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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.8167 of 2011

A.Parimala

...Petitioner

-Vs-

1.Tamil Nadu Pollution Control Board,
Rep. by its Board of Directors,
No.76, Mount Salai, Chennai - 600 032.

2.Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai - 600 032.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the connected records from the 2nd respondent, quash the order of the 2nd respondent dated 24.08.2010 bearing Procs.No.Per/CS/20698/2008 issued on behalf of the 1st respondent and the consequential order of the 2nd respondent dated 08.03.2011 bearing Procs.No.TNPCB/Per/CS/020698/2008 treating the period of dismissal from 09.03.2006 to 31.10.2006 as earned leave and unearned leave on private affairs and consequently direct the respondents to pay the back wages and restore the pay of the petitioner along with all consequential benefits.

For Petitioner : Mr.Balan Haridas

For Respondents: Ms.Vijayakumari Natarajan,
Standing Counsel

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein was dismissed from service by the respondents with effect from 04.03.2006, pursuant to charges framed against her. By the proceedings dated 25.10.2006, the dismissal order was set aside and the petitioner was directed to be reinstated back into service and the matter was remitted back for a fresh enquiry.



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3. In this background, the second respondent herein had originally imposed a punishment of stoppage of increment for a period of 5 years with cumulative effect, through his order dated 28.04.2008, which came to be modified by the first respondent on 24.08.2010, by imposing a punishment of stoppage of increment for a period of 2 years without cumulative effect. In the subsequent proceedings of the second respondent dated 08.03.2011, the period of dismissal between 09.03.2006 and 31.10.2006 was regulated, by treating 75 days as earned leave and 180 days as unearned leave on private affairs. Aggrieved against the orders dated 24.08.2010 and 08.03.2011, the present writ petition has been filed.

4. The learned counsel for the petitioner submitted that once the original punishment is modified, the modified punishment would revert back to the date of the original punishment and there is no justification on the part of the respondents in treating 180 days as unearned leave. He further submitted that since the original order of dismissal has been set aside, the petitioner is deemed to have been in service from the date of dismissal and therefore, the respondents have no authority to regulate the period of dismissal, by treating 180 days out of the dismissal period as unearned leave.

5. The learned Standing Counsel appearing for the respondents submitted that the second respondent, while imposing the punishment of stoppage of increment, had taken a lenient view by considering the period when the petitioner was dismissed from services and therefore imposed a lenient punishment of stoppage of increment. In the further appeal before the first respondent also, her dismissal period was considered and thereby, a lenient punishment was imposed. Since the respondents have taken into consideration the dismissal period, there is no infirmity in treating 180 days out of the dismissal period as unearned leave.

6. I have given careful consideration to the submissions made by the respective counsels.

7. The order dated 08.03.2011 suffers from two illegalities. Firstly, when the first respondent herein, through his proceedings dated 25.10.2006, had set aside the order of dismissal and reinstated the petitioner back into service, the petitioner is deemed to have been in service from the date of her dismissal. The initiation of fresh disciplinary proceedings will not in any manner affect her position. When the petitioner is deemed to have been in service from the date of her dismissal, the respondents have no authority to treat such period of dismissal as unearned leave, which by itself would



amount to a punishment. Secondly, in service jurisprudence, a Government employee cannot be imposed with two punishments for a single charge. In the instant case, a portion of the period of dismissal has been treated as unearned leave, which by itself is a punishment. This apart, the first respondent had also imposed a further punishment of stoppage of increment for a period of 2 years without cumulative effect. Thus, imposing two punishments for a single charge cannot be sustained in law. In view of these findings, the proceedings of the second respondent dated 08.03.2011, insofar as it relates to regulating 180 days between 09.03.2006 and 31.10.2006 as unearned leave on private affairs cannot be sustained.

8. The learned Standing Counsel for the respondents stated that since the respondents herein have considered the dismissal period, when the petitioner was out of employment and thereby imposed a lesser punishment, they were justified in treating a portion of the dismissal period as unearned leave. I am not in agreement with such a submission. As already stated, when the original order of dismissal itself was set aside, the petitioner is deemed to have been in service from the date of her dismissal. While that being so, there is no justification on the part of the respondents to consider that dismissal period and thereby impose a lenient punishment.

9. In the light of the above discussions, the impugned orders dated 24.08.2010 and 08.03.2011 are quashed. Consequently, the respondents herein shall pass appropriate orders, treating the petitioner's period of dismissal between 09.03.2006 and 31.10.2006 as duty period for all purposes, within a period of four (4) weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

hvk

To

1. The Board of Directors,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai - 600 032.



2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai - 600 032.

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+1cc to Mr.Balan Haridas, Advocate SR.No.14493

+1cc to Mr.Vijayakumari Natarajan, Advocate SR.No.13958

W.P.No.8167 of 2011

RSV(CO)

GMV(17/03/2022)