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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2022
Pronounced on : 11.05.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34060 of 2007
and W.M.P.Nos.1 and 2 of 2007

P.Ganesh Prasad

...Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the Revenue Secretary,
Fort St.George,
Chennai-600 009.

2. The Special Commissioner,
Commissioner of Revenue Administration
(Appellate Authority),
Fort St.George,
Chennai-600 005.

3. The Joint Commissioner,
Revenue Administration
(Disaster Management & Mitigation Department,
Chepauk, Chennai-600 005.

... Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus calling for the records relating to the order of dismissal of service of the petitioner in proceeding no. A.N1(1)/ 8999/ 2006 dated 06.02.2006 of the third respondent which was confirmed by the second respondent vide his proceedings in Proc.No.O.P1(1)/ 26887/ 2007 dated 20.05.2007 and further confirmed by the proceedings of the first respondent in Government Order (1t) No.531 dated 14.09.2007 so as to quash the same and reinstate the petitioner into service.

For Petitioner : Mr.B.Manoharan

For Respondents: Mrs.R.L.Karthika
Government Advocate



O R D E R

The present writ petition is filed challenging the order of dismissal from service passed by the 3rd respondent herein on 06.02.2007 which was confirmed by the 2nd respondent vide order dated 20.05.2007 and also by the first respondent vide order dated 14.09.2007.

2. The petitioner was appointed in the Department of Revenue Administration as a Junior Assistant, on 22.10.1997 on compassionate grounds. The petitioner had been in service for about 10 years.

3. The learned counsel for the petitioner submitted that the petitioner is a Hypertensive patient and was advised to take rest and thus the petitioner was unable to attend the office on various dates reported in the charge sheet as constituting unauthorised absence /leave /staying away from duty. The Charge Memo dated 03.06.2006 was issued to the petitioner which contained 4 charges viz.

Charge 1	P.Ganesh Prasad, Junior Assistant While working in Tappal Section applied for Earned Leave from 18.07.2005 to 31.07.2005 and Medical Leave from 01.08.2005 to 08.11.2005 and stayed away from duty from 09.11.2005 without any intimation. Only after, a memo was issued to him to report to duty, he joined duty on 25.01.2006. Thus, without submitting any leave application, he stayed away from duty unauthorizedly till 24.01.2006. He has failed to serve as a responsible Government Servant and thus caused much dislocation to office work and hardship to administration.
Charge 2	During the year 2005 and 2006 (as noted in the Annexure-II) he has been in the habit of availing leave without prior permission. Submitting leave applications belatedly and staying away from duty without submitting either leave application or intimation.
Charge 3	Though P.Ganesh prasad joined duty on 25.01.2006, he stayed away from duty without any leave application from 13.02.2006 to 16.02.2006. Thereafter, he again stayed away from duty from 28.02.2006 to till date (29.05.2006). By his action he has failed to act as a responsible Government Servant and caused much dislocation to office work.



Charge 4

Since, P.Ganesh Prasad very often stayed away from duty, the work allotted to him in Tappal Section was very much affected. By his action, he has violated the rule 20(1) of Tamil Nadu Government Servants Conduct Rules.

4. The Disciplinary Authority on finding that the petitioner was in the habit of availing leave without prior permission and sending leave letters belatedly and staying away from duty unauthorizedly issued the above charge memo under Rule 17(b) proposing removal from service. The petitioner submitted his explanation to the above charges. The petitioner submitted that in view of his medical condition viz., High Blood Pressure, he was on leave. However, the Enquiry Officer finding that the explanation was not convincing held that all the 4 charges were proved. After the copy of the entire report was furnished to the petitioner and on obtaining his explanation to the said report and after enquiry the Disciplinary Authority came to the conclusion that all the 4 charges were proved. It was further found that he had been habitually abstaining from duty, and that on earlier occasions, lesser punishment was awarded, however, the petitioner continued to commit the same lapse, thus the 3rd respondent passed orders on 06.02.2007, dismissing the petitioner from service. The above order was affirmed by the Appellate Authority/2nd respondent. After filing the revision, the petitioner approached this Court by way of writ petition in W.P.No.24509 of 2007. This Court was pleased to direct disposal of the Revision Petition within a period of six weeks. Pursuant to that the Revisional Authority has affirmed the order of removal from service on the premise that the petitioner has not adduced any convincing evidence/ reason in support of his contention.

5. The petitioner has filed the present Writ Petition challenging the order of removal of service primarily on the following grounds:

a) That the petitioner was not given an opportunity to put forth his explanation while imposing the major punishment of removal from service.

b) There was no examination by the medical committee.

c) The impugned proceedings stood vitiated for non-compliance with the mandatory requirement set out under rule 74 of the Tamil Nadu Fundamental Rules. The order of dismissal has been made looking to the antecedents without providing any opportunity to the petitioner.



d) The order of the Appellate and Revisional Authority stood vitiated for non-consideration of grounds raised in particular that evidence of treatment for medical ailment was being submitted.

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e) That the punishment is excessive and unduly harsh on applying the doctrine of proportionality.

6. To the contrary, it is submitted by Mrs.Karthika learned counsel for the respondents that the petitioner has been in the habit of absenting himself without obtaining prior permission and submitting leave applications belatedly. It was submitted that for these lapses, the petitioner was proceeded earlier under Tamil Nadu Civil Services (Discipline and Appeal Rules) and he was previously awarded the following punishments.

