

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :15.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7452 of 2013

P.Somasundaram

...Petitioner

- Vs -

1. Managing Director,
Metropolitan Transport,
Corporation (Chennai) Limited,
Pallavan Salai,
Chennai 600 002.

2. General Manager,
Metropolitan Transport
Corporation (Chennai) Limited,
Pallavan Salai,
Chennai 600 002.

...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 records pertaining to the order passed by the first respondent in his proceedings No.17196/Sabi (Ona)1/Manapok/2006 dated 17.09.2012 confirming the order passed by the 2nd respondent in his proceedings No.17196/Sabi (Ona)1/Manapok/2006 dated 13.06.2007 and quash the same, direct the respondents to reinstate the petitioner in service and confer all the consequential benefits.

For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates
For Respondents: Mr.M.Elumalai, A.G.P.,

ORDER

This Writ petition was filed by the petitioner, to call for the records pertaining to the order passed by the first respondent in his proceedings No.17196/Sabi(Ona)1/Manapok/2006 dated 17.09.2012 confirming the order passed by the 2nd respondent in his proceedings No.17196/Sabi(Ona)1/Manapok/2006 dated 13.06.2007 and quash the same, direct the respondents to reinstate the petitioner in service and confer all the consequential benefits.

2. The case of the petitioner is that he joined as Conductor in the erstwhile Marudhu Pandiyar Transport Corporation and posted at Pudukottai Depot in the year 1996 and thereafter he was transferred to Thiruvalluvar Transport Corporation in the year 1991, subsequently he was allotted to Kumbakonam Branch based on his request. Due to administrative reasons, in the year 2000, he was transferred to Metropolitan Transport Corporation (Chennai) and posted at Chennai Depot. While he was working in the first respondent Transport, a charge memo dated 14.08.2006 was framed by the respondent, alleged that the petitioner stayed away from duty on 21.11.2005 onwards, without prior permission for eight days, for which in violation of the Standing Order No.25 (VI). It is averred by the petitioner that though the respondent framed the charge memo, it was not served on the petitioner, disciplinary proceedings were initiated against the petitioner and after conducting enquiry, without receiving any explanation, the respondents concluded the disciplinary proceedings. Based on the enquiry report, the 2nd respondent has passed the final order by his proceedings dated 13.06.2007, imposed a major punishment, removed the petitioner from his service. As against the order of removal from service, the petitioner preferred Appeal before the first respondent in the last week of June 2007 and the copy of the same was submitted to the Minister on 7.10.2007, requesting to interfere, the office of the Minister was also kind enough to forward his appeal to the 1st respondent. Thereafter, the petitioner made representation to the Transport Minister in January -2008, since no action has been taken, thereby for consideration of his appeal, he filed WP.No. 15297 of 2012 before this Court and this Court by its order dated 18.06.2012, directed the 1st respondent to dispose of the petitioner's appeal. Pursuant to the order of this Court, the 1st respondent passed an impugned order on 17.09.2012, rejected his appeal. Hence the petitioner made a request on 18.10.2012 to the 1st respondent to review the order of the 1st respondent, later he came to know about that the same was forwarded to the 2nd respondent, however till date there was no action as against his representation. Hence the present petition.

