

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.3.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.23964 of 2012

N.Ravichandran

.. Petitioner

versus

1. The Managing Director,
Tamil Nadu Government,
State Transport Corporation (Salem),
Salem.

2. The General Manager,
Tamil Nadu Government,
State Transport Corporation (Salem),
Dharmapuri Region, Salem Road,
Barathipuram, Dharmapuri, PIN 636705. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for records relating to the first respondent's proceedings in Ka.No.69(D2)-5297-73 (D1)-3019-D2 Aapoka-2010-12 dated 6.9.2012, quash the same and consequently direct the respondents to accept the Voluntary Retirement from services of the petitioner forthwith and to extend all benefits both service and monetary including pension and other benefits.

For Petitioner: Mr. L.Chandrakumar

For Respondents: Mrs.S.Rajenni Ramadoss

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorarified Mandamus, to call for records relating to the first respondent's proceedings in Ka.No.69(D2)-5297-73 (D1)-3019-D2 Aapoka-2010-12 dated 6.9.2012, quash the same and consequently direct the respondents to accept the Voluntary Retirement from services of the petitioner forthwith and to extend all benefits both service and monetary including pension and other benefits."

2. The petitioner was originally appointed as Apprentice Clerk in the respondent Corporation in 1985. He was appointed against Sports quota being an Athlete in Discus Throw event. Subsequently, on the basis of his qualification, he was posted as Junior Engineer (Civil) in 1986 and further promoted as Assistant Engineer (Civil), then as Senior Asst. Engineer on the basis of his seniority and merit. According to the petitioner, during the course of his strenuous sporting activity, he suffered disk prolapse and due to which, he was not able to focus on his work. Therefore, he originally wanted to retire under Voluntary Retirement Scheme (VRS) during the year 2008. However, his request for VRS was rejected by the proceedings dated 3.7.2008 stating that although he had completed 20 years of service, he had not completed 50 years of age as he was only 43 years of age. Therefore, under the then existing scheme for VRS, he was not permitted to retire under the said scheme.

3. In view of the injury suffered, he remained absent for a spell on medical grounds. Therefore, the petitioner was advised by the respondent Corporation to appear before the Medical Board on 18.1.2012. As per the direction, the petitioner appeared before the Regional Medical Board and the Board found him suffering from Disc prolapse, however, concluded that he was fit to resume duty. For the period of his absence, the petitioner was sanctioned leave. Though the Medical Board found him to be fit to resume duty, factually, the petitioner was unable to move around and focus on his work. In such circumstances, he once again remained absent for some time.

4. In regard to the continuous absence from duty from 12.3.2010, a charge memo was issued on 8.6.2010. However, the petitioner failed to respond to the charge memo and therefore, an enquiry was conducted into the charges wherein, the petitioner also participated. On conclusion of the enquiry, a report was submitted on 15.6.2010 holding that the charges of unauthorised absence as proved. Thereafter, second show cause notice was issued on 30.07.2010 calling upon the petitioner to show cause as to why punishment of withdrawal of increment of one year should not be imposed on him, for which, the petitioner submitted his reply on 27.8.2010 reiterating his stand that he was unable to attend work because of grave injuries suffered by him. Thereafter, it appears that the respondent Corporation had deputed a staff to the residence of the petitioner to enquire about his condition and report the same. Subsequently the Staff member had visited the petitioner's residence on 28.09.2010 and reported to the respondent Corporation that the petitioner individually informed the staff that he was unable to report for duty due to his prolonged illness and as and when his health condition improves, he would report for duty. Thereafter, the petitioner was referred to Medical Board and the petitioner appeared before the Medical Board on 26.12.2011. The independent Medical Board finally submitted its report on 18.1.2012 certifying that the petitioner was fit to resume duty.

In the said circumstances, the petitioner was called upon to join duty immediately. However, the petitioner failed to join duty even at that stage. Therefore, the respondent Corporation issued a show cause notice once again to the petitioner dated 25.3.2012 calling for explanation of the petitioner as to why he should not be dismissed from service. The petitioner in response to the said show cause notice, submitted his explanation on 9.3.2012 once again requesting to recommend medical discharge from service. Thereafter, it appears that the disciplinary proceedings concluded and the order of dismissal dated 6.9.2012 was imposed on the petitioner.

5. Before the conclusion of the disciplinary action, the petitioner approached this Court in the present writ petition, seeking to issue Writ of Mandamus to direct the respondents to consider his request for VRS from service on 30.8.2012.

6. After conclusion of the disciplinary action and the dismissal of the petitioner from service, the petitioner has filed MP No.2 of 2012 seeking for amendment of the prayer in the writ petition, challenging the dismissal order as well and also sought for raising additional grounds. It appears that the said MP has been allowed by this Court on 1.4.2013.

