

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 05.10.2020

Delivered on: 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.2195 of 2020

K.Thilagavathi

...Petitioner

Vs

1. The Managing Director,
Tamilnadu Housing Board,
Nandanam,
Chennai - 600 035.

2. The Executive Engineer & Administrative Officer,
ONGC Works Division,
Tamil Nadu Housing Board,
Thirumangalam,
Chennai - 600 011.

3. The Section Officer,
Personnal (Non-Technical)
Tamil Nadu Housing Board,
Chennai - 600 035.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India

praying Writ of Certiorarified Mandamus to call for the records pertaining to proceeding No.DC4/2572/2015 dated 09.10.2015 and to quash the same and to direct the 1st respondent to reinstate the petitioner in service with effect from 09.10.2015 with continuity of service till 31.11.2017 being the date of retirement and sanction all consequential retirement benefits accruable to the petitioner along with backwages.

(Prayer amended vide order dated 03.08.2020 made in WMP.8542/2020 in WP.2195/2020 by VPNJ) .

For Petitioner : Ms.S.Sridevi

For Respondents : Mr.R.Bharatkumar
Standing Counsel

ORDER

This Writ Petition has been filed seeking a Writ of Certiorarified Mandamus to call for the records pertaining to proceeding No.DC4/2572/2015 dated 09.10.2015 and to quash the same and to direct the 1st respondent to reinstate the petitioner in service with effect from 09.10.2015 with continuity of service till 31.11.2017 being the date of retirement and sanction all consequential retirement benefits accruable to the petitioner along with backwages.

2. The case of the petitioner is that she was employed as Typist

in Tamil Nadu Housing Board. She was appointed in the year 1996 and she claims to have served the Board for 23 years with unblemished service. During her period of employment in the Housing Board, she appeared to have entered into a loan transaction with a third party along with her husband and borrowed some amount in order to tide over certain financial crisis.

3. According to the petitioner, the person who lent loan to her had demanded post-dated cheques as security for the loan amount and under the compelling circumstances, she claimed to have issued post-dated cheques to the person who lent her loan.

4. It so happened that the petitioner could not repay the loan in time, which led to the presenting of the cheques for encashment in the bank concerned and the cheques were dishonoured. The creditor/third party, after complying with the formalities under the provisions of Negotiable Instruments Act, approached the criminal court and registered a complaint under section 138 of the Negotiable Instruments Act. After trial, the criminal court rendered judgment of conviction dated 17.12.2014 in S.T.C.No.132/2014 against the petitioner imposing six months simple imprisonment and to pay a fine of Rs.2 lakhs as compensation. The petitioner preferred a Criminal Appeal in CrI.A No.3/2015 before the

District and Sessions Court, Thiruvallur and the Criminal Appeal was also dismissed by confirming the conviction of the petitioner by the trial Court. The criminal appeal came to be dismissed on 23.09.2015. As against that, the petitioner had preferred Criminal Revision No.1093/2015 before this Court and finally, the conviction of the petitioner was set aside by Lok Adalat held on 20.04.2018 on payment of Rs.1,50,000/- to the complainant/third party. Thereafter, the complainant appeared to have withdrawn all the complaints against the petitioner in respect of few other cheques issued by the petitioner relating to the same transaction.

5. While the matter stood thus, the 1st respondent issued a Memorandum dated 04.05.2015 directing the petitioner to give explanation within 15 days against the proposed punishment of removal from service, on the basis of conviction of the petitioner by the criminal court in the first instance and confirmed in the criminal appeal. The petitioner submitted her explanation on 19.05.2015, explaining the circumstances, under which, the loan was obtained and the cheques were issued. But not being satisfied with the explanation, ultimately, the 1st respondent passed an order on 09.10.2015, removing the petitioner from service.

6. Originally, the writ petition was filed to issue a Writ of Mandamus directing the 1st respondent to recall the removal order dated

09.10.2015 and to reinstate the petitioner in service from that date. However, when this Court was not inclined to entertain the writ petition with the prayer for mandamus in the face of the removal order passed against the petitioner, subsequently, an amendment was sought in W.M.P.No.8542/2020 and the same was also ordered by this Court on 03.08.2020. The amended prayer is to quash the order dated 09.10.2015 of the 1st respondent.

7. Learned counsel for the petitioner would submit that in a private transaction between the petitioner and the third party, she was convicted under Section 138 (N.I.Act) offence and for which, unfortunately, the 1st respondent had passed the impugned order, removing the petitioner from service, despite the petitioner had not suffered any blemish in her entire service for a period of 23 years. She would submit that the punishment of removal from service was extremely excessive, harsh and disproportionate to the gravity of the offence for which the conviction was recorded against the petitioner. While passing the order of removal from service, the 1st respondent had not taken into consideration the facts which led to conviction in terms of the regulation applicable to the staff of the Board and mechanically, the order of removal from service was passed.

