



W.P.(MD)No.7445 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.7445 of 2014
and
M.P(MD)Nos.1 and 2 of 2014

N.Thanasekaran

... Petitioner

Vs.

1.The Director,
Handlooms, Handicrafts, Textiles
and Khadi (c1) Department,
Chennai.

2.The Commissioner,
Handlooms and Textiles,
Chennai.

3.The Assistant Director/Administrator,
The Bharathi Co-operative Spinning Milld Ltd.,
Post Box No.1, Vilathikulam Road,
Ettayapuram,
Thoothukudi District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to impugned order, dated, 22.06.2006 in Proceedings No.113/H/2006 and its consequential order, dated, 27.08.2007 in Rc.No.13590/2006/D2, on the file of the second respondent and its consequential review order, dated, 07.03.2014 in Rc.No.33650/2011/D2 along with G.O.(D)No.08 on the file of the first respondent and to quash the same as illegal and further direct the respondents to reinstate the petitioner in service with all the benefits.

For Petitioner : Mr.K.R.Laxman
For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader
for R1 and R2
Mr.K.Hema Karthikeyan
for R3

ORDER

This writ petition has been filed challenging an impugned order, dated, 22.06.2006 and the consequential order, dated, 27.08.2007 and the consequential review order, dated, 07.03.2014 with the consequential direction to the respondents to reinstate the petitioner into service.



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2. The brief facts of the case are that the petitioner was appointed as Electrical Engineer on 13.05.1985 by the first respondent at Ramanathapuram District Co-operative Spinning Mill with a salary of Rs.900/-. The petitioner is a “C” license holder, which was issued by the Electrical License Board in certificate No.18274. The petitioner was deputed as Electrical Engineer in Bharathi Co-operative Spinning Mills vide proceedings, dated, 21.08.2002. In the month of May 2005, the level of electrical U.K.G has been raised to 3.52 and in the month of July, the 32K counting of 10 frame and 60 combed counts in 10 frames and the remaining 40 SK count the U.K.G level has been raised to 3.80 and similarly in the month of August, the level has been raised to 4.21. There was a discussion conducted by the Mill Administrator along with the Electrical Engineer and AFM and FM I/c. and the Administrator questioned about the increase of U.K.G level. Since the petitioner is Electrical Engineer, he had explained about the situation inside the Mills and the management also announced that the interim measures of Rs.220 to the workers will be disbursed



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only when the U.K.G level will reduce. The increase in the power consumption is only due to poor quality of cotton. Since this was continued for the subsequent period also and the same was not rectified, the respondents warned the petitioner that they will suspend him from service if the issue is not resolved. On 13.09.2005 the petitioner was called to attend the power audit, which was conducted by the Director. In the month of October and November, the Power Tripping has happened for 131 times and it has created a loss of Rs.3,14,096/- and a sum of Rs.1,77,100/- which added as an additional charges to the mill by using the generator for the manufacture process and a total cost of Rs.7,95,000/- loss has been incurred to the mill. The respondents taking note of this factor and has suspended the petitioner from service on 13.02.2006. The infirmities in the administration was reported by the petitioner to the first respondent through his letter, dated, 12.09.2005 and the said act of reporting was wrongly considered by the third respondent and with the *mala fide* intention, the petitioner was terminated from service with untenable charges.



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3. The contention of the petitioner is that on 06.01.2006, an electrical fault was incurred and the said fault cannot be rectified by the petitioner because of the Electricity Board Rules. Since it has to be rectified only by the 'A' Grade Electrical Engineer, whereas the petitioner is only holding 'C' grade engineering certificate, the petitioner submitted a detailed explanation before the respondents. But ignoring those explanations, the petitioner was dismissed from service on 22.06.2008. The petitioner preferred an appeal to the second respondent and the same was dismissed by stating that the petitioner is responsible for the loss incurred to the tune of Rs.3,50,000/-. The other allegation is that the petitioner has availed a leave of 172 days from 21.08.2002 to 31.12.2005 without any leave application. For a year, the petitioner have 20 days Casual Leaves and 30 days Earned Leaves even as per the permitted leaves. The petitioner can take 50 days for a year and as such for the said period of 3 ½ years, the petitioner had taken only permitted days of leave. Therefore, the said charge is also not tenable and maintainable. Since the respondents have not considered these two factors,



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aggrieved over the order of dismissal, the petitioner has preferred this writ petition.

