

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 20-04-2018

CORAM

THE HONOURABLE MR.JUSTICE SATRUGHANA PUJAHARI

W.P.No.11687 OF 2012

S.Muthukrishnan

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Petitioner

-VS-

1.The Chairman & Managing Director,
Chennai Metro Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chinthadripet,
Chennai-600 002.

2.The General Manager/Vigilance Officer,
Chennai Metro Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chinthadripet,
Chennai-600 002.

...

Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of writ of certiorarified mandamus, to call for the records of the first respondent in Proceedings No.CMWSSB/P&A/VC(A)/7536/2008, dated 14.09.2011, and quash the same as illegal, arbitrary, without authority of law and against the principles of natural justice and also direct the respondents to reinstate the petitioner forthwith with all attendant benefits.

For petitioner : Mr.L.Chandrakumar
For respondents : Mr.T.Gowtham

O R D E R

Heard the learned counsel appearing for the petitioner and also the learned counsel appearing for the respondents.

2. It appears, the petitioner, while serving as a Junior Engineer, remained unauthorisedly absent, for which, a disciplinary proceeding was initiated against him. In such disciplinary proceeding, in spite of an opportunity given, the petitioner did not participate and, as such, the authority proceeded ex parte against the petitioner and passed an order of his dismissal from service with effect from 12.04.2005. The said order was challenged by the petitioner before the appellate authority, which was dismissed. As against the same, the

petitioner has filed this Writ Petition, challenging the order of dismissal in the disciplinary proceedings, on the ground that it is violative of salutary principle of natural justice and audi alteram partem and, as such, not sustainable in the eye of law. So also, the punishment imposed being disproportionate to the nature of delinquency needs to be revisited.

3. Counter affidavit has been filed by the respondents, indicating that in spite of the adequate opportunity being given, the petitioner did not participate in the proceeding. The authority has also followed the rules governing Chennai Metro Water Supply & Sewerage Board (Disciplinary & Appeal) Rules, 1978. Hence, it cannot be said that the impugned order is bad being violative of principles of natural justice. So far as the imposition of punishment is concerned, the stand of the respondents is that since the petitioner was not willing to serve and he did not participate in the proceedings, the authority, having no other alternative, passed the order of dismissal from service and, as such, the same can in no circumstances be said to be shockingly disproportionate. Hence, the same needs no interference in this writ petition.

4. During the course of hearing, learned counsel appearing for the petitioner submits that he does not challenge the finding recorded against the petitioner with regard to charge on the delinquency inasmuch as the order was passed following the principles of natural justice and also the statutory provisions provided in the aforesaid rules. But, considering the fact that the petitioner remained unauthorisedly absent for compelling reasons, the punishment of dismissal is shockingly disproportionate, as the same shall deprive him of the benefit of pension and other monetary benefits, hence the punishment ought to be revisited with one of compulsory retirement. Therefore, he prays to substitute the punishment of removal by one of compulsory retirement, so as to enable him to receive pension and other monetary benefits. He also undertakes not to claim the actual financial benefit retrospectively but prospectively i.e., from the date of the order to be passed by this Court in this regard, submits the counsel for the petitioner.

5. Learned counsel for the respondents, however, submits that since the nature of delinquency is serious and the petitioner also did not participate in the proceedings, he does not deserve any sympathy, more so when he has abandoned the service on his own. Therefore, the contention of the petitioner is devoid of merit and, as such, the Writ Petition is liable to be dismissed.

6. After hearing the learned counsel for the parties and also on going through the material available on record, it appears to this Court that the petitioner was imposed with the penalty of dismissal from service for delinquency of unauthorised absence. The petitioner, by the time of delinquency of unauthorised absence, could have taken voluntary retirement instead of remaining unauthorised absent. Still, the petitioner did not opt and remained unauthorisedly absent and invited the departmental proceedings for such delinquency. He did not participate in the same proceeding and invited the penalty. The nature of delinquency is one of unauthorised absence and nothing more. The petitioner also did not participate in the disciplinary proceedings and allowed the same to be proceeded ex parte. Hence, he appears to be not interested in service. But, he came forward challenging the same in a statutory appeal provided and after dismissal of the appeal with this Writ Petition. The finding of guilt on the delinquency is not challenged but mercy is prayed with regard to the punishment by substituting the same with a punishment of compulsory retirement. It is well settled that this Court, in exercise of the power under Article 226 of the Constitution, should be loath in interfering with the punishment imposed in a disciplinary proceeding except in cases when the same is shockingly disproportionate to the nature of delinquency. The present case is one of such cases inasmuch as for unauthorised absence, the petitioner's service was dispensed with an order of dismissal. Therefore, the same needs to be revisited. Accordingly, the punishment imposed is required to be revisited by another punishment. In all fairness of the things, I would have remitted the matter back to the disciplinary authority with such a direction. But, the writ petitioner in the meanwhile having attained the age prescribed for superannuation, no useful purpose is going to serve by ordering the disciplinary authority to revisit the punishment, when the writ petitioner has prayed to substitute the same with one of compulsory retirement, with the benefit of pension from a prospective date.

7. Under the circumstances, this Court, while upholding the finding of delinquency recorded against the petitioner on the charge, sets aside the punishment of removal and substitutes the same by one of compulsory retirement. The financial benefit, if any accrued to the petitioner on account of such substitution, be given to him notionally till-date and actual benefit from today. The aforesaid order/direction be complied with by the respondents taking all effective steps required, within three months from the date of receipt or production of a copy of this order.

8. Writ Petition is disposed of accordingly. No costs.
Consequently, the connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Chairman & Managing Director,
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2.The General Manager/Vigilance Officer,
Chennai Metro Water Supply & Sewerage Board,
No.1, Pumping Station Road,
Chinthadripet,
Chennai-600 002.

+1 cc to Mr.T.Gowthaman Advocate sr 30485

+1 cc to Mr.L.Chandrakumar Advocate sr 29697

W.P.No.11687 OF 2012

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