8. Notice was ordered in the writ petition and Mr.Bharath Kumar, learned Standing Counsel entered appearance on behalf of the Board and a counter affidavit has also been filed.

9. Mr.Bharath Kumar, learned counsel for the Board would submit that the petitioner herein had violated Regulation 20 of the Tamil Nadu Housing Board Officers and Conduct Rules and Regulations, 1963. According to the learned counsel for the Board, the petitioner had not informed the Board authority about the pendency of the criminal case, against her and her conviction in the criminal court and therefore, she had not maintained absolute integrity in terms of the service regulations. The Board came to know about her conviction only when a lawyer notice was issued on behalf of the complainant informing the fact of conviction of the petitioner. Moreover, the conviction of the petitioner by the trial Court was also confirmed in the criminal appeal on 23.09.2015 in CrI.A.No.3 of 2015.

10. In the said circumstances, the Board had no option except to issue show cause notice under Regulation 37(c) of the Tamil Nadu Housing Board Service Regulation, 1969 and since the petitioner's reply was not satisfactory, the Board had imposed penalty of removal from service. When the petitioner stood convicted in a criminal court and was

sentenced to undergo six months imprisonment and imposed with a fine of Rs.2 lakhs as compensation, the Board cannot take a lenient view in the teeth of such conviction and therefore, imposed the penalty of removal from service.

11. Learned counsel appearing for the petitioner would submit that for a simple loan transaction, which unfortunately ended in conviction, the petitioner has lost her job and all her service retirement benefits which were otherwise due. She would state that after imposition of the impugned penalty, the petitioner had also reached the age of superannuation on 31.11.2017. On the contention of proportionality, the learned counsel would rely on a decision of Kerala High Court dated 20.10.2010 in W.P.(C).No.24066/2007. According to the learned counsel, the Kerala High Court has held that conviction involving moral turpitude alone would invite order of dismissal and not otherwise. She would particularly rely on the following.

"From the same it is evident that a dismissal for conviction in a criminal case can be only if that conviction is for an offence involving moral turpitude. Therefore without a finding that the conviction of the petitioner was for an W.P.(C)N.24066 of 2007 offence involving moral turpitude the petitioner cannot be dismissed from service.

Ext.P4 is the order of the bank dismissing the petitioner. It does not state as to whether the action of the petitioner leading to his conviction under Section 138 of the Negotiable Instruments Act involved moral turpitude. It merely say that, since he has been convicted for a criminal offence he has been dismissed from service. The reasoning in Exts.P7 and P9 also do not reveal that there is a finding to the effect that the petitioner was convicted for an offence involving moral turpitude.

6. Of course, the learned counsel for the bank would refer me to paragraph 24 of Ext.P9 order in an appeal wherein several earlier misconducts of the petitioner has been quoted which according to the counsel would go to support the contention of the bank that his conviction is one involving moral turpitude. I am not satisfied that the past conduct of the petitioner would spell out moral turpitude in a subsequent conviction under Section 138 of the Negotiable Instruments Act.

7. In view of the fact that the service rules permit dismissal on conviction for a criminal offence only if that offence for which he was convicted involves moral turpitude. The decisions in Saseendran Nair's case and Ibrahim Kannu's case (supra) would show that ordinarily an offence under Section 138 of the Negotiable Instruments Act would not involve moral turpitude in the absence of any other cogent materials to discern moral

turpitude. Therefore, the normal rule is that, the offence under Section 138 of the Negotiable Instruments Act does not involve moral turpitude. If a person alleges that an offence under Section 138 involves moral turpitude, it is for him to prove with cogent materials that the offence involves moral turpitude. Therefore in this case it is for the bank to prove that the petitioner's conviction under Section 138 of the Negotiable Instruments Act involves moral turpitude. Apart from the judgment of the criminal court, the bank has no other material in support of their contention that the conviction of the petitioner is for an offence involving moral turpitude. W.P.(c).No.24066 of 2007. The fact that the petitioner took a defence in the criminal case which was rejected does not ipso facto leads to an inference of moral turpitude insofar as he is not being tried for that defence but being tried for an act constituting an offence under Section 138 by issuing a cheque without sufficient funds in his account and not paying the amount covered by cheque to the creditor despite receipt of notice as provided under the Act. Therefore, the respondents have not been able to show any circumstances which would enable me to draw the conclusion that, the petitioner was convicted for an offence involving moral turpitude. Therefore, the impugned orders are quashed."

12. Moreover, she would also submit that after the impugned

order was passed, the conviction was also set aside by the High Court Lok Adalat proceedings on 20.04.2018, in terms of the compromise reached between the petitioner and the complainant.

13. This Court considered the submission of the learned counsel for the petitioner and Mr.Bharath Kumar, learned standing counsel appearing for the respondent Board.

