IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.25580 of 2005

P.Bhaskaran ... Petitioner

Vs

1.The Special Commissioner & Commissioner,
Hindu Religious & Charitable Endowment Dept.,
Government of Tamil Nadu,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment Dept.,
Government of Tamil Nadu,
Coimbatore-18. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of impugned order passed by the 1st respondent vide his proceedings Se.Mu.Na.Ka.8141/2001/L4 dated 25.02.2002 and quash the same and to direct the respondents to permit the petitioner for voluntary retirement from his service with all attendant benefits.

For Petitioner : Mr.L.Chandrakumar
for Mr.V.Balaji

For Respondents : Mr.M.Venkadeshkumar,GA(HR & CE)

O R D E R

The gist of the charges against the petitioner is that he had remained unauthorizedly absent from 02.09.1998 onwards. Pursuant to the charge memo, an enquiry came to be conducted and based on the same, the petitioner was removed from the services, through the impugned order dated 25.02.2002, which is challenged in the present Writ Petition.

2.By placing reliance on the decision of the Hon'ble Apex Court in the case of Krushnakant B. Parmar Vs. Union of India & ANR made in Civil Appeal No.2106 of 2012 and a decision of Hon'ble Division Bench of this Court in W.A.No.481 of 2016 and C.M.P.No. 6637 of 2016 [The Assistant Director of Survey and Land Record Department, Tiruchirappalli Versus K.C.Bhaskaran] and in W.P.(MD).No.20327 of 2013 and M.P.(MD)No.1 of 2013 [Dr.I.K.S.Vignesh Vs. The Principal Secretary to Government and others], the learned counsel for the petitioner submitted that in cases of 'unauthorised absence', the period of absence is required to be established as "wilful" and in the absence of such a finding, the enquiry officer's report would be vitiated, as per the ratio in the aforesaid decisions.

3.The learned Government Advocate by placing reliance on the Enquiry Officer's report and the statements made in the counter affidavit, submitted that the prolonged absence of the petitioner from duty for two years and nine months without submitting a leave application, cannot be taken lightly. The learned Government Advocate also submitted that the petitioner was earlier punished for a similar charge with stoppage of increment of three years with cumulative effect. As such, he would state that the punishment is proportionate to the charges levelled and the writ petition requires to be dismissed.

4.I have given careful consideration on the submissions made by the respective counsels.

5.As pointed out by the learned counsel for the petitioner, the Hon'ble Apex Court in Krushnakant B. Parmar case (cited supra) had held that the question as to whether "unauthorised absence" from duty would amount to failure of devotion to duty or behaviour of unbecoming of a Government servant, cannot be considered without deciding the question as to whether such absence is wilful or is the cause of compelling circumstances. While holding so, the Hon'ble Apex court had further observed that in a departmental proceeding, the disciplinary authority is required to prove that the absence is wilful and in the absence of such a finding, such absence will not amount to misconduct. The decision in Krushnakant B. Parmar case has been followed by a Division Bench of this Court in K.C.Bhaskaran case (cited supra) and the relevant portion of the said order reads as follows:

> "4.The learned Single Judge, after hearing the parties, allowed the writ petition following a judgment of the Honourable Supreme court in KRUSHNAKANT B.PARMAR v UNION OF INDIA (2012(2) SLJ 190 stating that mere unauthorised absence does not amount to misconduct unless it is proved that the unauthorised absence is wilful and hence, the finding

> of the disciplinary authority, without goint into the question whether the unauthorised absence is wilful or not is perverse. Since the respondent attained superannuation in the meantime, the learned Single Judge directed the respondent to notionally reinstate the petitioner with"continuity of service and other attendant benefits, but, without any backwages. Challenging the above order of the leaned Single Judge, the instant writ appeal was filed."

In his report, the enquiry officer has not rendered any finding with regard to the aspect as to whether the petitioner's unauthorised absence was wilful or not. As such, the report itself is opposed to the ratio laid down in the aforesaid decisions of the Hon'ble Apex Court as well as this Court.

6.By adopting the ratio laid down in the aforesaid decision, I am of the view that the petitioner is entitled to succeed in the present Writ Petition. However, since the petitioner has reached the age of superannuation, the question of reinstatement will not arise. Nevertheless, since the punishment itself deserves to be set-aside, in view of the observations made in this order and also taking note of the fact that the petitioner had not worked for a considerable time till his date of superannuation, if 50% of the backwages is ordered to be paid to the petitioner, the ends of justice would be secured.

7.For all the foregoing reasons, the orders passed by the first respondent vide proceedings Se.Mu.Na.Ka.8141/2001/L4 dated 25.02.2002 is set aside. Consequently, the first respondent shall pay 50% of the accrued backwages along with other DCRG benefits from the date of punishment till the date of his superannuation. Further, the first respondent shall also extend the pensionary benefits to the petitioner. Such an exercise shall be completed within a period of 60 days from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

jrs/AT

To

1.The Special Commissioner & Commissioner,
Hindu Religious & Charitable Endowment Dept.,
Government of Tamil Nadu,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment Dept.,
Government of Tamil Nadu,
Coimbatore-18.

+1cc to Mr.V.Balaji, Advocate SR.No.34492

+1cc to Government Pleader SR.No.34906

WP.No.25580 of 2005

SR(CO)
GMY(16/04/2019)