

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 34972 OF 2013

K.V.Lakshmanan

.. Petitioner

- Vs -

1. The State of Tamil Nadu
rep. By its Secretary to Govt.
Home Department
Fort St. George, Chennai 600 009.

2. The Director of Fire Services
& Rescue Department
Egmore, Chennai 600 008.

3. The Divisional Fire Officer
Thanjavur.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records in pursuant to the impugned order issued by the 3rd respondent in proceeding Ku.Pa.No. 47/93 dated 14.7.1994 and the order of the 1st respondent in Letter No.113810/Police-17/97-32 dated 27.9.2000 and the order of the 2nd respondent in proceeding Na.Ka. No.22950/A5/2011 dated 6.4.2011 and quash these orders and consequently direct the respondents to allow the petitioner to retire from service on 31.5.2011 and settle all the terminal and pensionary benefits.

For Petitioner : Mr. R.Prem Narayanan

For Respondents : Mr. S.Thangavel, Spl. GP

ORDER

It is the case of the petitioner that he was working as Fireman in the Fire Services Department from 1.9.1980 and that his service records is free of any blemish. Whiles, the petitioner proceeded on casual leave for 4 days from 18.5.93 and during the period of leave, the petitioner sustained severe head injury and, therefore, proceeded on medical leave initially for

a period of six months. It is the case of the petitioner that he was unconscious and the members of his family, due to the ignorance, failed to communicate the happenings to his superiors and the ailment of the petitioner prevented him to submit the necessary leave application on time.

2. It is the further case of the petitioner that a charge memo was issued, which was not served on the petitioner, but was affixed at the door of his residence. No information was received by the petitioner about the issuance of the charge memo. The aforesaid physical and mental condition of the petitioner prevented him from submitting any explanation and, therefore, the department proceeded to conduct an enquiry exparte. Based on the report of the enquiry officer, the petitioner was terminated from service by the 3rd respondent vide proceeding dated 14.7.94, against which an appeal was preferred, which was dismissed and the mercy petition preferred thereafter was also dismissed. Aggrieved by the above dismissal of his petitions, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner, while reiterating the contentions raised in the grounds filed in support of the petition, submitted that the petitioner had put in more than 13 years of unblemished service. It is further submitted that the circumstances surrounding the entire happenings resulting in the petitioner's failure to submit explanation and his absence during the enquiry proceedings have not been considered by the respondents in right perspective. The order of termination, in the above circumstances, is excessive and disproportionate to the delinquency committed by the petitioner and, therefore, this Court, by invoking its inherent powers may interfere with the said orders.

4. Learned Special Government Pleader appearing for the respondents, per contra, contended that the petitioner is a member of the disciplined force, and the petitioner ought to have brought to the knowledge of his superiors his predicament and submitted his leave application, which has not been done. It is not open to the petitioner to hide behind the ignorance of his family members to gain sympathy from this Court. The respondents have taken all the materials cumulatively into consideration and have decided to terminate the petitioner and, therefore, no interference is called for with the orders impugned.

5. This Court bestowed its best attention to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record.

6. Before proceeding to analyse the facts of the present

case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

7. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

8. True it is that the records reveal that the respondents have followed the procedure contemplated for proceeding with the

disciplinary enquiry by serving the petitioner duly and in his absence affixing the notice on the door of his house. The petitioner having not partaken in the enquiry proceedings, the petitioner was set exparte resulting in the culmination of the enquiry report. The disciplinary authority imposed the punishment of termination from service, which has received the seal of approval from the higher authorities by rejection of the petitioner's appeal and mercy petition.

9. However, one crucial aspect has been lost sight of by the respondents. The impugned order of termination was passed in July, 1994 and immediately, the petitioner has preferred his appeal in August, 1994, though the appeal has been wrongly sent to the 3rd respondent instead of the 2nd respondent. It further reveals from the record that no intimation/respondent was given to the appeal. Thereafter, the petitioner has sent his appeal on 30.12.1996 to the 2nd respondent, which was rejected and, thereafter, mercy petition has been preferred to the 1st respondent, which received the same fate.

