

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4800 of 2014

K.Mohandoss

... Petitioner

vs.

1. Government of Tamilnadu,
rep. by its Secretary,
Housing & Urban Development Department,
Fort St. George,
Chennai 600 009.
2. Tamil Nadu Housing Board,
rep. by its Managing Director,
Nandanam, Chennai 600 035. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, after calling for the records pertaining to the Government Order (D) bearing No.316, dated 30.06.2010 read with letter bearing No.15879/Vee.Va.1(2)/2012-5, dated 29.05.2013 issued by the 1st Respondent herein, to the extent it reduces the punishment of dismissal to reduction to lower stage in time scale and the period of non-employment is treated as a break in service, quash the same and consequently direct the Respondents to grant the Petitioner the difference of wages consequent to the reduction and the period treated as break in service should be treated as a continuous service and grant arrears of salary and arrears of terminal benefits including higher pension with interest @ 12% per annum.

For Petitioner : Mr.V.Ajoy Khose

For 1st Respondent : Mr.A.N.Thambidurai,
Special Government Pleader

For 2nd Respondent : Mr.R.Bharath Kumar

O R D E R

It is the case of the Petitioner that, while he was working as Superintendent in the 2nd Respondent/Board, he availed Medical Leave for a period of 2 months and Earned Leave for a period of 1 month in the year 2003 and joined duty

on 22.06.2003. On 24.06.2003, staff and Officials of the 2nd Respondent/Board suddenly decided to meet the Managing Director of the Board to represent their grievances, and the Petitioner along with other staff proceeded 'en masse' into the Managing Director's room. Thereafter, the 2nd Respondent issued a Charge Sheet dated 20.10.2003 and placed the Petitioner under suspension. Denying the charges as totally baseless, the Petitioner sent a reply dated 05.12.2003 to the 2nd Respondent.

2. According to the Petitioner, he never indulged in instigating other staff members of the 2nd Respondent/Board to meet the Managing Director of the Board on 24.06.2003 at 11.00 a.m., as alleged and that, he was one among the other staff members who assembled 'en masse' and proceeded to the chamber of the Managing Director of the 2nd Respondent/Board.

3. It is further stated by the Petitioner that, he submitted his reply to the Enquiry Officer's Report on 28.07.2004 and requested to drop the charges against him. However, the Disciplinary Authority vide proceedings No.DC6/40341/2003, dated 11.08.2004 dismissed the Petitioner from service with immediate effect. Challenging the same, the Petitioner made an Appeal dated 20.08.2004 to the 2nd Respondent/Chairman, Tamil Nadu Housing Board, requesting to cancel the dismissal order passed by the Disciplinary Authority. The 2nd Respondent rejected the said Appeal vide proceedings No.DC-6/40341/2003, dated 14.05.2007, which, according to the Petitioner is a non-speaking order.

4. Aggrieved by the dismissal of the Appeal, the Petitioner filed a Review dated 07.07.2007 to the 1st Respondent. As no orders were passed on the said Review, the Petitioner sent a reminder dated 10.08.2009 to the 1st Respondent, as he was about to retire from service on 31.05.2010. By an order in G.O.(D) No.316, dated 30.06.2010, the 1st Respondent modified the punishment of dismissal imposed on the Petitioner, to the following effect:

"(i) That the punishment of dismissal from service imposed against Thiru.K.Mohandoss, formerly Superintendent of Housing Board shall be modified as the punishment of reduction to lower stage in time scale;

(ii) That the period from the date of dismissal viz. 11.08.2004 to the date of issue of order of reinstatement shall be treated as break in service."

5. Pursuant thereto, the Petitioner filed a Review Petition dated 30.06.2011 to the 1st Respondent requesting to

exonerate him from the charges framed against him and to grant him all the attendant benefits. In spite of subsequent reminder letters, the 1st Respondent vide letter dated 29.05.2013, rejected the Petitioner's Review Petition.

6. Challenging the rejection of the said Review Petition and for a consequential direction to the Respondents to grant him the difference of wages, consequent to the reduction and the period treated as break-in-service and to treat the said period as continuous service, and to grant arrears of salary and arrears of terminal benefits including higher pension with interest @ 12% per annum, the Petitioner has come up with the present Writ Petition.

7. Learned counsel for the Petitioner submitted that, the Respondents ought to have taken note of the fact that, the issuance of Charge Sheet is to curtail the activities of the Association of staff from redressing their grievances and to threaten the staff with dire consequences of suspension and dismissal, without proper evidence. It is his contention that, the Inquiry Officer had acted mechanically and held that, the charges against the Petitioner as proved, without any basis.

8. Per contra, learned Special Government Pleader appearing for the 1st Respondent submitted that, the charges framed against the Petitioner are grave in nature and after detailed examination of the charges with connected records, the Inquiry Officer has stated in his findings that, all the charges framed against the Petitioner were held as proved. He further submitted that, only based on the Inquiry Officer's Report, final order has been passed by the competent Authority and there is no question of violation on the part of the Respondents.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. 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, the Courts interfere with the same, in exercise of powers under Article 226 of the Constitution of India. In Prem Nath Bali - Vs - High Court of Delhi reported in (2015 (16) SCC 415), the Hon'ble Supreme Court has 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)

11. In the case on hand, the prime charge against the Petitioner is that, on 24.06.2003, he instigated other staff members of the 2nd Respondent/Board to assemble 'en masse' in the chamber of the Managing Director of the 2nd Respondent/Board during office hours and that, he along with other staff members forcibly entered the chamber of the Managing Director without prior permission, despite the plea of the Personal Assistant to Managing Director, not to enter the chamber. The second charge against the Petitioner is that, he used unparliamentary language, questioned the Authority of the Board and its Officers on matters of discipline and confidential nature and even threatened to commit suicide with dire consequences. The third charge is that, by the above acts, the Petitioner has violated Regulation 32-A of Tamil Nadu Housing Board Service Regulation, 1969 and Regulation 20 of Tamil Nadu Housing Board

Officers and Servants Conduct Rules, 1963.

12. Denying the charges levelled against him as false, the Petitioner himself has stated in paragraph 6 of the Affidavit that, he was standing in the front row along with others and therefore, the Managing Director had a chance to see him and he had posed certain queries, to which he answered in a polite and decent manner. The Petitioner has denied the allegation that, he used unparliamentary language, questioning the authority of the Board and its Officers on matters of discipline and matters of confidential nature. It is the case of the Petitioner that, no witness was examined to establish the charges framed by the Department and it is nothing but a move to victimize him.

13. Though the Petitioner has stated that, he did not use unparliamentary language and that, he answered in a polite and decent manner to the queries posed by the Managing Director of the 2nd Respondent/Board, he has not made any averment as regards meeting the Managing Director of the Board with prior permission, when the prime allegation against him is that, he along with other staff members assembled in the chamber of the Managing Director without prior permission. Thus, it goes without saying that, the Petitioner is guilty of the charges framed against him.

14. In the light of the aforesaid analysis, this Court is of the view that, there is no flaw in the decision making process and the findings of the Inquiry Officer are not perverse. In view of the misconduct on the part of the Petitioner, he is not entitled to any relief as claimed in this Writ Petition.

In fine, the Writ Petition stands dismissed, as devoid of merits. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Secretary,
Government of Tamilnadu,
Housing & Urban Development Department,
Fort St. George,
Chennai 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai 600 035.

+1cc to Mr.V.Ajoykhose, Advocate SR.35066
+1cc to the Government Pleader SR.35031

W.P.No.4800 of 2014

VG II(CO)
CB(07/12/2020)



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