

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.11.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.106 of 2008

M.Meikkappan

... Petitioner

Vs.

1. The Chairman and Managing Director,  
Tamil Nadu Housing Board,  
Nandanam,  
Chennai - 600 035.

2. The Secretary,  
Housing and Urban Development,  
Government of Tamil Nadu,  
Fort St.George,  
Chennai - 600 009.

... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent bearing G.O.(ID).No.95 dated 09.04.2007 removing the petitioner from service and quash the same as illegal and unconstitutional and consequently direct the respondents to reinstate the petitioner in service with continuity of service, back wages with all consequential benefits.

For Petitioner : Mr.Silambanan  
Senior Counsel  
For Profexis Associates

For Respondents: Mr.V.Anandhamurthy

O R D E R

The Writ Petition has been filed to call for the records on the file of the 2nd respondent bearing G.O.(ID).No.95 dated 09.04.2007 and quash the same, and consequently, to direct the respondents to reinstate the petitioner in service with

continuity of service, back wages with all consequential benefits.

2. The case of the petitioner is that he was appointed as Work Assistant under the 1st respondent board on 01.10.1970 as an NMR employee and he was absorbed as Work Assistant on regular basis with effect from 01.10.1972. Subsequently, the petitioner was promoted as Junior Assistant with effect from 01.12.1973 and worked up to 20.11.1999. Thereafter, the petitioner suffered from a mental illness called Anxiety Depression from 11.06.1995 and hence, took treatment from a Psychiatric Consultant.

3. The petitioner would contend that after recovering from the illness, he joined the duty from 24.04.1997 and worked up to 08.12.1997. As the petitioner suffered from Anxiety Depression, once again applied for earned leave from 08.12.1997 to 11.01.1998. However, the petitioner was again advised by the Psychiatric Consultant, to be under continuous medical observation for about 18 months with effect from 01.04.1998. After the petitioner became fit from illness, he reported to resume duty from 21.10.1999, but, he was not allowed to join duty and informed by the 1st respondent that certain disciplinary action has been initiated against him, which the petitioner was not aware of. Thereafter, the petitioner received an order dated 20.11.1999, which inter alia stated that a charge sheet dated 14.09.1998 was issued under Regulation 37(b) of the Tamil Nadu Housing Board Service Regulation, charging the petitioner for the misconduct of unauthorised absence from 12.01.1998 to 20.10.1999.

4. The petitioner would further contend that he found in the charge sheet that an enquiry was ordered and notice was also issued to him, which was received by the petitioner. But, the petitioner did not attend the said enquiry, and therefore, the enquiry was conducted exparte and held the charges as proved. Based on the enquiry report of the enquiry officer, the 1st respondent passed a Resolution No.12.03, dated 25.08.1999 to remove the petitioner from service, which resolution was approved by the 2nd respondent, by its letter dated 15.11.1999.

5. The petitioner would also contend that he filed an appeal to the 2nd respondent on 05.01.2000 and 20.01.2000 for reinstatement, but, it was not considered by the respondent. Hence, he filed W.P.No.638 of 2006 before this Court on 03.01.2006, seeking for a direction to the 2nd respondent, to dispose of his appeal dated 20.01.2000. This Court, by an order

dated 17.03.2006, directed the 2nd respondent to consider and pass orders on the petitioner's appeal dated 20.01.2000 on merits and in accordance with law, within a period of 4 weeks from the date of receipt of a copy of the order. Pursuant to the said order, the petitioner made a representation to the 1st respondent on 27.03.2006, to which, he received a reply from the 1st respondent on 25.04.2007, enclosing G.O.No.95 dated 09.04.2007, by which, the appeal of the petitioner was rejected, as he did not produce any medical certificate in support of his mental illness. Challenge the said order, the present Writ Petition has been filed.

