IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1587 of 2018 and
C.M.P.No.12721 of 2018

1.The Director,
The Institute of Road Transport,
100 Feet Road, Taramani,
Chennai-600 113.

2.The Dean,
IRT Perundurai Medical College and Hospital,
Perundurai, Erode District. ... Appellants/Respondents

-vs-

P.K.Marshal Tito ... Respondent/Petitioner

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.28284 of 2011 dated 27.11.2017.

Prayer in W.P.28284 of 2011:

Writ Petition filed U/A 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus Calling for the impugned proceedings of the 2nd Respondent in No. 2568/E3/IRTPMC/2005 dated 13.6.2011 as confirmed by the 1st Respondent by proceedings No.367/24/SA PO NEE/2006 dated 21.12.2011 and quash the same and consequently direct the Respondents to credit back to the Petitioner's account an amount of Rs.8,239/- which has been withheld from the salary of the Petitioner.(Prayer amended as per order of the Court dated 28/2/2013 in MP No.1/13)

For Appellants :: Ms.Kala Ramesh

For Respondent :: Mrs.R.Gowri

JUDGMENT

(Made by HULUVADI G.RAMESH, J.)

The respondent herein was appointed as Pharmacist in Perundurai Medical College, run by the Institute of Road Transport, on consolidated wages and his services were regularised on 13.01.1993 with effect from 01.01.1993. While so, he was suspended from service with effect from 02.12.2004 alleging that he had misappropriated sums. A charge memo was issued alleging that he had distributed medicines procured from Tamil Nadu Medical Services Corporation to the employees of the Government Transport Corporation instead of branded items. It was also alleged that he had sold the branded items to the out-patients without bills and thus misappropriated a sum of Rs.27,809.14. Thereafter, disciplinary proceedings was initiated and the matter culminated in passing of an order by the second appellant imposing a punishment of stoppage of increment with cumulative effect for a period of two years. An amount of Rs.8,239/- was also directed to be withheld from the respondent in four equal monthly instalments starting from June 2011. The appeal preferred by the respondent before the first appellant was dismissed on 21.12.2011. Challenging both the orders, the respondent filed a writ petition before this Court in W.P.No.28284 of 2011. By order dated 27.11.2017, this Court held that the punishment of stoppage of increment with cumulative effect for two years and withholding the amount of Rs.8,239.99 from the respondent's salary is a double punishment. The relevant portion of the order passed by the learned single Judge is extracted hereunder:

> “28.In the case on hand, as per the version of the petitioner, pending disciplinary proceedings, the petitioner was called upon to remit Rs.27,809.14 and the same was remitted by the petitioner under protest. As such, there is no loss of revenue to the department. That apart an amount of Rs.8,239.99 was deducted from the salary of the petitioner in four equal instalments, while the appeal petition was pending before the first respondent. The aforesaid would show that the impugned order of punishment of stoppage of increment with cumulative effect for the period of two years and to withhold the amount of Rs.8,239.99 from the petitioner's salary is double punishment. Article 20 (2) of the Constitution of India contemplates that no person shall be prosecuted or punished for the same offence for more than once.
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> 29. In the light of the principles enunciated by this Court as well as the Apex Court time and again, I

am of the view that withholding of increments i.e., for two years with cumulative effect, would mean that two increments earned by the petitioner was cut off as a measure of penalty for every in his upward march of earning higher scale of pay.

30. It is settled law that it is for the department to prove the alleged charges beyond any doubt. Merely because the petitioner did not seek an opportunity that would not mean that charges were established. In number of decisions, this Court held that it was for the Department/Management, as the case may be, to establish charges by way of material evidence."

2.Stating so, the learned single Judge allowed the writ petition and directed the authorities to credit back the amount of Rs.8,239/- which was recovered from the respondent, by order dated 27.11.2017.

3.Challenging the order passed in the writ petition, the Department has come up with this appeal.

4.The learned counsel for the appellants/Department has submitted that the learned single Judge has erred in giving a finding that the respondent was not examined as witness, while it is up to the respondent to depose before the Enquiry Officer to prove his explanations and it is not for the appellants to examine the respondent. Further, the learned single Judge has erred in giving a finding that in the report of the enquiry officer, there is no whisper about the opportunity of hearing given to the respondent during the enquiry, whereas the fact remains that prior notice of enquiry was given and the records reveal that fair and reasonable opportunity was given to the respondent.

5.The learned counsel for the respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The second appellant has passed an order imposing a punishment of stoppage of increment with cumulative effect for two years, against the respondent herein. The learned single Judge has analysed the matter and came to the conclusion that the punishment of stoppage of increment with cumulative effect for two years and withholding the amount of Rs.8,239.99 from the respondent's salary is a double punishment. It appears that no explanation has been given by the respondent to the charges. It is also seen that the respondent trespassed into the pharmacy and took out some medicines and kept them in the telephone Section and Pharmacy Stores and when the audit was conducted, shortages of medicines were found out. Thus it is seen that the respondent, being the in-charge of the pharmacy, was negligent in performing his duties. But thereafter, pending disciplinary proceedings, the respondent was called upon to remit a sum of Rs.27,809.14 and the same was remitted by the respondent under protest. That apart, an amount of Rs.8,239.99 was deducted from the salary of the respondent in four equal instalments.

8.In view of the above stated circumstances, we are of the considered view that it is a lapse committed by the respondent in performing his duties and it is only an irregularity. Hence, a punishment of stoppage of increment for two years without cumulative effect would be appropriate, to be imposed on the respondent. Accordingly, the portion of the impugned order passed by the learned single Judge setting aside the order passed by the second appellant, alone is modified to the effect that the respondent shall be imposed with a punishment of stoppage of increment for two years, without cumulative effect. In respect of other aspects, the order passed by the learned single Judge shall remain unaltered.

9.The writ appeal is partly allowed. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KM

To

1.The Director,
The Institute of Road Transport,
100 Feet Road, Taramani,
Chennai-600 113.

2.The Dean,
IRT Perundurai Medical College and Hospital,
Perundurai, Erode District.

+1cc to Mr.R.Gouri, Advocate Sr.57597
+1cc to Mr.Kalaramesh, Advocate Sr.57760

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