

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.30969 of 2019

A.Mohan

.. Petitioner

Vs.

1. The Registrar General
Madras High Court
Chennai - 600 104.

2. The Principal District Judge
Salem.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned orders in RoC.No.363/2015/C1, dated 14.8.2019 on the file of the first respondent and RoC.No.7115/2011/Inq., dated 31.10.2014 on the file of the second respondent and quash the same, and consequently direct the respondents to pay all monetary benefits to the petitioner with all attended benefits and to fix corresponding pension within a reasonable time.

For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.K.Elango

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The writ petitioner here challenges the affirmation by the appellate authority in the High Court on its administrative side of the misconduct on the part of the petitioner as held by the disciplinary authority in the order dated October 31, 2014.

2. An earlier order of dismissal from service was revoked by an order dated April 1, 1999 and the writ petitioner resumed his position on or about July 2, 1999, whereupon he was transferred to Mettur on September 30, 2000. The writ petitioner was again

suspended from service on November 30, 2004, which suspension was subsequently revoked. He was next suspended on March 2, 2006, which also came to be revoked. He was again absent from duty from October 1, 2007 for a considerable length of time.

3. At the time that the matter was considered by the Principal District Judge, Salem, the writ petitioner was aged about 55 years and the grounds that he proffered to justify his conduct pertained to the difficult circumstances faced in his family. The disciplinary authority perceived that the absence for long periods in violation of the rules did not entitle the writ petitioner any leniency. Indeed, the writ petitioner had almost nothing to say in respect of his long periods of absence and it is recorded in the order impugned dated October 31, 2014 that he merely pleaded for mercy. The disciplinary authority observed that the writ petitioner had not served in any one Court regularly during the entire period of his service from the date of his appointment on August 31, 1985. An order of dismissal from service followed.

4. The initial ground urged by the appellant is that notwithstanding the subsequent appeal, the Registrar-General of this Court by a terse and unreasoned order communicated the veritable rejection of the appeal, albeit the punishment being reduced to removal from service.

5. When the matter was taken up earlier, it was submitted on behalf of the High Court administration that usually such matters are referred to a sitting Judge of the High Court or a Committee of Judges and such Judge or Committee decides the appeal.

6. In the present case, a Committee of three Hon'ble Judges of the High Court decided the matter by or about April, 2019 affirming the finding of grave misconduct on the part of the delinquent. It is necessary that the reasons indicated in the common order of the appellate authority be noticed:

"Appeal petition and records perused. The disciplinary authority PDJ, Salem in his order dated 31.10.2014 has given detailed reasons for his decision. The appeal petitioner service record disclosed his incorrigible conduct of unauthorized absence on several occasions. After the dismissal from service and later reinstatement pursuant to order of the High Court in W.P.1958/93 dt 01.04.99, has not mend his conduct. He again stayed away from reporting duty from 01/10/07. ..."

However, two of the members on the Appellate Committee were of the opinion that the punishment ought to be modified from dismissal from service to the lesser removal from service.

7. The writ petitioner says that the appellate order does not reveal the consideration of the grounds that had been urged by the appellant. The appellant almost suggests that the appellate authority merely accepted the findings of the disciplinary authority without applying its independent mind to the matters in issue.

8. It must be remembered at this stage that the scope of judicial review which is exercised in this jurisdiction under Article 226 of the Constitution has more to do with the decision-making process than the decision itself. When a judicial or quasi-judicial decision is questioned in this jurisdiction, the Writ Court looks at whether a fair procedure was adopted, whether the writ petitioner was given a chance to present his case and whether the matters referred to by the writ petitioner were deliberated upon or considered before rendering the impugned decision.

