

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2564 of 2018

and

CMP No.20781 of 2018

1. The General Manager South
and Appellate Authority,
Tamilnadu Region,
Food Corporation of India,
No.124, Greams Road, Chennai - 6.

2. The Disciplinary Authority,
Asst. General Manager (Commercial Stg.),
Food Corporation of India,
Avadi, Chennai -72.

... Appellants

Vs.

M.Thirunavukarasu

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 18.12.2017 made in W.P.No.30743 of
2006.

W.P.No.30743 of 2006:

To call for the entire records in V&S/4932)/2002/MT/DOM
DATED 10.01.2006 on the file of the 2nd respondent in VIG
5/1 2006/171 dated 24.07.2006 and quash the same.

For Appellants : Mr.M.Imthias

For Respondent : Mrs.S.Sasikala

for Mr.V.Bhiman

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is directed against the order made
in W.P.No.30743 of 2006 dated 18.12.2017.

2. Short facts leading to the filing of the writ appeal
are as follows:

Writ petitioner / respondent herein joined as a
Watchman in the Appellant's Corporation and was promoted as
Senior Picker. He was issued with a charge memo on the
ground that he had produced false community certificate,
while securing employment in the Corporation. An enquiry
was conducted. The Enquiry Officer submitted a report dated
17.09.2005, holding the charges proved. In response to the
enquiry report, the respondent sent his further

representation on 31.10.2005. Not satisfied with the same, the Disciplinary Authority, Assistant General Manager (Commercial Stg.), Food Corporation of India, Chennai, the second appellant herein, imposed a penalty of dismissal from service on the writ petitioner / respondent herein, with effect from 13.01.2006. As against the order of penalty, the writ petitioner / respondent preferred an appeal to the General Manager South and Appellate Authority, Tamilnadu Region, Food Corporation of India, Chennai, the first appellant and the same came to be rejected vide order dated 24.07.2006 by the first appellant. Orders of the appellants were put to challenge in W.P.No.30743 of 2006.

3. Before the writ Court, it was contended that the writ petitioner / respondent had attained the age of superannuation and therefore, the Corporation may be directed to sanction all retirement benefits as admissible to him.

4. After hearing the learned counsel on both sides and on perusal of the material on record, Writ Court vide order dated 18.12.2017, dismissed the writ petition. While doing so, writ Court has permitted the respondent to make a representation to the Corporation for grant of terminal benefits and has also directed the Corporation to consider the same sympathetically, taking into consideration 30 years of service put in by the respondent and also the family circumstances, as pointed out by the learned counsel for the writ petitioner / respondent therein. Relevant portion of the order of the writ Court made in W.P.No.30743 of 2006 dated 18.12.2017, is extracted hereunder.

"7. In the absence of any instructions to show about the community status of the petitioner, this Court necessarily has to go into the circumstances that is made available before this Court viz., the order passed by the District Level Vigilance Committee dated 17.02.2003, cancelling the community certificate granted to the petitioner. In view of the same, the orders passed by the first and second respondents cannot be interfered with. Since admittedly as on date, the petitioner had produced the bogus certificate in respect of his community status. Since the certificate itself has been cancelled by the District Level vigilance Committee, this Court does not find any scope for interference in the order passed by the respondents' Corporation and therefore, the writ petition lacks merits and substance. Therefore, the writ petition is dismissed. No costs.

8. While dismissing the writ petition, this Court observes that it is open to the petitioner to make representation to the Corporation for grant of any terminal benefits admissible to the

petitioner, do hors the order of dismissal imposed on the petitioner. If such representation is made, the Corporation is directed to consider the same sympathetically, taking into consideration the 30 years of service put in by the petitioner and also the family circumstances as pointed out by the learned counsel for the petitioner.

5. Aggrieved by the abovesaid direction, appellants have filed the instant Writ Appeal on the grounds inter alia that having sustained the order of dismissal dated 10.01.2006, passed by the Disciplinary Authority, Assistant General Manager (Commercial), Food Corporation of India, and confirmed by the General South and Appellate Authority, Tamil Region, Food Corporation of India, Chennai, for the proved charges of production of a false community certificate in securing employment in Food Corporation of India, Writ Court erred in granting permission to the respondent to make a representation to the Corporation for grant of terminal benefits to the petitioner, de hors the order of dismissal, and to consider the same.

6. Heard Mr.M.Imthias, learned counsel for the Food Corporation of India and Ms.S.Sasikala learned counsel representing Mr.V.Bhiman, counsel on record for the respondent, and perused the material on available on record.

7. Respondent was charged for producing false community certificate and securing employment in Food Corporation of India. Enquiry Officer held the charge as proved. Following the principles of natural justice, Disciplinary Authority, Assistant General Manager (Commercial), Food Corporation of India, vide order dated 13.01.2006, imposed a penalty of dismissal from service. Appeal filed to General South and Appellate Authority, Tamil Region, Food Corporation of India, Chennai, Appellate Authority, has been rejected on 24.07.2006. Being aggrieved, W.P.No.30743 of 2006, has been filed to quash the above orders.