3. Learned counsel appearing for the petitioner submitted that though the petitioner has absented himself only for 8 days, without obtaining prior permission from the 2nd respondent, which is the only fault committed by the petitioner. Only on the said ground, without considering his previous service rendered by him in the respondent's Transport Corporation, the whole disciplinary proceeding was initiated, without providing opportunity to the petitioner to submit his explanation, ultimately leading to the passing of the impugned order of removal from service, which is unsustainable one. 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 Additional Government Pleader appearing for the respondents, referred the counter affidavit filed by the respondents in support of his contention, denied the averments made by the petitioner and vehemently contented that on account of his voluntary request of transfer, the petitioner was absorbed in the respondent Corporation from 01.04.1999 and till the order of dismissal, he has reported for duty only a period of some days. In addition to it, on a four spell of unauthorised absence he was proceeded by departmentally and he regularly imposed with punishment periodically. It is the further contention of the learned Additional Government Pleader that without any authorization or a sanction of leave, he has stayed on an unauthorized absence from 21.11.2005. Based on a complaint/report received from the Branch Manager of Adyar Depot, a charge memo dated 14.08.2006 was framed, and the same not only affixed on the notice board of the Adyar Depot, where the petitioner was liable to report daily for duty but also sent to the petitioner's residential address with an acknowledgement proof. Even while the above show cause notice was issued, however there was no reply from the petitioner and he did not show any sign of interest to report for duty, thereby the respondent Management was constrained to pass an order in proceeding order dated 13.06.2007, accordingly he was removed from service. Even thereafter for a period of 5 years, the impugned order was not challenged by the petitioner. The absence and abandonment of service with a recurring delay of 6 years, show that the petitioner has abandoned the service and the decision of the Management on such lines cannot be found fault with. Hence the question of quantum of punishment does not arise in a case of abandon of service and the same is irrelevant also. The unresponsive nature of an employee failing to report duty for continuously and uninterruptedly for a period of 6 years along with an another 6 years even in challenging the order of removal, shows the warranting reasons of imposing such punishment. It is the submission of the learned Additional Government Pleader that unless the punishment imposed is shocking and disproportionate, Court 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 respondent Management, he unauthorised himself for a period of 8 days. In such view of the matter, the

charge memo was issued by the appropriate authority against the petitioner resulted in the enquiry being conducted. The petitioner, being a member of the government 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 dismissal from service, which is a major punishment, was subsequently confirmed by the appellate authority and, thereafter, confirmed by the second respondent. From the above, it is categorically clear that both the respondents have applied their mind independently and have imposed the major punishment.

10. A perusal of the materials available on record reveal that the allegation levelled against the petitioner is not a grave one. The enquiry officer having found the petitioner guilty of the charges, the charges levelled being not grave in nature, the disciplinary authority imposed a major punishment of dismissal from service, which on appeal was rejected by the first respondent and confirmed by the second respondent, on a careful consideration of the entire issue, this Court is of the considered view that while imposing such extreme penalty of dismissal from service, the 2nd respondent has taken into consideration about the past absence, which is not the subject matter of the charge memo, because it is obvious from the extract of the charge memo. Therefore the impugned orders are unsustainable in the eye of law and liable to be set aside.

11. On perusal of the entire materials, it is true that a charge memo was issued, however the same was not received by the petitioner, and as a result of the same, he could not submit his explanation. Before terminating the services of a person, they have to ensure that the charges are served on the concerned person and explanation must be received from him. However in the present case, the petitioner came to know later on that the charge memo has been despatched to his Mayiladuthurai address, whereas the petitioner was working in the corporation staying at Chennai, in any event the show cause notice may be given to him, in fact the petitioner has been referred to by the respondent corporation itself and he was enrolled in 2003 onwards, and has been taking treatment periodically, the petitioner being a conductor, periodical diet is impossible for him practically and the Branch Manager as well as the General Manager of the corporation are well aware of the clinical condition of the petitioner, considered his unauthorised absence of only 8 days is grave one and imposed a major punishment of removal of service is unsustainable one.

12.For the reasons aforesaid, this writ petition is allowed, modifying impugned order passed by the 2nd respondent. Further, this Court directs the 2nd respondent to modify the punishment of dismissal from service into compulsory retirement on the same date and to grant all consequential service and monetary benefits to the petitioner, till the date of 13.06.2007, if otherwise he is eligible. The above exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Managing Director,
Metropolitan Transport,
Corporation (Chennai) Limited,
Pallavan Salai,
Chennai 600 002.

2. General Manager,
Metropolitan Transport
Corporation (Chennai) Limited,
Pallavan Salai,
Chennai 600 002.

+lcc to Mr.K.Moorthy, Advocate, S.R.No.34397

+lcc to M/s.C.S.Associates, Advocate, S.R.No.34319

W.P. NO.7452 of 2013

UM(CO)

RV(03/12/2020)

WEB COPY