9. In matters arising out of departmental or disciplinary proceedings, ordinarily, three stages are involved. There is an inquiry officer who undertakes the fact-finding exercise and reports the matter to the disciplinary authority. If the disciplinary authority perceives that the matter ought to be carried forward, the disciplinary authority forwards the inquiry report to the delinquent along with the disciplinary authority's prima facie view thereon for the delinquent to satisfy the disciplinary authority as to why steps should not be taken against the delinquent. The disciplinary authority then considers the representation of the delinquent in the context of the inquiry report to render a reasoned decision. If there is a provision for an appeal, the appellate authority considers the disciplinary authority's order in the backdrop of the grounds of challenge urged in the appeal.

10. The case here was of the irregular and pitiable attendance of the writ petitioner over a considerable period of time since he was engaged in 1985. The records spoke for themselves since the number of days the writ petitioner attended and the time that he did not attend without obtaining leave or without any basis were all there to see. Indeed, the writ petitioner may not have had much of a defence and pleaded for mercy. In such context, the disciplinary authority rejected the plea and found that the conduct of the writ petitioner merited an order of dismissal from service. There does not appear to be anything amiss about the procedure adopted till the order of the disciplinary authority. A fair opportunity was afforded to the writ petitioner both at the inquiry stage and before the disciplinary authority and no grievance is indicated in such regard. Even if the veracity of the decision has to be looked

into in this jurisdiction, it does not appear that an absurd conclusion was rendered on the set of facts that presented themselves before the disciplinary authority. It was possible for the disciplinary authority, on the basis of the facts before such authority, to pass the relevant order and impose the punishment as inflicted.

11. In its wisdom, the appellate authority concurred with the finding of misconduct, but perceived that the petitioner ought to be removed from service instead of the harsher dismissal from service. The only question that remains is as to whether the appellate authority considered the matter in the appropriate perspective on the basis of the grounds urged by the appellant.

12. It is elementary that even in appeal, the authority is somewhat limited and the appellate authority may not always be required to reappraise the evidence unless exceptional grounds are made out. Here was a case of an employee failing to attend office regularly and nothing more was to be ascertained as to the facts which formed the basis of the charge against the employee. Further, it is elementary that when an appellate authority accepts the findings of the original authority in a judicial or quasi-judicial matter, the appellate authority is not called upon to discuss the matter threadbare as long as the application of the independent mind of the appellate authority is reflected in the decision rendered by such authority. That would not imply that the appellate authority may merely indicate that it had considered the order in appeal and agreed therewith. Some modicum of application of mind must be indicated. Such application of mind is indicated not only from the order as set out above, but from an independent endorsement of the finding of guilt by another member of the Committee which runs into another two or three lines. Such other member of the Appellate Committee recommended removal from service rather than dismissal from service and the third member also concurred in such modification of the punishment. The majority view was duly communicated to the delinquent by the Registrar-General.

13. At the end of the day, it is evident that the appellate authority was aware that the charge against the delinquent was of unauthorised absence. The appellate authority agreed with the manner in which the disciplinary authority arrived at the conclusions and, individually, the members of the appellate authority clearly indicated that they agreed with the conclusion on the facts that were available. More than this, the appellate authority was not required to go into the matter.

14. For the reasons aforesaid and considering the incorrigible conduct of the writ petitioner herein as has been

appropriately described by the appellate authority, the matter does not warrant any further consideration. The disciplinary authority quite appropriately came to a just conclusion on the basis of the facts before such authority. The appellate authority appropriately endorsed the finding of misconduct, but modified the punishment to bring it to a lower level. There is no cheer at this stage for the writ petitioner either.

W.P.No.30969 of 2019 is dismissed. Though the petitioner's conduct otherwise warrants costs, considering the punishment suffered, no costs are awarded. Consequently, W.M.P.No.31071 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The Registrar General
Madras High Court
Chennai - 600 104.
- 2.The Principal District Judge
Salem.

Copy to

- 3.The District Munsif,
Mettur.
- 4.The Section Officer,
Legal Cell, Highcourt,
Madras-104.
- 5.The Section Officer,
C1 Section,
Administration Department,
Highcourt, Madras 104

NRL (CO)
SM/16/02/2021

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