6. Denying the allegations of the petitioner, the 1st respondent filed a counter affidavit, by contending that the petitioner was issued a transfer order, posting him in the Board Secretariat from the Division Office. As he was unwilling to accept the routine transfer order, he wantonly avoided attending office and abstained from duty unauthorisedly from 13.01.1998 without submitting any application for granting leave. The Board, by its Memo dated 21.03.1998 in Memo.No.PNT.1/42934/94, directed the petitioner to join duty and the same was acknowledged by the petitioner on 01.04.1998. But, the petitioner did not respond by either joining the duty or submitting the reasons for his absence, and therefore, disciplinary action was initiated by the respondent and the petitioner was charged under Regulation 37(b) of Tamil Nadu Housing Board Service Regulations 1969 vide Memo.No.DC4/29013/1998 dated 14.09.1998, which the petitioner acknowledged on 08.10.1998.

7. The 1st respondent would further contend that even though, the petitioner is bound to furnish his written statement, he never responded to the charge memo, despite the board giving him an another opportunity on 03.12.1998 to submit his explanation, and therefore, an enquiry officer was appointed by the Board, vide its Proceedings No.DC4/29013/1998 dated 16.01.1999. The enquiry officer also made many attempts to call the petitioner in order to conduct the enquiry, but, the petitioner never turned up to the enquiry, despite receiving the call letters and the same were duly acknowledged by him. Therefore, the enquiry officer proceeded as per Rule under the disciplinary manual and finally concluded that both the charges are proved against the petitioner. However, the enquiry officer, by memo dated 09.07.1999, gave 15 days time to the petitioner to submit his further representation, but, the petitioner did not respond even to that memo. Thus, the matter was taken up to the board, as which is the competent authority to award a punishment. The Board, after examining the report, finally

resolved to award a punishment of removal from service, vide its Resolution No.12.03 dated 25.08.1999. The said resolution was forwarded to the Government of Tamil Nadu and the Government, after examining the report as well as the resolution, gave its approval, vide Proceeding No.(ID).No.528 dated 15.11.1999.

8. The 1st respondent would also contend that the petitioner acknowledging the Government's order dated 15.11.1999, made a representation to the 2nd respondent, seeking for cancellation of the removal order. In the meanwhile, the Petitioner filed W.P.No.638 of 2006 before this Court, seeking for a direction to the 2nd respondent to pass orders on the pending appeal. This Court, by order dated 17.03.2006, directed the 2nd respondent to consider and pass orders on the petitioner's appeal dated 05.01.2000. Pursuant to which, the Government, by its G.O.(ID).No.95 dated 09.04.2007, rejected the appeal filed by the petitioner on the ground that he has not produced any medical report on the alleged illness.

9. The 1st respondent further would contend that the petitioner, absconded from duty from 29.09.1994 to 05.04.1995 and to which, charges were also framed on 13.06.1996. Thereafter, the enquiry officer was appointed on 12.05.1997 and the petitioner also attended the enquiry and defended the case. However, the enquiry officer in his final report, held that the charges are proved. Thereafter, the petitioner made a representation to the Board in this regard, however, the Board, vide its letter dated 09.09.1998 in Letter No.23708/HBI(2)/1997-4, resolved to award a punishment of stoppage of increment for a period of 3 years with cumulative effect. In the meanwhile, the charge memo for the first resolution was issued and the petitioner was removed from service on 20.11.1999 itself, and therefore, the second resolution was not implemented.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

11. The learned Senior Counsel Mr.Silambanan, appearing for the petitioner, has filed additional typed set of papers to substantiate his contentions that the petitioner had been suffering from anxiety depression nearly for a period of 23 months with effect from 11.06.1995 and has also produced the medical certificate of the petitioner, certifying that the petitioner was suffering from anxiety depression during the aforesaid period. But, it was not accepted by the respondent.

12. The learned Senior Counsel would rely upon Section 2(q) of "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995" as which defines "Mental illness" as any mental disorder other than

mental retardation, and also rely upon Section 2(i) as which includes "Mental illness" as a disability.

