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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.07.2021

PRONOUNCED ON : 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.7192 of 2017
and WMP.No.7814 of 2017

E.Kandasamy

... Petitioner

Vs.

1.Tamil Nadu Civil Supplies Corporation
rep. by its Managing Director,
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

2.The General Manager (Administration),
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent relating to the impugned order dated 24.07.2015 bearing Procs. Order No.AD5/81775/2014 and of the first respondent dated 20.02.2017 bearing ref: Procs. Order No.AD1/47763/2015 and to quash the same and consequently direct the respondents to reinstate the petitioner into service with backwages, service and all other benefits.

For Petitioner : M/s.Sai Bharath

For Respondent-1: Mr.Rajendran

for Mr.L.P.Shanmugasundaram

For Respondent-2: Mr.K.Tippu Sultan, GA

O R D E R

The present Writ Petition is heard through Video Conferencing on 13.07.2021.

2. The petitioner herein, while serving as an Office Assistant under the respondent Corporation, is claimed to have remained unauthorizedly absent for a period of 9 months



commencing from 16.02.2014. Charges through a memorandum dated 16.12.2014, were levelled against the petitioner for unauthorised absence and pursuant to the explanation rendered by the petitioner, an enquiry was conducted and ultimately, the charges were held to be proved. A show cause notice thereafter was issued on 10.04.2015, for which the petitioner has submitted his explanation on 07.07.2015. Not being satisfied with the explanation, the second respondent herein had passed an order dated 24.07.2015, dismissing the petitioner from service. The appeal filed against the dismissal order was rejected by the first respondent herein on 20.02.2017. The orders of dismissal dated 24.07.2015 and the appellate order dated 20.02.2017, are put under challenge in the present Writ Petition.

3. The learned counsel for the petitioner submitted that the petitioner herein is governed under the Tamil Nadu Civil Supplies Corporation Employees' Service Regulations, 1989 and the second respondent had not followed the procedure contemplated under Rule 4 of the said Regulations, while awarding the major punishment of dismissal from service.

4. Per contra, the learned Standing counsel for the respondent Corporation submitted that the period of unauthorized absence was inordinate and the petitioner had not proved beyond satisfaction, as to the reasons for his unauthorized absence and therefore, there is no infirmity in the order of punishment passed by the respondents.

5. Rule 4 of the Tamil Nadu Civil Supplies Corporation Employees' Service Regulations, 1989 reads as follows:

"4.PROCEDURE TO AWARD MAJOR PENALTIES:

a)The competent authority as per Regulation 2, may either suo moto or on receipt of report as per explanation under the regulation or as indicated in Regulation 3 shall issue a memo recording the basis of charge, quoting the relevant rules or instructions omitted to be followed, the consequent result of such omission with specific charges suitably framed and the delinquent should be informed of the list of documents relied upon as the basis of charge, the list of witnesses whose versions also form the basis of the charge. The delinquents should then be required to furnish the list of witnesses if any on his defence within a reasonable time failing which the presumption would be that he has no witnesses on his defence.

The competent authority to impose the Major penalty thereon shall appoint an enquiry officer,



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immediately subordinate to him (punishing authority) to conduct an objective enquiry into the charges in the presence of the delinquent who should have been given due notice therefor. At the enquiry the documents relied upon in the charge memo should be made available to the delinquent for perusal. The delinquents may also be permitted to peruse any other record of the Corporation that are relevant to the charges, if he/she so desires. If for any reason such records, desired to be perused, are considered to be not relevant to the charges, the enquiry officer shall record so in his findings. So also the witnesses whose versions form the basis of the charges should be examined providing opportunity to the delinquent to cross examine. Thereon, the witnesses produced by the delinquent should be examined with due relevance to the charges. The delinquent may also be permitted to file his written statement."

6. In the instant case, the respondents had framed the charges and had considered the preliminary explanations to the charges. Thereafter, when the enquiry officer had held the charges to be proved, further explanations were called for and ultimately, the major punishment was imposed. However, the procedure contemplated under Rule 4 of the said Regulations requires the competent authority to issue a memo recording the basis of the charge, quoting the relevant rules and instructions omitted to be followed and the consequent result of such omission with specific charges suitably framed and the delinquent should also be informed of the list of documents relied upon and the list of witnesses whose versions framed the basis of the charges. Admittedly, this procedure was not adopted by the respondents during the course of the departmental action. Hence the major punishment, which is the outcome of such an enquiry that is not in conformity with the procedure, requires to be interfered with.

7. The learned counsel for the petitioner submitted that the petitioner herein had tendered explanations for the unauthorized absence stating that he was suffering from Peripheral Neuropathy, for which he was taking Siddha treatment at Madurantakam and the supporting medical certificate was produced before the Enquiry Officer.

8. The only basis for holding the charges proved was that, the petitioner had admitted to his medical ailment and his consequent unauthorized absence. When the petitioner had produced the relevant document explaining his absence owing to



his treatment with the Siddha practioner for the relevant period of his absence, there was a duty cast upon the enquiry officer, as well as the disciplinary authority to give credence or consideration to such a certificate. Such a consideration would be significant to enable the disciplinary authority to weigh the gravity of the charges, vis-a-vis the explanation and thereby determine the proportionality of the punishment proposed. Though the petitioner had admitted his absence, the enquiry officer ought to have considered the explanation before coming to a conclusion that the charges have been proved, thereby enabling the disciplinary authority to determine the proportionality. The regulations of the respondent Corporation also indicates that merely because the procedure for imposing a major punishment has been followed in the disciplinary procedure, the same need not end in inflicting a major punishment.

9. Since the procedure contemplated under Rule 4 of the Regulations have been deviated and the enquiry officer has also not given due weightage to the medical evidence produced by the petitioner for his absence, this Court is of the view that the major punishment of dismissal from service is not proportionate to the levelled charges.

10. It is now brought to the notice of this Court that the petitioner herein had already attained the age of superannuation and therefore no useful purpose would be served by directing the respondent to reinstate the petitioner, back into service.

11. It is also stated that the employees of the Respondent Corporation are not entitled for pension, but for a mere ex-gratia amount of Rs.2500/- per month for the retired employees. In these circumstances, this Court is of the view that if the major punishment imposed on the petitioner is modified into a minor punishment, the ends of justice could be secured.

12. In the light of the above observations, the impugned order passed by the second respondent in Procs. Order No.AD5/81775/2014, dated 24.07.2015 and the order passed by the first respondent in Procs. Order No.AD1/47763/2015 dated 20.02.2017, are set aside. Consequently, the punishment of dismissal from service imposed by the second respondent herein through his order dated 24.07.2015, is modified into one of stoppage of increment for a period of two years with cumulative effect. The modified punishment shall come into effect from 24.07.2015, when the original order of punishment was imposed. Since the petitioner would now be deemed to have undergone the punishment, he would be consequently entitled for the retirement benefits for which he is entitled to, had the order of dismissal not been passed, apart from the monthly ex-gratia of Rs.2,500/-



in lieu of his pension. The respondents shall endeavor to release the retirement benefits to the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petition is also closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Managing Director,
Tamil Nadu Civil Supplies Corporation
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

2.The General Manager (Administration),
No.12, Thambusamy Road,
Kilpauk, Chennai-600 010.

+1cc to Mr.T.Saikrishnan, Advocate, S.R.No.34867

W.P.No.7192 of 2017

UM(CO)
CB(06/08/2021)