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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.12791 of 2014

V.Sundararajan

... Petitioner

Vs.

1. The Nuclear Power Corporation of India Ltd.
Rep. by its General Manager,
Madras Atomic Power Station,
Kalpakkam-603 102.
2. The Additional General Manager (HR)
Disciplinary Authority
Nuclear Power Corporation of India Ltd.
Madras Atomic Power Station,
Kalpakkam-603 102.
3. The Station Director,
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station,
Kalpakkam-603 102.

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records connected with the impugned order passed by the 2nd Respondent in No. MAPS/31(2253)-2012-L0 dt.06.06.2012 which was confirmed by the 3rd Respondent in No. MAPS/31 (2253) 2012/ 2012-LO dt.21.08.12 and quash the same and consequently direct the Respondent to release the leave encashment amount withheld by it and also praying to pay the statutory subsistence allowance due to him during the period of his suspension for the period from 24.08.2011 to 31.05.2012.

For Petitioner : Mr.V.S.Jagadeesan for
Mr.R.Rengaramanujam

For Respondent : Mr.V.Vijayshankar



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petitioner and further, treating the suspension period from 24.8.2010 to 31.5.2012 i.e., date of superannuation as absence period. Challenging the said punishment inflicted on the petitioner, the petitioner has preferred an appeal before the Appellate Authority, third respondent herein. The third respondent by order dated 21.8.2012 has rejected the said appeal by confirming the order of the original authority. Hence, the present writ petition before this Court.

2. Counter affidavit has been filed by the respondent by stating that charge memo was served to the petitioner in english and the petitioner also has submitted his detailed explanation to the said charges in english and the other correspondence of the petitioner are also in english and therefore, the contention of the petitioner that he did not know english and no opportunity was given to the petitioner to defend the charges is misconceived and there is no iota of truth in making such allegation as against the respondent. The next contention of the respondent in the counter affidavit is that the petitioner has filed W.P.No.8392 of 2011 wherein this Court by order dated 10.2.2011 permitted the petitioner to have legal assistance from the members of the trade union where the petitioner is member. The petitioner did not appear before the enquiry officer nor any person appeared before the enquiry officer to defend the charges framed against the petitioner. Despite opportunity granted to the petitioner, the petitioner did not cooperate with the enquiry officer. The other allegation of the petitioner that the request of the petitioner to engage a defence assistance of his own choice to defend the charges from outside the trade union was not permissible. The respondent upon taking lenient view, inflicted minor punishment as against the petitioner. As such, there is no warrants to interfere with the order passed by the respondent.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. According to the learned counsel appearing for the petitioner, the petitioner has filed W.P.No.8392 of 2011 challenging the order passed by the respondent rejecting the request of the petitioner, wherein this Court by order dated 10.2.2011 permitted the petitioner to have legal assistance of his choice from the members of the trade union where the petitioner is member. According to the petitioner, the petitioner was not in a position to engage the defence assistance from the trade union and therefore, he made representation seeking defence assistance from outside trade union and the same was rejected by the respondent without giving any reason. The respondent, without affording an opportunity to the petitioner to defend the case as per Rules, passed the



impugned order. Thus, the impugned order is liable to be quashed on the ground of violation of principles of natural justice.

5. Admittedly, the petitioner has made a request before the enquiry officer as well as the respondent to furnish copy of the charge memo in tamil version. However, a perusal of the explanation submitted by the petitioner and other communications sent by the petitioner are only in english and nowhere he specifically stated that the said explanation submitted by the petitioner is only with the assistance of another person. Therefore, it is presumed that the petitioner submitted his explanation on understanding the charges framed and served on the petitioner. The next contention of the petitioner is that he made representation before the enquiry officer to allow one Mr.B.Ayyalu to act as defence assistance of the petitioner and the same was rejected without assigning any reason.