13. The learned Senior Counsel would vehemently argued that the petitioner is protected under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, and the termination is illegal.

14. Per contra, the learned counsel appearing for the respondents would vehemently argued that the unauthorised absence is very serious and the award of punishment of removal is in consonance with the Board's regulation and which has to be sustained.

15. On a careful perusal of the documents and the arguments put forth by the learned counsel on either side, it is not in dispute that the petitioner was appointed as Work Assistant on 01.10.1970 and absorbed on regular basis with effect from 01.10.1972, and thereafter, promoted as Junior Assistant from 01.12.1973. But, due to his unauthorised absence for the period from 12.01.1998 to 20.10.1999, disciplinary proceedings were initiated and charges were levelled against him, and subsequently, terminated him by following the due process as early as 20.01.2000, which later came to be confirmed by the present impugned order in G.O.(ID).No.95 dated 09.04.2007.

16. The undisputed facts remains that the petitioner has served the organisation from 01.10.1972 to 11.01.1998, and thereafter, from 12.01.1998, the respondents claim that the petitioner has unauthorisedly absented to duty. The petitioner has worked with the respondent board for a continuous period of 25 years, 2 months and 11 days. Besides, he has worked as an NMR employee before regulatisation of his service from 01.10.1970 to 31.09.1972, which fact is also not disputed by the respondents. However, the petitioner claims that he was mentally ill for certain period and therefore, he could not send any reply to the communications received from the respondents, pertaining to the disciplinary action initiated against him.

17. On perusal of the additional typed set of papers filed by the petitioner's counsel, it is not in dispute that the petitioner was suffering from anxiety depression and for which, proper medical certificate has been produced from the concerned Government Medical Officer. However, the enquiry officer set the petitioner exparte, as there was no communication received from the petitioner and held the charges as proved against the petitioner. Thereafter, the 1st respondent awarded major penalty of removal from service, which subsequently, came to be confirmed by the 2nd respondent, which is being impugned in this Writ Petition.

18. It is clear from the above that the petitioner did not appear for the enquiry and did not give any representation

before passing of the award by the 1st respondent. However, the respondents ought to have taken into consideration the past service rendered by the petitioner altogether, as the petitioner had worked for the respondent board for a continuous period of 25 years, apart from the service of two years as NMR employee. So, without taking into consideration of the past service rendered by the petitioner, the respondent has disproportionately terminated the petitioner from service, despite the petitioner has produced medical certificate for his mental illness. However, the enquiry officer cannot be faulted with, as it is an admitted fact that the petitioner did not participate in the enquiry and therefore, the enquiry officer, with no other option, but, to set the petitioner as exparte and proceeded to hold the charges as proved against the petitioner, and thereafter, resolution was passed by the 1st respondent removing the petitioner from service, which later on came to be confirmed by the present impugned order.

19. What the respondent failed to see before passing the award of removal from service, was the past service rendered by the petitioner. Technically, the order cannot be assailed when the petitioner substantiate his unauthorised absence in the enquiry by producing necessary documents. However, the circumstances of this case warrants interference by this Court for modifying the order of termination to an order of compulsory retirement, as it is found that the order of removal is stringent punishment, which ought not to have been imposed to a person like the petitioner who has suffered from mental illness, which comes under the Disabilities Act.

20. Under these circumstances, this Court is inclined to modify the order of removal to an order of compulsory retirement, and accordingly, hereby directs the respondents to pay all the retirement benefits, attendant benefits and other monetary benefits to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. With these directions, this Writ Petition is disposed of. No costs.

raja

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Chairman and Managing Director,  
Tamil Nadu Housing Board,  
Nandanam,  
Chennai - 600 035.

2. The Secretary,  
Housing and Urban Development,  
Government of Tamil Nadu,  
Fort St.George,  
Chennai - 600 009.

+1cc to the Government Pleader, S.R.No.76443

W.P.No.106 of 2008

VBA (CO)  
KAK (22/02/2019)



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