

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.32688 of 2012

K.Rajendran

... Petitioner

Vs

1.Tamil Nadu Civil Supplies Corporation,
Rep by its Managing Director,
10, Thambuswamy Road,
Chennai-10.

2.The Board of Directors,
Rep by the Chairman cum Managing Director,
Tamil Nadu Civil Supplies Corporation,
Chennai-10. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings Na.Ka.No.AD5/69664/2009 dated 14.07.2010 of the 1st respondent as confirmed by the second respondent's proceedings AD3/78393/2010 dated 11.09.2012, quash both the orders and consequently direct the 1st respondent to reinstate the petitioner in service on such terms.

For Petitioner : Mr.S.Venkataraman

For Respondents : Mr.L.P.Shanmuga Sundaram for RR1 & 2

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O R D E R

Heard Mr.S.Venkataraman, learned counsel for the petitioner and Mr.L.P.Shanmuga Sundaram, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the proceedings Na.Ka.No.AD5/69664/2009 dated 14.07.2010 of the 1st respondent as confirmed by the second respondent's proceedings AD3/78393/2010 dated 11.09.2012, quash both the orders and consequently direct the 1st respondent to reinstate the petitioner in service on such terms."

3. The case of the petitioner is as follows:-

The petitioner joined the service of the respondent Corporation on 09.07.1985 and he was working as Service Engineer and his duty was to inspect the moisture meters at the godowns and hulling centres. According to the petitioner, he met with an accident in 2007 and for which, he had to be absent from duty for some time, coupled with a fact that his father was seriously ill during that time. Therefore, he could not properly focus his attention on the work. Therefore, he was forced to remain absent from April 2008.

4. The respondents issued a charge memo to the petitioner on 12.08.2008, for having failed to discharge his duty due to his long absence. In response to the charge memo, an explanation was given by the petitioner that he was forced to remain absent due to compelling family circumstances and he had also submitted leave application belatedly in that regard. However, not accepting the explanation, an enquiry was conducted and finally by proceedings dated 14.07.2010, a punishment of removal from service was imposed on the petitioner.

5. According to the petitioner, eventhough he was willing to re-join duty on 22.04.2009, he was not permitted to join duty and the Authority directed him to await final orders to be passed in pursuance of the disciplinary action initiated against him. Against the order of the Disciplinary Authority of removal from service, an appeal was filed on 02.09.2010. However, by proceedings dated 11.09.2012, the appeal came to be rejected, thus, upholding the order passed by the first respondent, Disciplinary Authority. The orders passed by the Disciplinary Authority and the Appellate Authority i.e., first and second respondents herein, are put to challenge in the present writ petition.

6. The learned counsel for the petitioner would submit that the imposition of harsh penalty of removal from service in the facts and circumstances, suffers from non application of mind, particularly, in view of the fact that the petitioner had legitimate explanation to offer for his absence during the relevant time. The Disciplinary Authority ought to have appreciated the explanation given by the petitioner for his absence, in proper perspective. However, unfortunately, the action of the Disciplinary Authority towards imposing penalty of removal from service, suffers from dogmatic official assertion of his authority than examining the explanation given by the petitioner from a humane perspective. Moreover, the Appellate Authority also mechanically confirmed the order passed by the Disciplinary Authority, without due regard to the explanation offered by the petitioner.

7. According to the learned counsel for the petitioner, both the Authorities have not applied their mind in regard to

proportionality of the punishment imposed on the petitioner. This Court and the Hon'ble Supreme Court of India have held that mere absence from duty even unauthorized, cannot entail extreme punishment of removal from service. In this case, although the petitioner remained absent due to compelling family circumstances where his father was seriously ill and also subsequently died, the impugned punishment by the respondents cannot stand the test of proportionality doctrine.

8. Upon notice, learned counsel appearing for the respondents, entered appearance and filed a counter affidavit. The learned counsel would submit that the petitioner was holding an important position to supervise the moisture meters at the godowns and hulling centres in few districts and because of his long absence, the Public Distribution System suffered considerably and such conduct on the part of the petitioner, cannot be condoned and therefore, the administration had no choice except to proceed against him departmentally.

9. According to the learned counsel appearing for the respondents, the punishment ultimately imposed on the petitioner, cannot be construed to be disproportionate to the gravity of the misconduct committed by the petitioner. He would therefore pray that no relief would be granted in the writ petition, as any mercy shown will amount to misplace sympathy and this Court cannot be guided by such sympathies.

10. This Court has given its anxious consideration to the rival submissions of the learned counsel on both sides and perused the materials and pleadings placed on record. As rightly contended by the learned counsel for the petitioner that the imposition of penalty of removal from service suffers from non application of mind on the part of both the Disciplinary Authority as well as the Appellate Authority, since the orders came to be issued without taking note of the legitimate explanation offered by the petitioner for his absence. Such wooden approach and putting the issues in straight jacket perspective, does not advance the cause of good administration and proper justice.