10. The crucial aspect, which requires to be considered here is the initial rejection of the appeal dated 30.12.1996 by the 2nd respondent. The 2nd respondent has noted that the mercy petition has been filed belatedly and, therefore, it is not possible to consider the same. However, what has been lost sight of is the fact that the petitioner has initially submitted the appeal to the 3rd respondent, though wrongly, on which no intimation has been given to the petitioner. Even a wrong appeal is entitled to a response and had the petitioner received the response, the delay would not have occurred. Therefore, the delay in filing the appeal ought not to be put against the petitioner.

11. Further, what transpires from the materials available on record is that the petitioner, while submitting the appeal dated 20.8.1994, to the 3rd respondent, though wrongly, has annexed the medical certificate. Further, in the appeal to the 2nd respondent, the medical certificate and fitness certificate have also been annexed. However, the orders passed by the respondents are silent on the aspect about the medical certificate annexed by the petitioner. Though the order passed by the 1st respondent reveals that there is contradiction in the stand of the petitioner, in that the petitioner has mentioned that he had made an appeal to the 3rd respondent on 20.8.94 and in contrast has stated that an appeal was made to the 2nd respondent, after discharge from the hospital on 13.11.96 along with medical records, however, the fact remains that there is no whisper about the appeal filed by the petitioner before the 3rd respondent. It has not been disputed by the 3rd respondent that no appeal was received from the petitioner, though wrongly.

Further, the order of the 1st respondent is also silent on the aspect of the medical condition of the petitioner, though the order reveals that medical records were annexed with the mercy petition. In such a backdrop, this Court is of the considered opinion that the delinquency as a whole, coupled with the other relevant factors and documents have not been considered in proper perspective by the appellate authorities, while confirming the order of termination.

12. Though this Court is of the view that all is not well with the respondents while considering the appeal and mercy petition of the petitioner, equally, the petitioner has also been lethargic and not diligent enough to pursue the matter. The petitioner has pleaded ignorance on the part of his family members to the notice affixed on the notice board and stated that they are not aware of the official procedures of information to be given to the higher authorities. Further, the medical records have not been placed before this Court to come to a definite conclusion as to the actual medical condition of the petitioner. However, the authorities were duty bound to consider the medical records before passing the order of termination. The petitioner claims that he is a recipient of good service honours for more than a dozen times from the department. The past service of the petitioner ought to have been taken into account while imposing punishment. The petitioner has put in more than 13 years of unblemished service and the present scar on the petitioner cannot be a case of outright rejection by terminating the petitioner from service. The past service ought to have been taken into account while imposing punishment on the petitioner. The petitioner, a member of disciplined force, as submitted by the learned Special Government Pleader, deserves to suffer for his wrongful act, but equally, his service also should stand appreciated while imposing punishment.

13. Considering the factual matrix as a whole and on the basis of the materials available on record, this Court is of the considered view that the punishment of termination imposed on the petitioner requires to be modified and instead the petitioner shall stand compulsorily retired from service. In view of the above modification in punishment, the petitioner would stand entitled for all the terminal and pensionary benefits in consonance with the service rendered by him.

14. Accordingly, this writ petition is allowed in part by modifying the punishment of termination to one of compulsory retirement and the petitioner will stand entitled for all the terminal and pensionary benefits. The respondents are directed to calculate the service of the petitioner from the date of his entry into service till the date of his absents from work and

calculate the terminal benefits and other benefits, including pension, if any, payable to him and disburse the same within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Govt.
Home Department
Government of Tamil Nadu
Fort St. George, Chennai 600 009.

2. The Director of Fire Services
& Rescue Department
Egmore, Chennai 600 008.

3. The Divisional Fire Officer
Thanjavur.

+1 cc to M/s.R.Prem Narayan, Advocate Sr.No. 25271

+1 cc to the Government Pleader, Sr.No.25290

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