



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2022

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.25019 of 2018

and

W.M.P(MD)No.22677 of 2018

S.Balaji

... Petitioner

V.

1.The Gandhigram Institute of Rural
Health and Family Welfare Trust,
Rep.by its Chairman,
Soundaram Nagar, Gandhigram Post,
Dindigul District – 624 302.

2.The Director,
The Gandhigram Institute of Rural
Health and Family Welfare Trust,
Rep.by its Chairman,
Soundaram Nagar, Gandhigram Post,
Dindigul District – 624 302.

3.S.Seethalakshmi
Director, The Gandhigram Institute of Rural
Health and Family Welfare Trust,
Rep.by its Chairman,
Soundaram Nagar, Gandhigram Post,
Dindigul District – 624 302.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order issued by the first respondent in his proceedings in GIRH/CHAIRMAN/2018-19/0714 dated 15.10.2018 confirming the order issued by the second respondent in her proceedings No.GIRH/ESDTT/2018-19/0007 dated 03.04.2018 and quash the same and consequently direct the respondents to reinstate the petitioner into service, regularise his service and to pay all monetary and attendant benefits within the time stipulated by this Court.

For Petitioner : Mr.S.Ramsundar Vijayaraj

For Respondents : Mr.V.Karthikeyan for Mr.V.Vijayshankar

ORDER

Heard the learned counsel on either side. When the matter was taken up for hearing, the learned standing counsel appearing for the respondents sought time to file counter affidavit. I however declined the said request primarily for the reason that the writ petition is more than four years old.

2.The petitioner joined the respondent institution as Driver. He was asked to work as Driver for a project floated by the respondents at Oddanchathiram. The petitioner after working for two weeks, requested the Director of the institution to relieve him from the project itself. According to



