

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :12.08.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 6433 OF 2013

and

M.P.No.1 of 2013

R.Amara

.. Petitioner

- Vs -

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

2. The Director General of Prisons,
Tamil Nadu,
Chennai 600 008.

3. The Superintendent,
Central Jail,
Cuddalore.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the entire records relating to the impugned G.O. passed by the 1st respondent in G.O.Ms.No.808, Home, (Prison -2) Department, dated 10.07.2008 and quash the same and consequently direct the respondents to disburse the arrears of the petitioner's salary which was retained by the respondents.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.A.N.Thambidurai, Spl.G.P.

ORDER

This Writ petition was filed by the petitioner, to call for the entire records relating to the impugned G.O. passed by the 1st respondent in G.O.Ms.No.808, Home, (Prison -2) Department, dated 10.07.2008 and quash the same and consequently direct the respondents to disburse the arrears of the petitioner's salary which was retained by the respondents.

2. The case of the petitioner is that the petitioner was working as Chief Head Warder at Puzhal Central Jail Chennai. While she was working as Chief Head Warder at Sub Jail (Woman) Villupuram, the 3rd respondent issued a charge memo, on the allegation that the petitioner took medical leave on and from 19.12.2003 without any information and instead of submitting the medical certificate through Superintendent, Sub Jail, the petitioner forwarded the medical certificate directly to the Controlling Officer. Thereafter disciplinary proceedings were initiated against the petitioner and after conducting enquiry, based on the enquiry report, the 3rd respondent has passed the final order by his proceedings dated 29.05.2004 and imposed a punishment of compulsory retirement on her. As against the punishment of compulsory retirement, the petitioner preferred an appeal before the Deputy Director General of Prison, Trichy region, which was disposed by the Appellate Authority on 29.06.2004 by modifying the punishment to reduction in salary in basic level without cumulative effect for two years. Aggrieved against the order of the appellate authority, the petitioner filed a revision before the 1st respondent, which was rejected vide G.O.Ms.No.808, Home (Prison-2) Department, dated 10.07.2008. Challenging the same, the present writ petition has been filed with the above said prayer.

3. Learned counsel appearing for the petitioner submitted that though the petitioner has not submitted any leave application and medical certificate prior to proceeding on leave, subsequently, she has forwarded the medical certificate to the Controlling Officer, which is the only fault committed by the petitioner and the said medical certificate and leave application were not submitted to the Appropriate Authority but it was forwarded to the Controlling officer, who is not the appropriate authority. Only on the said ground, the whole disciplinary proceeding was initiated, ultimately leading to the passing of the Government Order. The above act is not a serious one and imposition of major penalty is not warranted, which has gravely affected the petitioner's career. Accordingly he prays for allowing the prayer sought for by the petitioner in this writ petition.

4. Per contra, learned Special Government Pleader appearing for the respondents, referred the counter affidavit filed by the respondents in support of his contention and contented that the petitioner should have given the leave application along with the medical leave certificate only to the immediate superior officer of the place where she was working, and instead she has directly sent the application to the Controlling Officer of the Sub-Jail, which is in clear violation of Rules 126, 127 and 128 of Tamil Nadu Prison Manual Volume II. Though compulsory

retirement was passed by the disciplinary authority, however, it was modified by the appellate authority, which has been confirmed by the 1st respondent. It is the submission of the learned Special Government Pleader that unless the punishment imposed is shocking and disproportionate, Courts shall not interfere with the said punishment. Accordingly, he prays for dismissal of the petition.

5. This Court heard the rival submissions made by either side learned counsel and also perused the materials available on records.

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. The facts in the present case are not in dispute. It is not in dispute that the petitioner, without submitting any leave application to the appropriate authority along with medical certificate, has proceeded on leave and, thereafter, had submitted the medical certificate directly to the controlling authority. The said leave application has not been submitted along with the medical certificate. In such view of the matter, the charge memo issued by the appropriate authority against the petitioner resulted in the enquiry being conducted. The petitioner, being a member of the uniformed and disciplined service, it was incumbent on the part of the petitioner to have adhered to the rules and regulations with regard to submission of application for leave.

9. Be that as it may. For non-compliance with the rules, the petitioner was proceeded with resulting in imposing the punishment of compulsory retirement, which was subsequently modified by the appellate authority and, thereafter, confirmed in revision. From the above, it is categorically clear that the appellate authority and the revisional authority have applied their mind independently and have imposed the modified punishment.

10. A perusal of the materials available on record reveal that the allegation levelled against the petitioner is a grave one, which is not one expected from a disciplined force. The enquiry officer having found the petitioner guilty of the charges, the charges levelled being grave in nature, the disciplinary authority imposed punishment of compulsory retirement, which on appeal was modified by the appellate authority and confirmed by the revisional authority. On a holistic consideration of the entire issue, this Court is of the considered view that the punishment imposed on the petitioner could in no way be said to be disproportionate or shocking the conscience of the Court warranting interference. The petitioner has not proved that the punishment imposed on her is arbitrary or bad or the punishment is disproportionate to the gravity of the proved charges and is in contravention of the rules. In such circumstances, this Court is of the considered view that

the punishment imposed on the petitioner is just and reasonable and the same does not warrant any interference at the hands of this Court.

11.For the reasons aforesaid, this writ petition is dismissed as being devoid of merits. Consequently connected miscellaneous petition is closed. However there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Government of Tamil Nadu,
Home Department,
Fort. St.George,
Chennai 600 009.
2. The Director of General Prisons,
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3. The Superintendent,
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+1cc to the Government Pleader in Sr.No.26570

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