11. The punishment of removal and dismissal from service can be imposed only in extreme cases where the misconduct alleged against the employee is very serious in nature like corrupt motive, fraudulent action, misappropriation etc. As far as the absence is concerned, unless the person is accused for repeating the offence, such extreme punishment of removal from service is not warranted at all. More so, in the present case, when the petitioner had given an explanation for his absence which explanation was not found to be untrue, particularly, when the petitioner's father was seriously ill and died, the petitioner cannot be imposed with the extreme penalty of removal from service.

12. Though this Court does not per se condone the long absence of the petitioner in the interest of the administration, however, at the same time, this Court has to adopt a balanced approach in both protecting the welfare of the employee as well as the interest of the administration. In such view of the matter, this Court is of the considered view that it is a fit case for interfering with the quantum of the penalty imposed on the petitioner by invoking the principle of "doctrine of proportionality".

13. This Court is also of the considered view that when the petitioner was willing to report for duty on 22.04.2009 itself, however, the respondents refused to permit him to join duty. That being the case, the petitioner cannot be blamed for being absent for longer time which ultimately ended in removing him from service. Therefore, on this ground alone, the punishment of removal from service cannot be justified.

14. In the above circumstances, this Court set aside the orders passed by the first and second respondents in Na.Ka.No.AD5/69664/2009 dated 14.07.2010 and Na.Ka.No.AD3/78393/2010 dated 11.09.2012. The punishment of removal from service is however modified into one of stoppage of increment admissible to the petitioner for a period of one year. It is also made clear that the petitioner is not entitled to back wages for a period of his non-employment on the principle of "no work no pay". The respondents are directed to pass orders of stoppage of increment for a period of one year on being reinstated in service. Such order shall be passed by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

gsk

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To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
10, Thambuswamy Road,
Chennai-10.

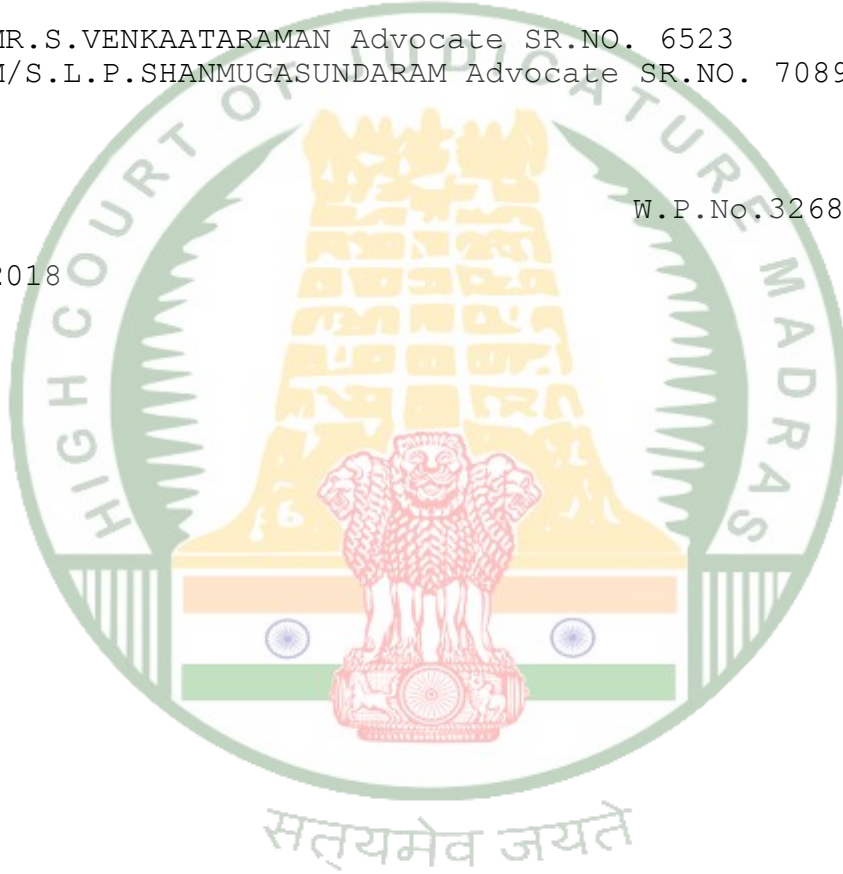
2.The Chairman cum Managing Director,
The Board of Directors,
Tamil Nadu Civil Supplies Corporation,
Chennai-10.

+1 cc to MR.S.VENKAATARAMAN Advocate SR.NO. 6523

+1 cc to M/S.L.P.SHANMUGASUNDARAM Advocate SR.NO. 7089

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RD 17/02/2018



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