



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.18473 OF 2009

P.Ganesan (Deceased)

1. Porkodi
2. Karhikeyan
3. Aadhavan
4. Poonguzhali

Petitioners 1 to 4 substituted vide
order made in WMP No.8873/2018 dated 12.06.2018

... Petitioners

Vs.

1. The Chairman/Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House, Chennai 600 002.
2. The Joint Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Chennai 600 002.

... Respondents

Prayer:

Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the first respondent dated 23.02.2009, in Memorandum No.28967/Sapi(O.Na)5/Ma.Po.Ka/05 and quash the same and consequently for a direction, to the respondents to refund the sum of rs.33,898/- together with interest @ 18% p.a. from the date of recovery and promote the petitioner as Superintendent with effect from 01.11.2007 by placing him above his junior and refix his pension accordingly with effect from 01.05.2009, pay the same to the petitioner and pass orders.

For petitioner : Mr.R.Saravanakumar

For respondents : Mr.K.Moorthy



punishment of stoppage of increments without cumulative effect from two years to one year. The above said appeal was dismissed by the first respondent. Assailing the above said order passed by the first respondent, this writ petition has been filed.

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3. The contentions of the written statement filed by the respondents in brief:

After passing of decree in O.S.No.3701/1999 dated 19.01.2004, the petitioner was given all opportunities, calling for an explanation and thereafter, conducted domestic enquiry on the charges levelled against him. The charges were proved in the enquiry and his explanation was found to be not satisfactory. Therefore, punishment was imposed on him, stopping two increments without cumulative effect and to recover his portion of liability of Rs.1,67,498/-. The appellate authority has also rejected the appeal filed by the petitioner. Hence, the writ petition is liable to be dismissed.

4. Heard the rival submissions made by the learned counsels to the both parties and I have perused the materials on record.

5. The contention of the petitioner is that, the incident alleged to have been taken place was in the year 1995, but disciplinary proceedings was initiated only in the year 2005 and there is a delay of 10 years in initiating disciplinary proceedings. Therefore, on the ground of delay and latches, the charges framed as against the petitioner is liable to be quashed. The delay in framing charges is a ground for vitiating the entire proceedings.

6. The another contention of the petitioner is that the respondent has framed two charges against the petitioner. As far as the first charge is concerned, it has not been proved. The punishment was implicated in respect of the second charge only alleging that due to the carelessness and negligence on the part of the petitioner, the forms were missed, which causes loss to the Corporation.

7. According to the petitioner, there is no negligence on the part of the petitioner; and after noticing the forms missing, he had given complaint. Hence, the petitioner made a request before the first respondent to quash the order of punishment and sought for modification of the punishment imposed by the second respondent. Therefore, on this ground, the impugned order is liable to be set aside.

8. The learned counsel appearing for the respondents submitted that the petitioner was working as Senior Assistant in the respondent Corporation and he is responsible for missing of



documents. The enquiry officer has come to the conclusion that in so far as the second charge is concerned, it is proved as against the petitioner. Therefore, the petitioner cannot be disputed that he is not responsible for the missing of the forms. Thus, the respondent has rightly implicated punishment on the petitioner.

9. He further contended that, there is no delay on the part of the respondent corporation. Since, the Tamil Nadu Handloom Weaver's Co-operative Society had filed a suit in O.S.3701/1999 for recovery of of a sum of Rs.2,03,738/- with subsequent interest at 18% p.a. on Rs.1,69,498/- and the Civil Court by its judgment dated 19.01.2004 has decreed the above suit as prayed for. Based on the above decree, disciplinary proceedings was initiated against the petitioner by framing two charges and domestic enquiry was conducted. During enquiry, out of two charges, one charge was proved. Consequent to that, punishment was imposed on the petitioner. Therefore, there is no delay in initiating disciplinary proceedings and hence, the contention of the petitioner cannot be accepted.

10. It is contended by the learned counsel for the petitioner that the petitioner has clearly established before the enquiry officer that he was not sole responsible for the missing of document, whereas, other staff were also responsible for the above missing document. However, action has been taken only against the petitioner, whereas no action was taken against the other staff.

11. It is not disputed that the petitioner was working as Senior Assistant in the respondent Corporation. Hence, he is also responsible for the missing document. The petitioner has not denied that the above said documents were not missing from the office of the respondent Corporation. A perusal of the Judgment passed by the civil court clearly shows that, after considering the oral and documentary evidence adduced by both the parties, it has come to a conclusion that the respondent corporation has to pay the suit amount. Thereby, there occurred a loss to the respondent Corporation, due to the carelessness and negligence of the petitioner. Apart from that, the petitioner himself had made a representation before the respondents seeking reduction of punishment. Therefore, the petitioner is responsible for the missing of documents. Further, pursuant to the decree passed by the civil court, the respondent Corporation had initiated disciplinary proceedings against the petitioner. Therefore, the contention of the petitioner that there is an inordinate delay in initiating disciplinary proceedings cannot be accepted.



12. Further, the petitioner has sought for reduction of punishment of stoppage of increment from two years to one year. In this context, the Hon'ble Supreme Court in its decision in Dev Singh Vs. Punjab Tourism Development Corporation Ltd and Others reported in 2003(8) SCC 9, has held thus.

Employment-Dismissal-Whether sustainable? - Held, "no" - Charge of displacement of file without ulterior motive. Hence, punishment of dismissal too harsh totally disproportionate to misconduct alleged and certainly shocking judicial conscience. To avoid further prolonged litigation punishment modified. Punishment of withholding one increment including stoppage at efficiency bar imposed. However, applicant not entitled to back wages for a period of suspension except subsistence allowance.

The Court, sitting in appeal against a punishment imposed in the disciplinary proceedings, will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary /appropriate authority to reconsider the penalty imposed or to shorten the litigation, it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. Further, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

In the case on hand, the reasons stated by the enquiry officer is cogent and accepted and it does not warrant any interference. Based on the above report, the second respondent has imposed punishment, which is perfectly valid and proper. Therefore, in view of the above decision of the Hon'ble Supreme Court of India, this court is not inclined to interfere with the punishment imposed on the petitioner.

13. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

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Sub Assistant Registrar



To

1. The Chairman/Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House, Chennai 600 002.
2. The Joint Managing Director,
Metropolitan Transport Corporation Ltd.,
Pallavan House, Chennai 600 002.

+1cc to Mr.E.Veda Bagath Singh, Advocate, S.R.No.65697
+1cc to Mr.K.Moorthy, Advocate, S.R.No.65775

W.P.No.18473 of 2009

PL (CO)
PM/17/02/2022