Sl.No.	Punishment	Proceedings No.
1.	Stoppage of increment without cumulative effect for a period of one year	O.P.I(1)/40456/2002, dated 23.07.2002
2.	Stoppage of increment without cumulative effect for a period of one year	O.P.I(1)/19064A/02, dated 05.09.2002.
3.	Stoppage of increment with cumulative effect for a period of two years	O.P.1(1)/74757/04, dated 18.11.2005.

7. Yet, the petitioner has made no attempts to mend himself and behave in a manner expected of a Government Servant but continued to abstain from duty. The third respondent therefore was left with no other alternative but to frame charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, resulting in his removal from service which stood affirmed by the appellate and revisional authority.

8. It is further submitted by the learned counsel for the respondent that the contention of the petitioner that the proceedings are in violation of principles and natural justice is unfounded. To the contrary, the materials on record would reveal that a detailed enquiry was conducted on 11.10.2006 and the Enquiry Officer had given adequate opportunities to the petitioner to defend his case. During the course of enquiry the petitioner had only stated that he was suffering from some medical ailments without submitting any acceptable documentary evidence.

9. The petitioner had submitted that he was the sole bread winner as would be evident from the fact that he himself



appointed on compassionate grounds and submitted that this Court may consider reducing the punishment, which was resisted by the counsel for the respondent stating that no interference is warranted under Article 226.

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10. Heard the learned Counsel on both sides and perused the entire materials available on record.

11. The only question that requires consideration is as to whether the punishment of removal from service is disproportionate, excessive and harsh on applying the doctrine of proportionality.

12. It is trite law that Courts would be loathe in interfering with the exercise of discretion in particular with regard to quantum of punishment. However, it is equally true that the Courts had consistently held that if punishment is excessive, unduly harsh or shocks the conscience of the Court, then such orders are not immune from judicial review. In this regard, it may be useful to refer to the decision of the Supreme Court in the case of B.C.Chaturvedi where in it was held as under:

"18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

25. Again, in the case of Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and Another this court considered the doctrine of proportionality and it was held :

"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any



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authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise--the elaboration of a rule of permissible priorities."

13. It may also be relevant to refer to the judgment of the Supreme Court reported in 2009 8 MLJ 460 wherein while dealing with unauthorized absence for which an employee in that case was removed from service, it was held that the punishment was unduly harsh and grossly in excessive. The relevant portion is extracted below:

"26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the



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Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months. "

14. It may also be relevant to refer the judgment of Shri Bhagwan Lal Arya v. Commissioner of Police Delhi & Ors. reported in Civil Appeal No.1625 of 2004.

"The above appeal was filed against the final judgment/order dated 16.03.2002 passed by the High Court of Delhi in C.W.P.No.6261 of 1998. The main issue relates to the alleged unauthorised absence for 2 months and 8 days for which penalty of removal from service was imposed by the respondents on the appellant.

Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated upto the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spend on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of



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partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

15. Normally cases relating to unauthorised absence especially for long period, has been understood by courts to be prima facie indicative of lack of interest on the part of the employee to work and the employee is found guilty of misconduct.

16. Now coming to the facts of the present case the unauthorised absence was due to the medical condition of the petitioner viz., hypertension which is serious and if left unattended may also prove fatal. While the disciplinary authority proceeded on the basis that the petitioner has not let in any evidence to show that he was suffering from the medical condition. Before the appellate authority the petitioner has expressly stated in his grounds of appeal that evidence is being let in to show that he had undergone medical treatment for his ailments. The petitioner also pleaded that the capital punishment can be modified by way of some minor punishment. The Appellate and the Revisional Authority has however proceeded to affirm the order of the disciplinary authority by merely stating that no new evidence or grounds has been raised, there is no finding as to whether the grounds raised by the petitioner that evidence is being let in support of their contention is correct or otherwise nor has the plea of punishment being excessive been dealt with. In other words the Appellate and the Revisional Authority has passed orders in perfunctory manner to put it mildly.

17. Taking into account the measure, magnitude and all relevant circumstances including the fact that the reason for unauthorised absence being medical ailment and also the fact that the Appellate and the Revisional Authorities had passed orders in a perfunctory manner. This Court is of the view that the order of dismissal is excessive, unduly harsh and shocks the conscience.

18. Normally in these circumstances this Court would have been remitted the matters back to the Appropriate Authority for re-consideration, however, taking into account the fact that the writ petition has been pending for more than 14 years, this Court is of the view that the punishment of removal of service may be modified to re-instatement without payment of back wages but with continuity of service.



19. Accordingly, this Writ Petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Psa

To

1. The Revenue Secretary,
The State of Tamil Nadu,
Fort St.George,
Chennai-600 009.
2. The Special Commissioner,
Commissioner of Revenue Administration
(Appellate Authority),
Fort St.George,
Chennai-600 005.
3. The Joint Commissioner,
Revenue Administration
(Disaster Management & Mitigation Department,
Chepauk, Chennai-600 005.

+1cc to the Government Pleader, S.R.No.31411

W.P. No.34060 of 2007
and
W.M.P.Nos.1 and 2 of 2007

NR(CO)
CT 02/06/2022