7. In the mean while, on 22.1.2011 there was a 12(3) settlement between the respondent management and the workmen of the respondent Corporation providing for the benefit of VRS, stating that the employee can go on VRS under the scheme either on completion of 20 years of service or 50 years of age. It appears that the petitioner had renewed his request for VRS seeking retirement from service on 30.8.2012 on the basis of 12 (3) Settlement since original rejection of his request for VRS in 2008 was on the basis that the petitioner had not completed 50 years of age. In 2012, the petitioner had completed more than 20 years of service and therefore, he was eligible to be considered for VRS.

8. While matters stood thus, it appears that the respondent Corporation de hors the request of the petitioner for VRS, proceeded with the disciplinary action to its logical end and by the impugned order dated 6.9.2012 dismissed the petitioner from service. According to the dismissal order, the petitioner was earlier imposed with minor penalties and therefore, he was not fit to be retained in service. The dismissal order referred to the same charge memo dated 8.4.2010 which culminated in the issuance of show cause notice dated 25.3.2012 proposing punishment of withholding of increment for a period of one year. However, subsequently that proposal seemed to have been jettisoned and was replaced by another proposal proposing to dismiss the petitioner from service for the same charge of unauthorized absence and ultimately dismissed the petitioner from service by impugned order dated 6.9.2012.

9. Mr.L.Chandrakumar, learned counsel appearing for the petitioner would submit that non-consideration of the petitioner's request for VRS even after 12(3) Settlement dated 22.1.2011 which provided for either completion of 20 years of service or 50 years of age, was on mala fide grounds since the respondent management determined to punish the petitioner notwithstanding the fact that the petitioner wanted to go out of service on his own under VRS scheme. The learned counsel would submit that the original proposal to impose a minor penalty by withholding an increment for a period of one year, has been replaced by the order of dismissal on the basis of same charge and enquiry finding and such action on the part of the respondent Corporation would clearly disclose the vindictive mindset to punish the petitioner under all circumstances. He would draw the attention of this Court to the enquiry report of the Enquiry Officer wherein a conclusion was reached without giving any acceptable reasons or without any supportive evidence let in, in the enquiry particularly in the teeth of the legitimate explanation offered by the petitioner in regard to grave injury suffered by him. Once the finding gave rise to proposal for imposing minor penalty of withholding of increment for a period of one year with cumulative effect, it is not open to the Corporation to suddenly modify the proposal unilaterally and replace the same into the dismissal from service. Such action by the respondents cannot be countenanced either in law or on facts. Firstly he would submit that the absence of the petitioner was beyond his control as the Medical Board itself has opined that he suffered from Disc prolapse and in the face of the finding, the conduct of the petitioner has to be appreciated while imposing the penalty on him. The punishment of dismissal from service, in the circumstances of the case, appears to be a decision taken more as vindictive measure to unjustly punish the petitioner notwithstanding his request for VRS which request could have been considered earnestly by the Corporation and relieved the petitioner from his duty, instead of dismissing him from service.

10. The learned counsel finally would submit that even otherwise, the punishment imposed on the petitioner for unauthorized absence is grossly disproportionate particularly in the teeth of valid explanation offered by the petitioner and therefore, on this ground alone, the punishment has to be interfered with.

11. Per contra, the learned counsel appearing for the respondent Corporation would submit that the petitioner had already suffered several punishments in the past which were one of the considerations weighed with the Corporation for imposing the major penalty of dismissal from service. The petitioner having come under a cloud and the disciplinary action was pending against him, his request for VRS was not therefore considered and rightly so. The petitioner being aware of the

disciplinary action initiated against him, has approached this Court without disclosing the same and sought a direction from this Court to consider his request for VRS. Such action on the part of the petitioner is required to be frowned upon for suppressing the material facts before this Court. The learned counsel would also submit that 12(3) Settlement relied upon by the petitioner has not been approved by the Government, therefore, the same cannot be enforced for the purpose of availing benefits of VRS scheme by the petitioner.

12. This Court has given its anxious consideration to the rival submissions of the learned counsels and perused the materials and pleadings placed on record.

