

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 14.02.2018	Date of Pronouncing Judgment 29.08.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P. VELMURUGAN

Writ Appeal No.362 of 2013

C.Kalidass

... Appellant

Vs.

1. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 002.

2. The Controller of Examinations and
Secretary (i/c) T.N.P.S.C,
Chennai - 600 002.

... Respondents

PRAYER:

The Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P.No.24912 of 2005, dated 27.07.2012 upholding the Appellant's entitlement to get the periods from 01.04.1981 to 24.09.1990 regularised as duty periods upholding the Appellant's attendants benefits in full, viz; service and monetary benefits disbursing him the arrears of pay for the said periods with all allowances with interest at the rate of 18% per annum apart from issuing paper promotion order as 'Section Officer' including his name in between S.No.8 P.S.Vaitheeswaran and S.No.9 R.Ramakrishnan in the 'C' list of 'Superintendents' for the years 1995-96 dated 01.08.1995 with all attendant benefits besides disbursing him the difference in the scale of pay in the promotion cadre.

W.P.No.24912/2005:

Writ Petition filed under Article 226 of the constitution of India Praying to issuance a writ of certiorarified mandamus calling for the records of the respondents especially the second respondent relating to his proceedings No.7700/PD-B3/99 dated 20.6.2005 and quash the same as null and void illegal and invalid and consequently

directing the respondents to regulate the period from 30.12.1981 to 23.9.90 as duty period upholding the petitioners attendant benefits in full viz service and monetary benefits disbursing him the arrears of pay for the said period with all allowances with interest at the rate of 18% per annum apart from promoting the petitioner as section officer including his name in between S.No.8 Thiru P.S.Vaitheeswaran and S.No.9 Thiru R.Ramakrishnan in the 'C' list of superintendents for the year 1995-96 dated 01.08.1995 with all attendant benefits besides disbursing him the difference in the promotion scale with interest therefor.

For Appellant : Mr.A.Amalraj.

For Respondents: Mr.M.Loganathan (TNPSC)

J U D G M E N T

P. VELMURUGAN, J.

This is an intra court appeal filed against the order passed in W.P.No.24912 of 2005, dated 27.07.2012.

2. Heard Mr.A.Amalraj, the learned counsel appearing for the appellant and Mr.M.Loganathan (TNPSC), the learned counsel for the second respondent and perused the materials placed on record.

3. The appellant/petitioner has filed the Writ Petition, challenging the order of the second respondent/TNPSC and sought for a consequential direction, directing the respondents to regulate the period from 30.12.1981 to 23.09.1990, as duty period, upholding his entitlement to the attendant benefits in full, viz; service and monetary benefits, disburse the arrears of pay for the said periods with all allowances with interest at the rate of 18% per annum apart from promoting him as 'Section Officer' by including his name in between the employees in S.No.8 P.S.Vaitheeswaran and S.No.9, R.Ramakrishnan in the 'C' list of 'Superintendents' prepared for the years 1995-96, dated 01.08.1995 with all attendant benefits.

4. (i) The case of the appellant is that he has applied for extraordinary leave on loss of pay w.e.f. 1.4.1981 by producing medical certificate and on completion of the said extraordinary leave, the appellant reported for duty on 1.6.1981, but he was not permitted to rejoin duty and after completion of the Medical Board Examination, the Medical Board has regularized the appellant's leave on loss of pay from 1.4.1981 to 1.8.1981, apart from recommending leave for another 22 days from 11.7.1981. Pursuant to its proceedings made in Ref.No.8634/ S/RMP/81/Government Stanley Hospital, Chennai, the Medical Board further examined the appellant on 05.09.1981, and only after the second medical examination, the appellant was

found fit to join duty w.e.f. 05.09.1981, regularising the leave availed by the appellant from 02.08.1981 to 05.09.1981.

(ii) The second respondent issued a charge memo, dated 10.08.1981, raising a specific charge that the appellant has neither re-joined duty on the expiry of the extraordinary leave applied by him nor sent a report for his absence from 01.06.1981 in accordance with the instruction issued in O.C.No.244 dated 02.08.1975, and subsequently, imposed the punishment of 'removal from service' w.e.f. 29.12.1981. Against the said order, the appellant preferred Appeal before the Appellate Authority/first respondent. The first respondent, by order, dated 08.06.1982, dismissed the Appeal and confirmed the order passed by the second respondent. The order passed by the Appellate Authority was challenged before the Tamil Nadu Administrative Tribunal (hereinafter, referred to as 'the Tribunal'). The Tribunal, by its order, dated 09.02.1990, in T.A.No.278 of 1989, allowed the Application, by setting aside the order of dismissal and denying backwages from 1.4.1981 (i.e., the date, the appellant entered on leave) till the date of re-instatement, on the ground that the appellant's absence has not been properly explained. Pursuant to the order passed by the Tribunal, the appellant had been reinstated in service.