8. When the writ petition, came up for hearing, submission has been made that pending writ petition, respondent had attained superannuation and that Corporation may be directed to sanction retirement benefits. Reading of the order made in the writ petition, shows that the order of the District Level Vigilance Committee, dated 17.03.2003, cancelling the community certificate issued to the respondent, has been produced before the writ court and submission has been made by the learned counsel for the respondent that no instructions were given to the learned counsel as to whether appeal has been filed against cancellation. On the basis of the materials available on record, writ court vide order dated 18.12.2017 categorically held as follows:-

"7. In the absence of any instructions to show
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about the community status of the petitioner, this Court necessarily has to go into the circumstances that is made available before this Court viz., the order passed by the District level Vigilance Committee dated 17.02.2003, cancelling the community certificate granted to the petitioner. In view of the same, the orders passed by the first and second respondents cannot be interfered with. Since admittedly as on date, the petitioner had produced the bogus certificate in respect of his community status. Since the certificate itself has been cancelled by the District Level Vigilance Committee, this Court does not find any scope for interference in the order passed by the respondents' Corporation and therefore, the writ petition lacks merits and substance. Therefore, the writ petition is dismissed. No costs."

8. Though the writ court has sustained the orders, writ court has issued directions to the appellant corporation to consider the case of the respondent sympathetically, taking into consideration 30 years of service put in by the respondent and also the family circumstances. Direction of the writ court, would virtually erase order of dismissal from service for the proved charge of producing false certificate. Direction of the writ court is an act of misplaced sympathy which can find no foundation in law or in equity and the consequences on retirement benefits to a dismissed employee, for the proved charge. In this regard reliance can be made to a few decisions, as below:-

9. Explaining the effect of an order, compulsory retirement, and dismissal, the Hon'ble Supreme Court in Shyamlal Vs. State of Utter Pradesh, reported in A.I.R. 1954 SC 369, at paragraph Nos.17 and 18, held thus:-

"17. There can be no doubt that removal---I am using the term synonymously with dismissal---generally implies that the officer is regarded as in some manner blameworthy or deficient, that is to say, that he has been guilty of some misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do. The action of removal taken against him in such circumstances is thus founded and justified on some ground personal to the officer. Such grounds, therefore, involve the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer.

There is no such element of charge or imputation in the case of compulsory retirement. The two requirements for compulsory retirement are that the officer has completed twenty five years' service and that it is in the public interest to dispense with his further services. It is true that this

power of compulsory retirement may be used when the authority exercising this power cannot substantiate the misconduct which may be the real cause for taking the action but what is important to note is that the directions in the last sentence in Note 1 to Article 465-A make it abundantly clear that an imputation or charge is not in terms made a condition for the exercise of the power. In other words, a compulsory retirement has no stigma or implication of misbehaviour or incapacity.

18. Finally, rule 49 of the Civil Services (Classification, Control and Appeal) Rules clearly indicates that dismissal or removal is a punishment. This is imposed on an officer as a Penalty. It involves loss of benefit already earned. the officer dismissed or removed does not get pension which he has earned. He may be granted a compassionate allowance but that, under Article 353 of the Civil Service Regulations, is always less than the pension actually earned and is even less than the pension which he would have got had he retired medical certificate. But an officer who is compulsorily retired does not lose any part of the benefit that he has earned.

On compulsory retirement he will be entitled to the pension etc. that he has actually earned. There is no diminution of the accrued benefit. It is said that compulsory retirement, like dismissal or removal, deprives the officer of the chance of serving and getting his pay till he attains the age of superannuation and thereafter to get an enhanced pension and that is certainly a punishment. It is true that in that wide sense the officer may consider himself punished but there is a clear distinction between the loss of benefit already earned and the loss of prospect of earning something more.

In the first case it is a present and certain loss and is certainly a punishment but the loss of future prospect is too uncertain, for the officer may die or be otherwise incapacitated from serving a day longer and cannot, therefore, be regarded in the eye of the law as a punishment. The more important thing is to see whether by compulsory retirement the officer loses the benefit he has earned as he does by dismissal or removal. The answer is clearly in the negative. The second element for determining whether a termination of service amounts to dismissal or removal is, therefore, also absent in the case of termination of service brought about by compulsory retirement."

10. Following Shyamlal's case, the Hon'ble Supreme Court in State of Bombay vs. Saurkagohand, reported in A.I.R.1957 SC 892, at paragraph Nos.9 and 10, held thus:-

9....The ratio decidendi of that decision is this: Under the Rules, an order of dismissal is a punishment laid on a government servant, when it is found that he has been guilty of misconduct or inefficiency or the like, and it is penal in character, because it involves loss of pension which under the Rules would have accrued in respect of the service already put in.

An order of removal also stands on the same footing as an order of dismissal, and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed, is. An order of retirement differs both from an order of dismissal and an order of removal, in that it is not a form of punishment prescribed by the Rules, and involves no penal consequences, inasmuch as the person retired is entitled to pension proportionate to the period of service standing to his credit.

10. Now, the policy underlying Article 311(2) is that when it is proposed to take action against a servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. But that consideration can have no application where the order is not one of punishment and results in no loss of benefits already accrued, and in such a case, there is no reason why the terms of employment and the rules of service should not be given effect to.