14. From the above narrative, what emerges consideration of this Court is as to whether the petitioner could be subjected to the order of removal in the face of her conviction under section 138 (N.I.Act). The transaction entered into by the petitioner with the third party complainant was in the realm of private loan transaction and the same was not in relation to the discharge of the petitioner's duty as an employee of the respondent Board. Therefore, the transaction involving the petitioner and the subsequent conviction of her by the criminal court, need to be appreciated with reference to the conduct and circumstances which led to the conviction of the petitioner.

15. Although the petitioner was convicted for the offence under section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment with fine, yet it is imperative upon the authority to examine whether the conviction of the petitioner was due to

grave criminal conduct on the part of the petitioner involving moral turpitude, or for a conduct involving commission of an offence other than the penal laws, but attracting the mischief of criminal proceedings and its consequence. The facts in this case would disclose that it is a simple case of conviction for cheque dishonour arising from a private loan transaction between the petitioner and the third party. Therefore, imposition of stringent and harsh penalty of removal from service, in the opinion of this Court, is not warranted at all.

16. Moreover subsequently, the Lok Adalat of this High Court has set aside the conviction vide its proceedings dated 20.04.2018 on the basis of the compromise entered into between the petitioner and the complainant. Therefore, the conviction itself stood removed after 20.04.2018. Of course, the proceedings of the Lok Adalat was subsequent to the order of removal passed by the 1st respondent on 09.10.2015. In any event, this Court finds that when an order of removal was passed against the petitioner under Regulation 37(c) applicable to the Board employees, the authority cannot simply pass orders imposing penalty of removal or dismissal from service routinely and mechanically. In every case of conviction, the authority has to appreciate and examine the circumstances under which an employee was convicted.

17. If the punishment of dismissal or removal from service is the automatic penalty to be imposed on every convicted employee, it could only result in painting every convicted employee with the same brush, whether the employee involved in serious and heinous crime or a simple offence relating to Section 138 (N.I.Act), The discretion vests in the authority would be meaningless, if the authority is to discharge such discretion perfunctorily with a rigid mind set. According to Regulation 37 of the Tamil Nadu State Housing Board Service Regulations, 1969, the following major penalties are envisaged.

37. Procedure for awarding penalties:-

....

Major penalties:- (i)...

- 1) reduction to a low post or to a lower stage in the time scale of pay or*
- 2) compulsory retirement; or*
- 3) removal from service; or*
- 4) dismissal from service.*

18. In the counter affidavit, the claim of the petitioner that she had rendered blemishless service has not been disputed. In the counter, nothing is stated on record pointing out any shortcomings on the part of the petitioner in discharge of her duties. While so, it is also the more reason that the authority ought to have taken the conduct which led to the

conviction of the petitioner and ought to have spelt out the basis for the decision of imposing the harsh penalty of removal from service. The impugned order did not disclose any such application of mind on the part of the authority.

19. No doubt, the Board had to take action in the face of the conviction recorded against the petitioner by the criminal court, but at the same time, the Board has a momentous discretion to take a decision as to the nature of penalty to be imposed with reference to the circumstances and facts of each case. This is one such case that the Board has approached the matter, without displaying any kind of empathy and benevolent consideration, while deciding to impose the harsh penalty of removal from service. Further subsequently, the order of conviction was also set aside on 20.04.2018 by proceedings of the High Court Lok Adalat on the basis of compromise entered into between the petitioner and the complainant. That being the case, the petitioner is entitled to be treated leniently atleast after 20.04.2018.

20. In the above circumstances, the impugned order dated 09.10.2015 passed by the first respondent imposing the penalty of removal from service is to be held shockingly disproportionate and therefore, liable to be set aside.

21. In the circumstances, the impugned proceedings No.DC4/2572/2015 dated 09.10.2015 of the first respondent is hereby quashed. Consequently, the first respondent is directed to impose any other penalty on the petitioner other than dismissal, removal, compulsory retirement by passing appropriate orders.

22. The first respondent is further directed to reinstate the petitioner notionally with effect from 09.10.2015 and till the date of her superannuation.

23. The first respondent, in furtherance of the above, is directed to issue appropriate orders regulating the relevant service period of the petitioner during her employment and also sanction pensionary benefits, if the petitioner is otherwise eligible for the same.

24. It is made clear that the petitioner is not entitled to seek backwages on being reinstated in service. However, she is entitled to the notional fixation of pay and allowance and also entitled to pensionary benefits on the basis of such refixation. It is also made clear that the petitioner is entitled to be paid arrears of pension from the date of her superannuation on the basis of revised penalty to be imposed on her.

24. Finally, the 1st respondent is directed to pass comprehensive order as indicated above within a period of eight weeks from the date of

receipt of a copy of this order.

25. The Writ Petition is allowed as above. No costs.

28.10.2020

Speaking/Non-speaking

Internet : Yes/No

Index : Yes/No

vsi

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V.PARTHIBAN.J.,
vsi



**Pre-delivery order made in
W.P.No.2195 of 2020**

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