4. The third respondent has filed a counter stating that the third respondent Mill is not in a state as defined in article 12. Therefore, the present petition is not maintainable. The petitioner herein will come under a definition of employee under supervisory cadre. Therefore, the petitioner herein has to work out his remedy under civil law and not under writ jurisdiction. The plea of the petitioner that he was deputed to the third respondent mill is utterly baseless. The petitioner was transferred to the third respondent mill as per the order, dated, 13.08.2002. The petitioner during the tenure in the third respondent mill has committed various serious and grave acts of misconduct. The explanation submitted by the petitioner was not convincing and acceptable. Hence, full fledged domestic enquiry was conducted. But the petitioner failed to attend the domestic enquiry even after affording adequate opportunities. Thereafter, the proceeding was concluded ex parte and ex parte enquiry report was submitted on 28.04.2006,



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where the charges levelled against the petitioner held proved because of his careless work and not conversant with the work of electrical work department and not able to extract work from the subordinate employees. The third respondent mill has incurred a heavy loss of Rs.7,95,000/- by utilizing a generator from 05.01.2006 to 10.01.2006. For this lapse, again another Charge Memo was issued against the petitioner along with the suspension vide order, dated, 11.02.2006. The petitioner has received an enquiry notice, dated, 18.02.2006. Again the petitioner has not appeared before the enquiry officer and the proceedings were concluded ex parte and enquiry report with the findings that the charges levelled against the petitioner were proved vide report dated, 29.04.2006. The third respondent has accepted the two enquiry reports and the findings of the enquiry officer was held to be fair. Therefore, a second show cause notice, dated, 09.05.2006 was issued along with the two domestic enquiry proceedings. The petitioner has submitted an explanation, wherein, the petitioner has tendered his apology and assured to work correctly in future. The said apology was not accepted by the third respondent. Finally, the petitioner was dismissed from



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service as the charges against him were very serious in nature and vide order dated 26.06.2008, the petitioner was dismissed. Further, the petitioner preferred an appeal and review and the same were dismissed. Hence, the respondents prayed to dismiss this writ petition.

5. The second respondent has also filed a detailed counter and the counter of the second respondent is in the similar lines of the counter of the third respondent.

6. Heard Mr.K.R.Laxman, learned counsel appearing for the petitioner and M/s.Farjana Ghousia, learned Special Government Pleader for the respondents 1 and 2 and Mr.K.Hema Karthikeyan for the third respondent and perused the records.

7. It is seen from the records that the petitioner was working as Electrical Engineer in the Ramanathapuram District Co-operative Spinning Mill. Thereafter,



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he was transferred to Bharathi Co-operative Spinning Mill on 21.08.2002. The allegation against the petitioner is that the petitioner has not rendered his duty properly, which has resulted in 131 times power tripping in the mill, which has incurred loss to the tune of Rs.3,14,096/-. Since there were several tripping, the mill was forced to run through diesel generator, thereby incurred additional loss of Rs.1,77,100/-. The respondents have initiated two departmental proceedings and the petitioner has not participated in the two departmental proceedings in spite of granting several opportunities. Therefore, the respondents have concluded the proceedings as ex parte proceedings and the charges were held proved. The respondents intended to pass a major punishment. Therefore, the second show cause notice was issued to the petitioner and the petitioner has not submitted any explanation. But, he has submitted an apology letter with an undertaking that he will be very careful in future. The respondents have not considered the said apology letter and the undertaking. Based on the report, the petitioner was dismissed from service. The contention of the petitioner is that he is only a 'C' License holder and according to Electricity Board Regulation, only an 'A' License



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holder can attend to the power tripping i.e., narrated by the respondents. The respondents have not explained why the respondents have not engaged any 'A' License holder, thereby the respondents have violated the regulations stipulated by the Electricity Board. In two enquiry proceedings which were passed ex parte, the petitioner is entitled to be considered so that he can get an opportunity to explain his side of the case. However, it is seen from the records that the petitioner has already attained superannuation. It is also seen from the records that the petitioner has put in service more than 15 years of service.

8. Therefore, this Court is of the considered opinion that the punishment of dismissal ought to be interfered. The petitioner is entitled to the terminal benefits by taking his service, which was rendered in Ramanathapuram District Co-operative Spinning Mills as well as Bharathi Co-operative Spinning Mills and the terminal benefits shall be calculated. Hence, the punishment of dismissal from service is modified as compulsory retirement. The respondents are directed to pay the terminal benefits applicable to the petitioner. If the petitioner is coming under



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any pensionable service, the respondents shall consider the same also. If the petitioner is not coming any pensionable service, the same will not be considered. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. With this direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

28.04.2022

Index : Yes / No

Internet : Yes

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To

1.The Director,
Handlooms, Handicrafts, Textiles
and Khadi (c1) Department,
Chennai.

2.The Commissioner,
Handlooms and Textiles,
Chennai.

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S.SRIMATHY, J

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Order made in
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28.04.2022