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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2022

PRONOUNCED ON : 11.05.2022

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NO.13451 OF 2010

Dr.G.Sivagnanam

... Petitioner

.Vs.

1. The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 2.

3. The Director of Medical Education,
Chennai - 10.

4. The Dean,
Chengalpattu Medical College,
Chengalpattu.

... Respondents

PRAYER:-

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.(D) No.1497 dated 10.12.2007 and the order in G.O.(D) No.43 dated 13.01.2009 and quash the same and direct the respondents to reinstate the petitioner in Tamil Nadu Medical Service with all consequential and other service benefits.

For Petitioner : Mr.N.Suresh

For R1, R3 & R4 : Mr.R.L.Karthika
Government Advocate

For R2 : Mr.R.Karthik Rajan





(b) The application for leave on loss of pay from 01.08.2004 having been refused by means of a telegram followed by a letter and with the direction to the petitioner to join duty immediately, the failure on the part of the petitioner to join duty in terms of the said direction was treated as constituting disobedience to the orders of the superior.

5. It is submitted by the learned counsel for the petitioner that the punishment of removal from service is grossly disproportionate and harsh, if one takes into account the fact that the petitioner's absence was only in view of the medical crisis in his family and the petitioner has until then been regular in service and not absented himself. In support of his contention reliance was sought to be placed on the judgment of the Supreme Court reported in (2009) 8 MLJ 460 (SC) in the case of Mukul Kumar Choudhuri and others wherein while dealing with case of unauthorised absence it was found by the Supreme Court that the punishment of removal of service was harsh and excessive.

6. To the contrary it was submitted by Mrs. Karthika learned counsel for the respondent that the petitioner having admitted to the charges of unauthorized absence it is prima facie indicative of lack of interest in work as held by the Supreme Court and that the employee concerned may then be guilty of misconduct. Further, petitioner's failure to join duty would constitute disobedience of the orders of the superior. It was submitted that the quantum of punishment falls within the exclusive jurisdiction of the disciplinary authority and would not warrant interference under Article 226.

7. Though, we agree with the submissions of the learned counsel for the respondents that Courts would be loathe in interfering with the exercise of discretion in particular with regard to quantum of punishment. However, Courts have consistently held that the exception to the above rule is where the punishment is excessive, harsh and shocks the conscience of the Court, such cases would be open to judicial review and cannot claim immunity thereof.

8. 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



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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 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.

9. 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 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



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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 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.

10. Keeping the above principles in mind and applying the same to the facts of the present case, this Court finds the reason for the absence of the petitioner was that he had to take care of his ailing and aged parents and the said reason was also set out by the petitioner in his explanation. However, the respondents had brushed aside the explanation and had ordered removal from service. We find that the reason for the unauthorized absence and not joining the duty, which is to take



care of his aged and ailing parents that are very compelling. In the circumstances, this Court is of the view that the punishment of removal from service is grossly disproportionate, harsh, severe and shocks the conscience of this Court.

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11. This Court is of the view that in these circumstances the order of dismissal would stand modified as one of compulsory retirement and the petitioner would not be entitled to back wages but would be entitled to terminal benefits.

12. Accordingly, this Writ Petition is disposed of on the above terms.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Psa

To

1. The Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George,
Chennai.
2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 2.
3. The Director of Medical Education,
Chennai - 10.
4. The Dean,
Chengalpattu Medical College,
Chengalpattu.

+1cc to the State Government Pleader, S.R.No.31413

W.P.NO.13451 OF 2010

JP-II(CO)
PBS/27/05/2022