



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.11.2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6261 of 2013

M.Thandavarayan

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary,
Housing and Rural Development Department,
Fort St.George, Chennai - 9.

2.Tamil Nadu Housing Board,
Rep. by its Managing Director,
Nandanam, Chennai - 35.

3.Tamil Nadu Housing Board,
Rep. by its Secretary and Personal Officer,
Nandanam, Chennai - 35.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 2nd Respondent in proceedings No.DC3/52796/2004 dated 07.09.2011 and quash the same and further direct the respondents to pay all backwages and monetary and pension benefits.

For petitioner : Mr.S.Parthasarathy
For R1 : Mr.A.Zakir Hussain,
Government Advocate
For R2 : Mr.R.Bharathkumar

ORDER

The instant writ petition is for a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the second respondent in Proceedings No.DC3/52796/2004, dated 07.09.2011 and to quash the same and further to direct the respondents, to pay all back wages, monetary and pension benefits.

2. The petitioner was working as N.M.R. in the Tamil Nadu Housing Board, Chennai/the 2nd respondent herein. He was later regularised as Work Assistant, on 18.05.1990. The petitioner



states that in August 2011, he was severely affected by Fistula because of which he could not sit down. He states that there was prolonged bleeding, which prevented him from observing regular.

3. A charge memo was issued to the petitioner for unauthorised absence. The details of Charge No.1, reads as under:-

Charge No.1:- That Thiru.M.Thandavarayan, Work Assistant, while working in Board's Rental Section (on diversion from Nandanam Division) becomes frequent absentee thus hindered the Official work in an important time. On examination of the Attendance Register for the years 2001 and 2002 the following absence found:-

DETAILS OF ABSENCE:

I. No Reports: 30.7.2001, 1.8.2001, 3.8.2001, 1.10.2001, 12.10.2001, 15.10.2001, 3.1.2002, 8.1.2002, 9.1.2002, 28.1.2002, 29.1.2002, 30.1.2002, 1.2.2002, 11.2.2002, 12.2.2002, 25.2.2002, 5.3.2002, 22.4.2002 to 30.4.2002 (Late converted as M.L.), 29.5.2002, 13.6.2002, 16.6.2002, 26.6.2002, 30.6.2002, 18.9.2002, 26.9.2002, 22.10.2003, 23.10.2003.

II. Late: 14.8.2001, 12.10.2001, 9.11.2001, 21.12.2001, 28.12.2001, 31.12.2001, 17.4.2002, 18.4.2002, 19.4.2002, 28.5.2002, 20.6.2002, 27.6.2002, 15.7.2002, 29.7.2002, 3.9.2002, 4.9.2002, 6.9.2002.

III. Casual Leave: 2.8.2001, 6.8.2001, 4.10.2001, 5.10.2001, 1.11.2001, 2.11.2001, 5.11.2001, 16.11.2001, 24.12.2001, 17.1.2002, 18.1.2002, 30.9.2002.

IV. Earned Leave: 11.3.2002 to 15.3.2002.

V. Unearned Leave on Medical Ground: 1.5.2002 to 21.5.2002, 5.8.2002 to 14.8.2002, 21.8.2002 to 28.8.2002.

VI. Medical Leave: 17.8.2001 to 27.9.2001, 20.11.2001 to 7.12.2001.

VII. R.H.: 15.11.2001, 16.8.2002.

The above details of the absence shows the irregularity on the part of Thiru. M. Thandavarayan, Work Assistant, in attending office, devotion less in duty."

4. The petitioner was also charged for violation of Regulation 32-A of the Tamil Nadu Housing Board Service Regulation 1969 and Regulation 20 of Tamil Nadu Housing Board Officers and Servants Conduct Rules, 1963.



5. The petitioner states that his absence from work was not deliberate and was primarily due to the circumstances beyond his control in as much as he suffering from such a disease, which prevented him from sitting down and he had continues bleeding. The petitioner was initially removed from service. On appeal the appellate authority, by an order dated 28.01.2005, reduced the punishment of fixation of his pay in the minimum time scale of pay in the post of Work Assistant till his date of superannuation.

6. This order was challenged by the petitioner in W.P.No.8738 of 2005. This Court by an order dated 17.11.2009, set aside the order dated 28.01.2005, on the ground that the order of the appellate authority was an unreasoned. This Court remanded back the matter to the Appellate Authority, for passing fresh orders.

7. On remand, the impugned order, dated 07.09.2011 has been passed. In the impugned order, the punishment awarded to the petitioner, has been revised by fixing his pay in the minimum time scale of pay of Work Assistant for a period of five years, from the date of punishment instead of "till his date of superannuation" which was awarded earlier. This order is under challenge in the instant writ petition.

8. The second respondent has filed a counter affidavit, stating that there has been long and continues absence from service by the petitioner, which amounts to violation of Service Regulations.

9. Heard the learned counsel for the parties.

10. A perusal of the period of absence, would show that the petitioner was not regularly attending office. The order dated 28.01.2005 passed by the Appellate Authority, was set aside only on the ground that it was unreasoned order and on remand, the Appellate Authority has once again modified the order of punishment, and redirected to fixing this minimum scale of pay of work assistant or five years.

11. Material on record would show that other than the ipsi dixit of the petitioner that the nature of disease of the petitioner was such that there was so much bleeding, which did not permit the petitioner to attend office on all days mentioned above, there is no material to substantiate the contention.

12. In the absence of any material which would substantiate



the contention of the petitioner, this Court while exercising the power under 226 of the Constitution of India, is not inclined to interfere with order of punishment. The order was passed on 07.09.2011, the same was not challenged, immediately. The petitioner took voluntary retirement on 31.03.2012 and after his retirement, the petitioner was filed the writ petition in the year 2013.

13. There is no reason forthcoming, as to why the petitioner did not challenge the impugned order within reasonable time. It is well settled that the delay defeats equity. The Hon'ble Supreme Court in Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman, reported in (2003) 12 SCC 408, the Supreme Court has observed as follows:-

"12. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting into depriving of the remedy, is a principle based on public policy and utility and not equity alone??."

14. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.

15. In Eastern Coalfields Ltd., v. Dugal Kumar, reported in (2008) 14 SCC 295 the Hon'ble Supreme Court has held as follows:

"24.As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant."



16. In view of the above discussion and decisions, the writ petition is dismissed. As stated above the petitioner has taken voluntary retirement on 31.03.2012. More than 7 years have been passed and terminal benefits they have not yet settled to the petitioner, only because he has filed the instant writ petition and the same was pending. The respondents are directed to pay the terminal benefits to the petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Housing and Rural Development Department,
Fort St.George, Chennai - 9.
2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam, Chennai - 35.
3. The Secretary and Personal Officer,
Tamil Nadu Housing Board,
Nandanam, Chennai - 35.

+1 cc to M/s.S.Parthasarathy,Advocate Sr.No.92623
+1 cc to M/s.R.Bharath Kumar,Advocate Sr.No. 93437
+1 cc to The Government Pleader Sr.No. 93025

AKM/20.12.19/5P- 7C /

W.P.No.6261 of 2013