officially deputed, in the attendance register, his attendance was marked as 'absent' for the subject period and on his return from the special duty, he complained about marking his absence in the attendance register to his superior and he was advised by his superior to make correction in the attendance register since the custody of the register was with the petitioner. Therefore, according to the petitioner, the correction in the attendance register was made after getting clearance from the superior and the said act cannot be construed as one of misconduct more particularly he was directed by his superior to go out of station on special duty for Depavali Special Sale and such deputation was treated as duty for all purposes.

4. As regards second charge that the petitioner had come to office in drunken state, a criminal case was filed before the competent Judicial Magistrate, which ultimately had ended in

acquittal. As regards third charge was concerned, no witnesses were examined nor any documents were marked in the departmental enquiry and therefore, the enquiry report holding the charge proved, cannot be countenanced both in law and on facts.

5. The learned counsel appearing for the petitioner would contend that the Enquiry Officer merely obtained the statement from the petitioner and the Board failed to discharge its obligation to prove the charge in the departmental enquiry as no witnesses were examined in the enquiry at all. In the absence of evidence to rebut the explanation offered by the petitioner in respect of the first charge and also in respect of other two charges, no contra evidence was available in the face of acquittal by the Criminal Court and also in the face of denial of opportunity to cross examine the witnesses by the petitioner. Therefore, the report of the Enquiry Officer is nothing but perverse and invalid. In the circumstances, although the respondent Board had modified the original penalty of dismissal from service into stoppage of increment for a period of two years with cumulative effect, the said punishment cannot be on the basis of flawed enquiry since no evidence was made available in the enquiry in support of the charges.

6. The learned counsel would draw the attention of this Court to the order passed by the respondent Board on 11.6.2008 in which the Board had concluded that the charges 1 and 2 were proved and the third charge was not proved. The Board had come to the conclusion only on the ground that the petitioner was acquitted of the charges by the Criminal Court only on the basis of benefit of doubt, but the statement of the employee would show that he had come to the office in a drunken state.

7. According to the learned counsel for the petitioner, the Board failed to appreciate the explanation offered by the petitioner in respect of first charge and its veracity or otherwise has to be decided by letting in evidence in the departmental enquiry and in the absence of any evidence contra to the claim of the petitioner, the said charge cannot be said to be established. As regards the second charge was concerned, the petitioner having been acquitted by the competent criminal Court and the so-called statement given by the co-employee cannot be taken into consideration unless the author of such statement was examined and cross-examined in the departmental enquiry. Admittedly, in the case, no such attempt was made by the department during the enquiry. In any event, the third charge found to be not proved by the Board itself. In the circumstances, the learned counsel would submit that the impugned order passed by the respondent is invalid and the same is liable to be interfered with.

8. Upon notice, Mr.S.K.Bose, learned counsel entered

appearance for the respondents and filed a detailed counter affidavit.

9. According to the learned counsel for the respondents, the punishment imposed by the Board was a minor punishment and the Board has taken into consideration the relevant material before passing the impugned order dated 11.6.2008.

10. This Court has considered the rival submissions of the learned counsel appearing for the petitioner as well as the respondent Board and perused the relevant materials and pleadings placed on record.

11. This Court is in full agreement with all the contentions put forth by the learned counsel for the petitioner that no proper procedure was followed while imposing the original penalty of dismissal from service which penalty has been subsequently modified by the Board vide order dated 11.6.2008. As rightly contended by the learned counsel for the petitioner, mere statements obtained from the petitioner and a report was submitted. Such half-baked and flawed report cannot be the basis for imposing penalty on the petitioner. This is a clear case of no evidence in respect of all the charges and therefore, the impugned penalty cannot at all be countenanced both in law and on facts. In the absence of any evidence, mere allegations against the petitioner, would remain as allegations and the same cannot entail any penal action by the Board against the employee. In the said circumstances, this Court has no hesitation to accept the case of the petitioner.

12. The Writ Petition is therefore, allowed and the impugned order dated 11.6.2008 is set aside. The respondent is directed to issue consequential direction towards grant of benefits as admissible to the petitioner consequent to the present order. The said direction shall be complied with by the respondent Board within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
Tamil Nadu Khadi & Village Industries,
represented by Chief Executive Officer,
Kuralagam,
Chennai.

+1cc to Mr.R.THIAGARAJAN, Advocate, S.R.No. 75136

W.P.No.23990 of 2010

TR(23/11/2017)



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