

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 1092 of 2015

O R D E R:

Respondent No.2 is Visakhapatnam Port Trust. The petitioner herein was initially appointed as Medical officer in respondent No.2 on 21.02.1990. While so, respondent No.2 issued Memorandum of Charges dated 13.08.1998 framing two charges against the petitioner. The charges read as under:

- i) Indulging in private practice in spite of drawing non-practicing allowance;
- ii) Treating/consultation of the port employees after duty hours and accepting remuneration.

2. In reply to the above charges, the petitioner submitted his explanation on 15.12.1999. The respondents being dissatisfied with the said explanation, initiated enquiry against the petitioner.

On the basis of enquiry report, the Deputy Chairman, Visakhapatnam Port Trust, who was delegated with the disciplinary powers for Class-I and Class-II Officers passed orders dated 10.05.2000 imposing penalty of removal of the petitioner from service. Questioning the same, the petitioner preferred an appeal on 02.06.2000 to respondent No.1, wherein the Ministry

remitted back the file observing that respondent No.2-Chairman, Visakhapatnam Port Trust is competent authority to conduct enquiry. Pursuant thereto, respondent No.2, being the competent authority, considering the representation of the petitioner and the material available on the record, passed orders dated 10.06.2003 imposing penalty of removal of the petitioner from service observing that he is not fit to continue in service. Subsequently, on 27.06.2003, respondent No.2 passed orders treating the period from 10.05.2000 to 10.06.2003 as 'the period spent not on duty' for all purposes and that the petitioner is not entitled to any allowance for the aforesaid period.

3. Questioning the same, the petitioner preferred an appeal before respondent No.1, stating that the respondent authorities arbitrarily with an intention to harass the petitioner tried for the same offence twice and that he is entitled to pay and allowances during the period from 10.05.2000 to 10.06.2003. Respondent No.1 having gone through the facts of the case, while upholding the order dated 10.06.2003 quashed the order dated 27.06.2003 passed by respondent No.2 by treating the period

from 10.05.2000 to 10.06.2003 as deemed suspension and granted subsistence allowance for the said period. The petitioner filed a review petition before the Joint Secretary, Ministry of Shipping on 23.05.2011 to consider his case sympathetically as is considered in case of Dr.G.Jaganmohan, Medical Officer. The reviewing authority in exercise of its powers conferred under Regulation 27 of VPT (Classification, Control & Appeal) Regulation, 1968 and taking into account the fact that the punishment imposed by the disciplinary authority is not commensurate with the offence committed by the petitioner, has allowed the review petition by order dated 20.12.2013 with the following observations:

- i) To set aside the removal order No. QPER/D-Cell/Med/MLK/118/2000 dated 10.06.2003 of the Disciplinary Authority and Order No.C-16018/7/2003-PE-II dated 03.03.2004 of the Appellate Authority;
- ii) To treat the period from 10.05.2000 (date of removal) till date of his joining as dies-non land will not be considered for pay & allowances and pensionary & other consequential benefits;
- iii) To reinstate him in the pay scale of Rs.9100-15100/- (pre-revised) with effect from the date of this order at the minimum of the scale of pay i.e., Rs.9100/-;

- iv) To recover the Non-Practising Allowance (BPA) along with interest paid to Dr.M.L.Kasuri from the date of his original Joining in the service till date of his removal.

Questioning the same the present writ petition is filed by the petitioner.

4. Heard Sri P.B.Vijay Kumar, learned counsel for petitioner and Sri C.Raghu Ram, learned Standing Counsel for respondents and perused the material on record.

5. Learned counsel for petitioner would submit that previously, the respondents-port trust dealt with the similar issue in question, in case of Dr.Jagan Mohan, Medical Officer, Visakhapatnam Port Trust, on whom, similar charges were framed on 22.06.2000, that he was reinstated with all consequential benefits, and that for the similar offences, punishment should not be disproportionate. It is also pleaded that for the similarly proven charges and for the same cadre officers, the respondent authorities awarded disproportionate punishment to that of the proved misconduct against the petitioner. Further, the respondent authority considering the fact that the petitioner has been suffering since 13 years, erred in imposing punishment of

dies-non against the petitioner, which is illegal, arbitrary and liable to be set aside.

6. On the other hand, the learned Standing Counsel appearing for respondents submitted that the charges levelled against the petitioner are serious in nature and there cannot be any comparison between the disciplinary proceedings initiated against the petitioner and the case of Dr.Jagan Mohan as the charges framed against each of the Officer are different. In so far as imposing different punishments in respect of two employees for the identical charges is concerned, the reviewing authority has taken a lenient view against the petitioner and set aside the order of removal and that the respondent authorities passed the reasoned order on 20.12.2013, which does not suffer from any illegality or infirmity warranting interference of this court.