Thus, the real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss of benefits previously earned. Applying this test, an order under Rule 165-A cannot be held to be one of dismissal or removal, as it does not entail forfeiture of the proportionate pension due for past services.

11. In Union of India and others vs. Subedar Ram Narain etc., reported in 1998 (8) SCC 52, while considering the case of a Junior Commissioned Officer, as to eligibility for pension or gratuity in respect of his previous service, on being dismissed under the Army Act 1950, and the Regulations held thus:-

Moreover pension is granted by the rules and regulations which can and do provide for the circumstances which would make a person ineligible to receive the same. Dismissal makes a junior

commissioned officer dis- entitled to receive pension or gratuity. Regulation 113(a) is not in any way invalid. For the aforesaid reasons we come to the conclusion that unlike Regulation 16(a) which applies to the commissioned officers, id the case of non-commissioned officers other ranks and non- combatants (enrolled) the dismissal of such a person under the Army Act would ipso facto render him ineligible for pension or gratuity. The President, however, has a right, in the case of a person dismissed Under the provisions of the Army Act but in exceptional circumstances and at his discretion to grant service pension at a rate not exceeding that for which the individual concerned would have otherwise qualified had he been discharged on the same day.

4. In Dattatraya Mahadev Nadkarni (Dr) v. Municipal Corporation of Greater Bombay, reported in 1992 (2) SCC 547, explained that removal and dismissal from service stand on the same footing and both bring about termination of service though every termination of service does not amount to removal or dismissal. The only difference between the two is that in the case of dismissal the employee is disqualified from future employment while in the case of removal he is not debarred from getting future employment. Therefore, dismissal has more serious consequences in comparison to removal.

12. In Dr.Dattatraya Mahadev Nadkarni Vs. Municipal Corporation of Greater Bombay, reported in (1992) 2 SCC 547, the Hon'ble Supreme Court, at paragraph No.8, held thus:-

8. The only difference in the punishment of dismissal and removal is that in case of dismissal the employee is disqualified from future employment while in case of removal he is not debarred from getting future employment.

13. No provision has been shown by the respondent as to whether a dismissed employee of the Corporation for proved charges is also eligible for pension and retirement benefits.

14. In view of the above discussion and decisions, Writ Appeal is allowed. Direction issued to the appellants to sympathetically consider the case of the writ petitioner/ respondent herein by taking into consideration the 30 years of his service and also the family circumstances, for the purpose of grant of terminal benefits, is set aside. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

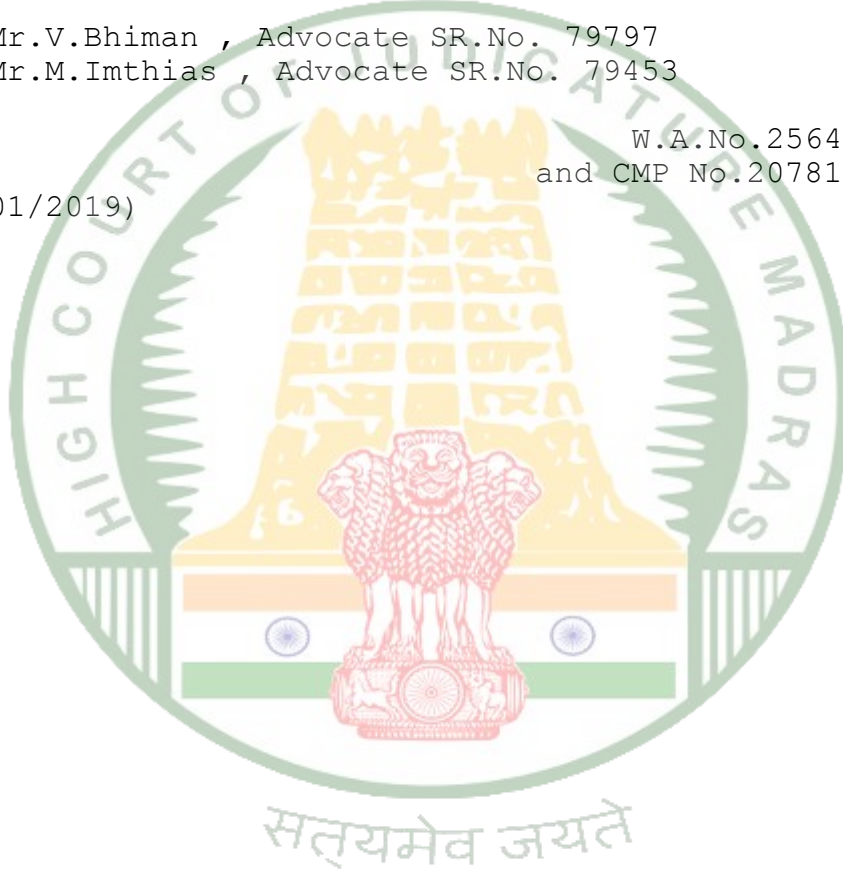
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A.SK(31/01/2019)



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