



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.10.2018

PRONOUNCED ON : 04.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No.19665 of 2008

and

M.P.No.1 of 2010

T.S.Jayaparthasarathy Paranthaman

... Petitioner

vs

1.The State of Tamil Nadu,
Rep. by its Secretary to the Government
of Tamilnadu,
Tamilnadu Handloom Weavers Co-op Society Ltd.,
Chennai.

2.Managing Director,
Balasundaram Buildings,
350, Pantheon Road, Egmore,
Chennai - 8.

3.Chief General Manager,
Balasundaram Buildings,
350, Pantheon Road, Egmore,
Chennai - 8.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Ceritiorarified Mandamus, to call for records in respect of the order RC.No.A/2005/A3 dated 19.04.2005 issued by the 2nd respondent quash the same and direct the 2nd respondent to reinstate the petitioner to the same post he was holding.

For petitioner : Ms.Padma Bharanidhasan for
M/s.Vedantham Srinivasan

For respondents : Mr.N.Inbanathan, AGP (W)
for R1
No appearance for R2 and R3
M/s.Jayaraman Associates for R2 & R3



O R D E R

The present writ petition has been filed to quash the order dated 19.4.2005 passed by the second respondent bearing reference R.C.No.A/2005/A 3. By the impugned order, the second respondent has dismissed the petitioner from service on account of continuous absence for over one year on leave on loss of pay basis as per clause 10 (4) of "The Tamil Nadu Handloom Weavers, Cooperative Society Rules. The petitioner seeks for reinstatement.

2.As per clause 10(4) of the Service Regulation of the Staff of Co-optex, any person who is in continuous leave on loss of pay of one year is liable to be removed from service..Clause 10 (4) of the aforesaid Service Regulations reads as under:-

10. Leave On Loss Of Pay

1.....

2.....

3.....

4.Continuous absence on leave on loss of pay for one year entails forfeiture of appointments.

3.On the date of the filing of the present writ petition, the petitioner was already aged 58 years. Another 11 years have gone by, since the filing of the above writ petition. Therefore, prayer for reinstatement of the petitioner at an advanced age of 68 years cannot be considered.

4.The grievance of the petitioner has also neither been articulated properly nor all the documents have been filed to give clear back ground of the case.

5.At the same time, I am inclined to examine the issue on merits based on the documents on record and submissions made in the interest of justice.

6.The learned counsel for the petitioner submitted that the petitioner was frequently transferred even though the petitioner was unwell. It was submitted that the petitioner was transferred to the following places:

- a)Chidambaram to Hyderabad
- b)Hyderabad to Rung Birlamandir
- c)Bellary main office
- d)Bellary showroom
- e)Gulbanga ERD showroom Department
- f)Bidar exclose showroom



also no



16. The petitioner kept pursuing and persisting with his request for retransfer him to the Chidambaram branch of the respondent and hoped the second respondent would sympathetically consider his request.

17. All through the disciplinary period also, the petitioner had requested the 2nd respondent to consider transferring him back to Chidambaram.

18. During the interregnum, domestic enquiry was conducted and the report dated 23.12.2003 was forwarded wherein the petitioner was found guilty of the charge namely absconding from duty from 1.7.2003 and that he was on leave without pay attracting consequences under Rule 10(4) of the Rules.

19. The petitioner stated that during his tenure in the Karnataka sales depots of the respondents, he had suffered from health setback and therefore he was constantly forced to take leave for treatment and therefore could not join duty at Hyderabad.

20. The petitioner also has expressed his anguish that one of his colleague passed away in New Delhi when he was transferred and uprooted from his family. The petitioner therefore feared for loss of his life like his colleague.

21.I have given my anxious thoughts to the facts of the case. It is noticed that the petitioner had joined the respondent on 2.11.1981 and worked in various capacity while gaining higher qualification through correspondence courses. However, after being uprooted from his family he suffered health setback in Karnataka.

22. Therefore, when he was transferred to Andhra Pradesh, he developed cold feet and sought to encash medical leave, privileged leave and earned leave. The petitioner later kept taking leave on loss of pay and persisted with his request for a re-transfer on health and family grounds.

23. However, the respondents did not pass any order on his request for a re-transfer to Chidambaram where his wife was employed as a teacher and was taking care of his three young female children alone.

24. By the impugned order dated 19.4.2005, the respondent has found the petitioner guilty of misconduct for being absent without pay for more than 12 months and therefore dismissed the petitioner.



25. Considering the totality of the facts and circumstances of the case, it is evident that petitioner was unwilling to work in Hyderabad as he allegedly had certain health conditions which prevented him from joining duty and therefore perused and persisted with his request for re-transfer. He was beyond 53 years at that time.

26. However, no orders were passed with reference to his request for re-transfer. As the petitioner exhausted all his earned and privileged leave, he was forced to be on leave without pay beyond 12 months and thereby attracted consequence under Rule 10(4) of the Rules.

27. As an employee, the petitioner had no right to demand transfer to a place of his choice. At the same time, it is evident that the petitioner was practically absent right from the beginning of financial year 2000 and thereafter till 2005 though he briefly appears to have joined duty in token compliance of the transfer order.