7. In view of the rival contentions, it is appropriate to examine the case of Dr.Jagan Mohan, Medical Officer, Visakhapatnam Port Trust. The respondent authority framed two charges against the said Dr.Jagan Mohan, stating that he absented from duty unauthorisedly on 01.06.2000 and he had indulged in a private clinic unauthorisedly for pecuniary gain in

spite of drawing non-practising allowance in lieu of private practice. Thereafter, a departmental enquiry was conducted against him and during enquiry, he admitted the said charges. However, the disciplinary authority, submitted enquiry report on 22.09.2000. Based on the same, the respondents authority, imposed penalty of reduction of his pay from Rs.10,500/- to the minimum of the pay of Rs.9,100/- in the pay scale of Rs.9,100-15000/- with effect from the date of issue of the order. After lapse of two years, he preferred revision. However, the reviewing authority considering the explanation given by him for the said delay, found that there is a lacuna in the order of penalty in terms of FR-29 and remitted the matter back to the respondent authority for rectifying the lacuna appropriately. However, the disciplinary authority vide proceedings dated 18.10.2001, has taken a lenient view against Dr.Jagan Mohan and imposed punishment of reduction of pay to a minimum pay scale of Rs.9100-15100. Thereafter, he filed review petition and the reviewing authority modified the punishment and restored his pay with effect from 18.10.2010 on completion of the penalty of reduction of pay by six stages for a period of nine years with

effect from 18.10.2001 as per the Chairman's modified order dated 05.02.2008.

8. At the time of arguments, it is pleaded by the learned counsel for petitioner that his case should be treated on par with the case of Dr.Jagan Mohan, Medical Officer and the action of the respondent authorities in imposing two different sets of punishments for the similar offence is illegal and arbitrary.

9. So far as this aspect is concerned, it is noticed that the charges framed against Dr.Jagan Mohan and against the petitioner are for absconding from duty and indulging in private practice, which are one and the same. Hence, the disciplinary authority ought to have treated the case of the petitioner sympathetically alike and ought to have imposed the punishment similar to that of Dr.Jagan Mohan, where he was let off with minor punishment. But, the petitioner was imposed with major penalty of removal from service. Even the reviewing authority failed to appreciate the fact that the petitioner is entitled for similar treatment as was done in case of Dr.Jagan Mohan.

11. In support of his contention, the learned counsel for petitioner relied on the decision of the Apex Court in ***Rajendra***

Yadav V.State of Madhya Pradesh and others¹, wherein it was held that parity among co-delinquents should be maintained while imposing punishment. This aspect was clearly dealt with at Paragraph -9 of the Judgment and it reads as follows:

"The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e, lesser punishment for serious offences and stringent punishment for lesser offences."

10. Contrary to the above settled law and legal position and without assigning any reasons, the respondents-authority imposed the punishment of removal of the petitioner treating the period from 10.5.2000 (date of removal) till date of his joining as *dies-non* by fixing minimum pay scale of Rs.9100/- and ordered to

¹ (2013) 3 Supreme Court Cases 73

recover the Non-Practising Allowance (NPA) along with interest which is disproportionate to the proven misconduct. The respondent authority while reinstating the petitioner ought to have imposed similar punishment as imposed on Dr.Jagan Mohan.

11. So far as recovery of Non Practising allowance paid to the petitioner is concerned, as seen from the order dated 03.09.2006 and as is stated above, the respondent authority did not order recovery of Non-Practicing Allowance (NPA) against Dr.Jagan Mohan. In view of the same, the respondent-authority ought not to have imposed the said condition on the petitioner while exonerating Dr.Jagan Mohan for the same. Since the case of the petitioner is also on similar lines, recovery of non-practising allowance from the petitioner is illegal and arbitrary and the same is liable to be set aside.

12. In the light of the above discussion, this court is of the considered view that ends of justice would be met if the punishment of removal imposed on the petitioner from 10.06.2003 (order of respondent No.2 imposing penalty of removal from service of the petitioner) till 20.12.2013 (order of respondent no.1) is treated as dies-non and the said period shall be counted

'as on duty' for all purposes. However, the respondents are directed not to recover the non-practising allowance from the petitioner.

13. With the above observations, the writ petition is disposed of. No costs.

14. Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

24th September, 2018
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