13. Although the Corporation was right in rejecting the request of the petitioner for VRS in 2008 since at that time, the scheme provided for retirement voluntarily when an employee completes 20 years of service and 50 years of age and admittedly, the petitioner at that time, had completed only 20 years of service and not 50 years of age. At the same time, subsequently, when the petitioner has made request for VRS in terms of 12(3) Settlement dated 22.1.2011, the Corporation ought to have given proper reply to the petitioner whether 12(3) Settlement could be relied or whether the same requires any approval of the Government for the employees to avail benefits under 12(3) Settlement. However, without dealing with the request for VRS, the respondent Corporation had proceeded with the disciplinary action for unauthorized absence and ordered enquiry and thereupon based on the enquiry report, a show cause notice was issued on 30.7.2010 proposing to withhold increment for a period of one year without cumulative effect. Once such proposal emanated from the Corporation as culmination of disciplinary action initiated against the petitioner, the respondent Corporation ought to have taken the matter to its logical end and ought to have considered whether such punishment can be imposed or not on the basis of reply from the petitioner to the show cause notice. However, without embarking upon such exercise, the authorities concerned have gone out of the way in deputing a staff of the Corporation to the residence of the petitioner in order to verify the physical condition of the petitioner and after obtaining the report from the staff who were deputed, the authorities have issued another show cause notice dated 25.3.2012 proposing to dismiss the petitioner from service on the basis of same charge dated 8.4.2010. In the show cause notice, certain earlier minor punishments imposed on the petitioner were enumerated for proposing the extreme penalty of dismissal from service on the petitioner. However, these punishments were admittedly not made as part of the charge memo dated 8.4.2010, in which case, such earlier punishments cannot be relied upon for the purpose of imposing major penalty on the petitioner. Law requires that unless the previous punishments are made as part and parcel of the charge memorandum, the same

cannot be relied upon for the purpose of imposing penalty of the employee concerned. In this case, the respondent Corporation appears to have been guided by the earlier punishments imposed on the petitioner and had chosen to impose the extreme penalty of dismissal, ultimately.

14. Moreover, it has to be seen that once the Corporation itself has proposed to impose lesser penalty on the petitioner, namely, withholding of increment for a period of one year without cumulative effect, this Court is unable to comprehend under what circumstances, such conclusion by the authorities can undergo a drastic change and issued yet another show cause notice proposing to impose major penalty of dismissal from service. Ultimately, the charge against the petitioner was unauthorized absence and the said unauthorized absence was the subject matter of the charge memo dated 8.4.2010 and on the basis of single charge memo, there cannot be two proposals by the employer for punishing the employee.

15. As rightly contended by the learned counsel for the petitioner that in any event, the punishment of dismissal from service in this case appears to be grossly disproportionate. This is more so, when the petitioner admittedly suffers from injury on his spinal cord due to his strenuous sporting activity in the past. The respondent Corporation ought to have adopted a pragmatic and fair approach in this matter and ought to have dealt with the request of the petitioner more sympathetically. Instead of that the Corporation seems to have adopted a punitive approach in order to victimize the petitioner and decided to impose the severe penalty of dismissal from service instead of accepting the request of the petitioner for VRS. In any event, the enquiry report appears to be a non-speaking report and the Disciplinary Authority's order imposing the penalty of dismissal from service did not consider various and relevant factors for taking such an extreme view in the matter of imposing the penalty on the petitioner.

16. As stated above, the Disciplinary Authority was solely guided by the past punishments imposed on the petitioner which factor cannot be countenanced in law or on facts. Moreover, notwithstanding the request of the petitioner pending consideration, it appears that the authorities have proceeded with the departmental action to its logical end with pre-determination and ultimately slapped the extreme penalty of dismissal from service on the petitioner. All these factors would unequivocally demonstrate that the authorities have decided to exercise the power without bona fide consideration of the case of the petitioner and such action on the part of the authorities is clearly a colourable exercise of power and the same has to be held invalid and unsustainable.

17. For the foregoing reasons, the impugned order, i.e., proceedings of the first respondent in Ka.No.69(D2)-5297-73 (D1)-3019-D2 Aapoka-2010-12 dated 6.9.2012, is set aside. The petitioner is directed to be reinstated in service and on being reinstated in service, the Corporation is directed to consider the request of the petitioner for VRS if he is otherwise eligible. Such request is to be considered favourably. It appears from the record that the petitioner had completed more than 50 years of age as on date. Therefore, whether the settlement 12(3) entered into between the workmen and the management on 22.1.2011 is valid or not need not be gone into by this Court.

18. It is made clear that the petitioner on being reinstated is entitled to all attendant benefits but not arrears of pay for the period of non employment on the principle "no work, no pay". This Court hopes that the respondents would consider the request of the petitioner for VRS in accordance with law and on merits on the application being made by the petitioner as expeditiously as possible.

19. Accordingly, the Writ Petition is allowed. No costs.

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Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu Government,
State Transport Corporation (Salem),
Salem.

2. The General Manager,
Tamil Nadu Government,
State Transport Corporation (Salem),
Dharmapuri Region, Salem Road,
Barathipuram, Dharmapuri, PIN 636705.

+ 1 cc to Ms. S. Rajeni Ramadass, Advocate Sr.20133
+ 1 cc to Mr.L. Chandrakumar, Advocate Sr.19497

W.P.No.23964 of 2012

SJ(CO)
EU 4.5.18