28. In *Basappa V. Nagappa* AIR 1954 SC 440, the Hon'ble Supreme Court held that in granting a writ of certiorari the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person.

29. In *Estralla Rubber V. Dass Estate (P) Ltd.*, (2001) 8 Supreme Court Cases 97, while dealing with the scope of Art. 227, the Hon'ble Supreme Court held that an order of the appellate can be set aside if it is based on no evidence at all or is so perverse that no reasonable person would come to such a conclusion.

30. In *Champagne Moet & Chandon V. Union of India* (2011) 183 DLT 99 (DB), it was held that while exercising the power of judicial review under Article 226 of the Constitution of India, it cannot be converted into an appeal. The judicial review is directed not against the decision but is confined to the examination of the decision making process.

31. In *B.C. Chaturvedi V. Union of India* (1995) 6 SCC 749, it was held that the findings of the disciplinary authority and that of the Enquiry Officer are based on evidence collected



during the inquiry. They reached the findings that the appellant was in possession of Rs.30,000 in excess of his known sources of income. The alleged gifts to his wife as stridhana and to his children on their birthday were disbelieved. It is within the exclusive domain of the disciplinary authority to reach that conclusion.

32. In Anand Regional Co-op Oil Seed Growers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548, though relied upon by the learned counsel for different purpose, it was held that although the Labour Court has jurisdiction to consider the quantum of punishment but it was limited role to play. It was held that industrial Courts/Tribunal do not interfere with the quantum of punishment unless sufficient cause exist.

33. The disciplinary proceeding was conducted by giving petitioner adequate opportunity to present his defence. Therefore, there is no irregularity in the proceedings adopted.

34. The learned counsel relied on the above case to state that in appropriate case order punishing an employee from removal of service can be substituted to with voluntary retirement so that he can be given pensionary benefits and the stigma attached with removal from service can be removed.

35. It is evident from the fact narrated, the petitioner did not want join duty in Hyderabad and therefore took long leave after and waited for the management to re-transfer him back to the place of his choice. However, the 2nd respondent did not consider the same and instead allowed for the petitioner to take further leave to attract the consequences under Rule 10 (4) of the Service Rules.

36. Earlier, the petitioner was on medical leave on full pay for 210 days from 17.04.2000 to 12.11.2000 and thereafter once again took leave by citing several reasons on account of health and family constraints.

37. The petitioner assumed that his request for re-transfer to Cuddalore would be considered favourably during the pendency of disciplinary proceedings and therefore the disciplinary proceeding would be given a quite rest.

38. The petitioner was beyond this prime by the time transfer orders were issued to him. He was unwilling to join duty. The petitioner was on leave and thereafter exhausting his leave, he continued to take leave on loss of pay.

39. The second respondent ought to have either rejected the request for re-transfer or compulsorily retired the petitioner



from service instead of forcing the petitioner to take leave continuously to his detriment.

40. In my view, the petitioner deserved a dignified exit from the service of the first respondent instead of an unceremonious removal from service at the fag end of his career of spanning over two decades since 1981 in various capacities.

41. Removal from service is disproportionate and is punitive and has several consequences including cheating an employee of his rightful space to retire with dignity.

42. As a concerned employer, the respondents could have allowed the petitioner to retire gracefully either by offering the choice of voluntary retirement from service or compulsorily retiring the petitioner as admittedly the petitioner was not in a position to serve the respondent as is evident from the duration of period of absence even prior to the period covered by the impugned order.

43. In my view, the punishment cannot be justified as the respondents are also equally responsible for forcing the petitioner to breach the aforesaid Rules. The second respondent could have handled the human issue then and there with a more humane approach instead of allowing the petitioner to invite the adverse consequences of the Service Rules of the Staff of Co-optex.

44. Therefore, the impugned order of the second respondent is set aside and the second respondent is directed to treat the period of absence of the petitioner without pay as a period warranting compulsory retirement of the petitioner from service of the first respondent.

45. If really, there existed a scheme for voluntary retirement from service when the petitioner was on leave without pay and facing disciplinary proceedings, same shall be also offered. The 2nd respondent shall offer both the scheme to the petitioner and extend terminal benefit to the petitioner.

46. Second Respondent shall therefore call on the petitioner within a period of eight weeks from the date of receipt of this order and pass appropriate orders by granting to the petitioner all the terminal benefits from such date by either treating the petitioner having retired compulsorily on and after the date the petitioner had exhausted leave with full pay or by giving the petitioner the benefit of voluntary retirement from service scheme, if any that was in force at the time of the pendency of the disciplinary proceeding. It is made clear, that



the petitioner shall not be entitled for any salary during the period of his absence from service. The respondent shall pay the amount together with interest at the rate of interest that was applicable for saving accounts prescribed RBI during the period.

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47. The above Writ petition thus stands disposed of with above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Arul
To

The Secretary to the Government
of Tamilnadu,
State of Tamil Nadu,
Tamilnadu Handloom Weavers Co-op Society Ltd.,
Chennai.

W.P. No19665 of 2008
and
M.P.No.1 of 2010

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srg 20/02/2019