6. In a writ petition filed by the petitioner in W.P.No. 8392 of 2011, this Court by order dated 10.2.2011 after elaborate discussion, permitted the petitioner to have defence assistance of his choice from the same trade union, in which the petitioner is a member. The relevant portion of the order reads as follows:

'5. Therefore, I am of the view that the petitioner should be permitted to engage an Assistant from his own trade union, in the enquiry, which is pending for a quite a long time, so that it could be completed without any further delay. Though the learned counsel for the respondents submits that the petitioner is not entitled to take any assistance of his choice from anywhere, it has to be seen that the petitioner is not asking for any legal practitioner or any person from outside the Union and his only case is that he being uneducated employee while participating in the domestic enquiry, he has to be assisted by an Office-bearer of a trade union of which he is a member. When the standing order clearly says that a workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member, I do not find any difficulty in permitting the petitioner to have an assistant of his choice from the same trade union, in which he is a member.'

7. In view of the aforesaid order, the petitioner cannot raise the same ground that the petitioner was not given an



opportunity to engage defence assistance of his choice from outside the trade Union. Therefore, the petitioner cannot seek any relief on this aspect.

8. Coming to the punishment inflicted against the petitioner viz.,

1. Withholding of earned leave encashment;
2. The suspension period was treated as absence;

According to the counsel appearing for the petitioner, considering the nature of charges, the punishment of treating suspension period as absence is excessive and the same may be modified to lesser punishment. Insofar as the punishment of withholding earned leave encashment is concerned, it is property of the petitioner, the respondent has no right to withhold the earned leave encashment.

9. The learned counsel appearing for the petitioner has placed reliance on the following decisions of this court to contend that in the absence of statutory provisions, the respondent cannot withhold earned leave encashment;

1. CDJ 2019 MHC 2977 [THE SECRETARY TO GOVT. REVENUE DEPARTMENT, SECRETARIAT & OTHERS VS. K.PALANIYANDI]
2. CDJ 2019 MHC 1589 [V.S.NITHIYANANDAM VS. TAMILNADU SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD., CHENNAI]
3. 2019 SCC OnLine Mad 1195 [STATE OF TAMIL NADU, REP. BY THE SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT AND ANOTHER VS. V. MAHALINGAM]

10. The Division Bench of this Court in STATE OF TAMIL NADU, REP. BY THE SECRETARY TO GOVERNMENT, PUBLIC WORKS DEPARTMENT AND ANOTHER VS. V. MAHALINGAM [2019 SCC ONLINE MAD 1195] has categorically held that in the absence of an enabling statutory provisions to that effect, an unfair advantage cannot be taken of a rather fortuitous situation by snatching the frugally accumulated earned leave of a Government Servant in a capricious manner, which remains unencashed at the time of his attaining the age of superannuation. In the light of the aforesaid decision, this Court has no hesitation to set aside the impugned order passed by the respondent insofar as the withholding of earned leave encashment payable to the petitioner.

10. In view of the foregoing discussion and the decision cited supra, this Court is inclined to pass the following order:

- (i) The impugned order passed by the respondent insofar



as the withholding of earned leave encashment alone is quashed.

(ii) Insofar as the other punishment is concerned, this Court is not inclined to interfere with the impugned order passed by the respondent.

(iii) The respondent is directed to settle the earned leave encashment amount to the petitioner within a period of 12 weeks from the date of receipt of copy of the order.

11. With the above observations, the writ petition is partly allowed to the extent indicated above. No cost.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The General Manager,
Nuclear Power Corporation of India Ltd.
Madras Atomic Power Station, Kalpakkam-603 102.
2. The Additional General Manager (HR)
Disciplinary Authority
Nuclear Power Corporation of India Ltd.
Madras Atomic Power Station, Kalpakkam-603 102.
3. The Station Director,
Nuclear Power Corporation of India Ltd.,
Madras Atomic Power Station, Kalpakkam-603 102.

+1cc to Mr.R.Renga Ramanujan, Advocate, S.R.No.67660

W.P.No.12791 of 2014

SR(CO)
SU(19/01/2022)