(iii) After reinstatement, the second respondent, once again issued a fresh charge memo, containing same set of allegations on 27.10.1990. Challenging the fresh proceedings, the appellant filed Writ Petitions, one after another, viz., i) W.P.No.10666 of 1991, ii) W.P.No.8837 of 1991, and iii) W.P.No.22024 of 2003. (i) W.P.No.10666 of 1991 was dismissed, by order, dated 01.08.1991, holding that the interference of the Court at the stage of charge-memo is not warranted and directed the respondent/TNPSC to consider and dispose of the representation of the petitioner for closing the enquiry. ii) W.P.No.8837 of 1991 was disposed of, by order, dated 22.09.1999, with an observation that the points urged for setting aside the second charge memo deserves to be considered only at the time of enquiry and directed the appellant to submit explanation. In compliance of the said order, the appellant submitted a detailed explanation on 05.10.1999. Thereafter, the enquiry was proceeded and the Enquiry Officer in his report dated 29.04.2002, held that the charges against the petitioner were not proved. However, the Disciplinary Authority, disagreed with the said Enquiry Report, and this proceeding was challenged by the appellant in W.P.No.22024 of 2003, with a further prayer to direct the respondent/TNPSC to promote him as Superintendent (Section Officer), pursuant to the 'C' list of 'Superintendents' (Section Officer) for the year 1995-96 dated 1.8.1995, by including his name in between S.No.8 P.S.Vaitheeswaran and S.No.9 R.Ramakrishnan and to grant all service and monetary

benefits. This Court dismissed the Writ Petition with an observation that no specific directions were required and directed the respondents to pass orders with regard to the promotion of the appellant. Pursuant to the direction issued in W.P.No.22024 of 2003, the second respondent issued a proceeding, dated 29.11.2004, promoting the appellant as Section Officer w.e.f. 29.11.2004, fixing pay from the date of orders. Since his name was included in the panel of Section Officer prepared for the year 1995-1996, the appellant preferred an Appeal before the first respondent for sanctioning the benefits, viz. Service and monetary benefits from the date of removal and on receipt of the same, the second respondent passed an order, dated 20.06.2005, holding that the intervening period from 30.12.1981 (i.e., the day following the date of removal from service) to 23.09.1990 (i.e. the day preceding the date of his rejoining duty on his reinstatement into service) has been treated as extraordinary leave without pay and allowances without medical certificate. Challenging the order, dated 20.06.2005, the appellant has filed the Writ Petition No.24912 of 2005. This Court, by order, dated 27.07.2012, dismissed the Writ Petition. Aggrieved by the said order, the present Writ Appeal has been filed.

5. It is a matter of record that a fresh charge memo dated 27.10.1990 was issued by the respondents informing that the appellant had neither rejoined duty on the expiry of the extraordinary leave applied for by him nor sent a report for his absence from 01.06.1981, in accordance with the instructions issued in office Order No.244, dated 02.08.1975 and thus absented himself from duty unauthorisedly from 01.06.1981. Pursuant thereto, again an enquiry had been conducted. Though the enquiry officer held that the charges levelled against the appellant had not been proved, the first respondent, being the Disciplinary Authority disagreed with the findings of the enquiry officer and taken an independent view and passed orders for removal from service against which the appellant preferred an appeal before the Chairman, Tamil Nadu Public Service Commission and the same was dismissed. Challenging the order of dismissal the appellant filed a writ petition in WP.No.10859 of 1982. The said writ petition was transferred to the Tamil Nadu State Administrative Tribunal. The Tribunal on 9.2.1990 passed an order to re-instate the appellant in service without backwages. Subsequently, pursuant to the directions issued in WP.No.22024 of 2003, the second respondent granted him promotion with effect from the date of passing the order, i.e. w.e.f. 29.11.2004, fixing pay from the date of the order, by not regularizing the period from 30.12.1981 to 23.9.1990. The learned Single Judge, held that, once the rights of parties stood determined by orders of the Tribunal, dated 09.02.1990 and as there has been no challenge thereto by either of the parties,

the parties are bound by the same. The contention of the appellant is that the Enquiry Officer submitted a report holding that the charges levelled against him were not proved and as such, the Disciplinary Authority cannot take a different view. It is well settled law that the Disciplinary Authority has got power either to accept the findings of the enquiry officer or to take a different view for reasons to be recorded. While passing the order, the Disciplinary authority has to consider the materials placed before it independently and arrive at a conclusion, supported by reasons.

6. A perusal of material records would reveal that the order of the Tribunal disallowing the back wages was never challenged before the Court of law. The appellant did not even challenge the charge memo issued to him. The appellant all along participated in the enquiry and only challenged the findings given by the first respondent before the Tribunal. Under the above said circumstances, this Court finds there is no merits in the appeal and the writ appeal is liable to be dismissed.

7. In the upshot, we dismiss the Writ Appeal. No costs.

Sd/-

Assistant Registrar(CS-IX)

// True Copy//

Sub Assistant Registrar

msm/tsh/tar

To

1. The Secretary, Tamil Nadu Public Service Commission,
Chennai - 600 002.
2. The Controller of Examinations and
Secretary Incharge, Tamil Nadu Public Service Commission,
Chennai - 600 002.

+1cc to Mr.A.Amalraj, Advocate SR.No.59606

VSNII (CO)
RMP (26/09/2018)

W.A.No.362 of 2013