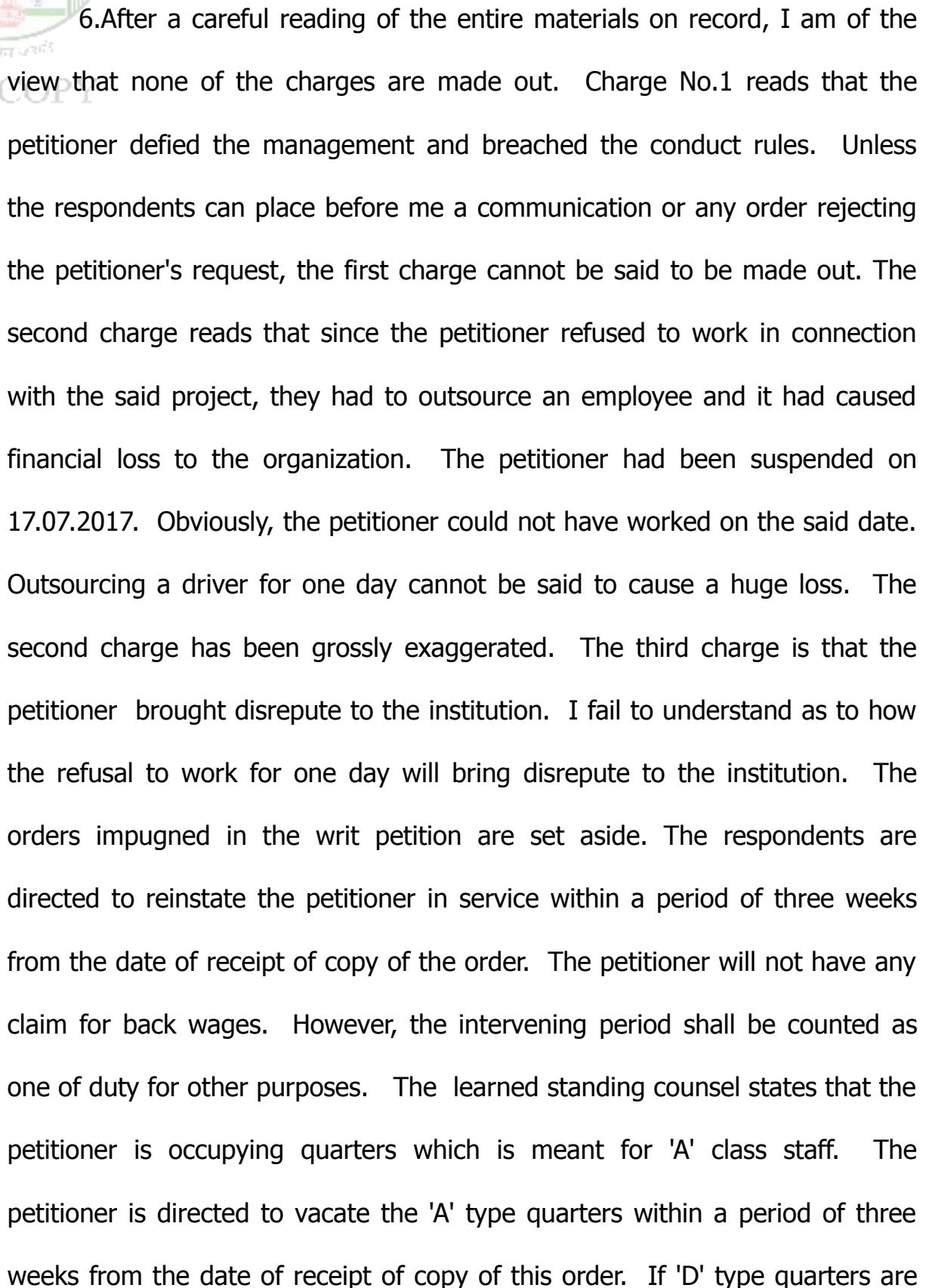
the petitioner, he was being asked to work for fifteen hours a day and that his health condition did not permit him to work for such long hours. He was suspended from service on 17.07.2017. Charge memo was issued on 28.09.2017. The petitioner offered his explanation on 13.10.2017. An enquiry officer was appointed. The enquiry officer submitted his report holding that the charges framed against the petitioner stood proved. After issuing show cause notice and obtaining further representation from the petitioner, he was dismissed from service. Questioning the order dated 03.04.2018, the petitioner filed an appeal before the appellate authority/R1. On 15.10.2018, the appellate authority confirmed the order of dismissal and dismissed the appeal. Challenging the same, this writ petition has been filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and wanted this Court to set aside the impugned orders and direct reinstatement of the petitioner. On instructions from the petitioner, the learned counsel submitted that the petitioner will be satisfied if he is given reinstatement and he will not claim any claim for backwages from the date of dismissal till the date of reinstatement. This understanding given by the petitioner is recorded.



4. Even though the respondents have not filed counter affidavit, the learned standing counsel took me through the materials on record and submitted that the impugned order does not warrant any interference.

5. I carefully considered the rival contentions and went through the materials on record. The petitioner was asked to work in connection with a project known as LASI. The petitioner submitted letter dated 17.07.2017 expressing his difficulties in working for the said project. He wanted to be relieved from the project duty. In my view, an employee is entitled to make this request. It is for the management to accept or reject the same. Making a request cannot amount to misconduct. But the second respondent chose to suspend the petitioner on the same date. Though the charge memo reads that the petitioner declined to accept the office order dated 17.07.2017, my attention has not been drawn to any order passed by the second respondent rejecting the petitioner's request made vide letter dated 17.07.2017. In any event, refusal of the petitioner to work for one day ie., 17.07.2017 cannot be construed as so grave as to warrant punishment of dismissal from service. The punishment imposed by the management is shockingly disproportionate. In any event, the petitioner has been out of employment for almost five and half years. He had also forgone the claim for backwages. This in my view is enough and more punishment.





available, the petitioner has to be necessarily accommodated therein. The management shall hand over the order reinstating the petitioner the moment he vacates the "A" quarters that he is now occupying. Since the petitioner had given up his claim for backwages, no rental charges shall be levied on him for occupying "A" quarters.

7.This writ petition is allowed on these terms. No costs. Connected miscellaneous petition stands closed.

30.11.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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