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W.A.No.1426 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.07.2023

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1426 of 2023
and C.M.P.No.13914 of 2023

1.The Additional Chief Secretary to Government,
Home (Police V) Department,
Secretariat, Chennai – 9.

2.The Director General of Police,
Santhome High Road,
Mylapore, Chennai – 4.

3.The Commissioner of Police,
Salem City.

4.The Deputy Commissioner of Police,
Crime and Traffic,
i/c Law and Order, Salem City.

.. Appellants

Vs.

K.Kannan
S/o.Krishnasamy

.. Respondent



W.A.No.1426 of 2023

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 04.02.2022 passed by this court in W.P.No.23251 of 2019.

For Appellants : Mr.Stalin Abimanyu
Additional Government Pleader

For Respondent : Mr.S.Vijaya Kumar

JUDGMENT

[Judgment of the Court was delivered by R.MAHADEVAN, J.]

Challenging the order dated 04.02.2022 passed by the learned Judge in W.P.No.23251 of 2019, the present appeal has been filed by the appellants / State.

2. The case pleaded by the writ petitioner / respondent herein before the writ court was that he was appointed as Junior Assistant in the Police Department in March, 2013, selected through Tamil Nadu Public Service Commission. On 22.05.2014, he applied for casual leave to attend a family function after getting prior permission from the superiors. However, a charge memorandum under Rule 17(a) of the Tamil Nadu Civil Servants



W.A.No.1426 of 2023

(Discipline and Appeal) Rules, 1955 (for brevity “TNCS (D & A) Rules”)

was issued to him on 22.05.2014 alleging that he has left the work place without proper permission and thereafter, he was placed under suspension and was not allowed to join duty. While so, again on 02.06.2014, he was issued with another charge memorandum under Rule 17(b) of the TNCS (D&A) Rules alleging unauthorized absence on 23.05.2014.

3. According to the respondent, on 23.05.2014, he left the office only for 45 minutes, that too, for ascertaining the 10th Standard result of his daughter and the penalty proceedings could not be attracted for the said absence. However, he was issued with an order dated 25.09.2014 dismissing him from service. Aggrieved by the same, the respondent filed an appeal before the third appellant and the same was dismissed on 12.11.2014. Thereafter, he filed a mercy petition before the second appellant and the same was rejected on 22.07.2016. Subsequently, he filed a review petition before the first appellant and the same was also rejected on 29.10.2018.



W.A.No.1426 of 2023

4. Challenging the orders of rejection and the punishment of removal from service, the respondent filed WP.No.23251 of 2019, which, by order dated 04.02.2022, was allowed by the learned Judge observing that all the authorities have shown lack of sensitivity and appreciation in dealing with the lapses of the inferior officer and that, the punishment of removal from service is shockingly disproportionate to the gravity of the misconduct committed by the respondent herein. The learned Judge further observed that loss of employment for over seven years itself is a very serious and harsh consequence for the respondent and that, denying him salary for the long period of non-employment would be a suitable punishment. Ultimately observing that the respondent herein is entitled to all other benefits like notional fixation of pay, continuity of service and other consequential service benefits as if he had been continued in service without any break, the learned Judge set aside the orders impugned in the writ petition and directed the authorities to reinstate the respondent in service forthwith, however, made it clear that the respondent is not entitled for any salary or allowances for the period of non-employment. Aggrieved by the same, the appellants have preferred the present appeal.



W.A.No.1426 of 2023

5. The learned Additional Government Pleader appearing for the appellants / State has submitted that the order of punishment can be interfered only on the limited grounds of palpable illegality, arbitrariness or *mala fides*. He further submitted that the respondent has filed the writ petition only to evade the punishment imposed on him by the Department. Finally submitting that in the case of departmental proceedings, it would be only preponderance of probabilities and hence, the charge framed against the respondent was held to be proved, the learned Government Counsel prayed for setting aside the impugned order passed by the learned Judge.

6. Per contra, the learned counsel for the respondent has submitted that the learned Judge has analysed the issue in detail and has passed the impugned order allowing the claim of the respondent herein and hence the same does not require any interference by this Court.

7. Heard the learned counsel on either side and perused the materials available on record.



W.A.No.1426 of 2023

8. A reading of the documents enclosed in the typed set of papers, would reveal that for a single day absence, ie., on 22.05.2014, the respondent was served with Charge Memorandum under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules. It is also seen that on the next day, ie., on 23.05.2014, he was issued with another Charge Memorandum. Thereafter, based on the report dated 10.09.2014, notwithstanding the explanation given by the respondent against his absence on those particular days, an order of removal from service has been passed against him. The third appellant/Appellate Authority has also confirmed the findings of the Disciplinary Authority in the appeal vide proceedings dated 12.11.2014. The mercy petition and the review petition filed by the respondent before the appellate authorities have also been rejected. It is seen that unfortunately, all the authorities have rejected the representations of the respondent without due appreciation atleast on the quantum of the penalty imposed on him in consideration of the charges framed against him. According to the counter statement of the authorities, the respondent was lethargic in his conduct and attitude to work and he lacked devotion to duty. In the counter affidavit produced before the Writ Court, the authorities have



W.A.No.1426 of 2023

given a statement showing the dates on which the respondent had taken leave without obtaining proper permission. Even though the conduct of the respondent was not upto the mark as drawn by the superior authorities, the response by the superior authorities as to the so-called lapse committed on the part of the respondent herein, can be termed only as disproportionate reaction. Taking note of the same, the learned Judge has observed that the punishment of removal from service in the facts and circumstances of the case, is shockingly disproportionate. It was further observed by the learned Judge that the reaction of the appellants as could be inferred from the tenor of the counter affidavit, is more out of anger against the conduct of the respondent. In the circumstances, in view of the fact that the respondent had already suffered non-employment for more than 7 years, the learned Judge has correctly held that denying salary to the respondent for the said period of non-employment would be a suitable punishment for his lackadaisical attitude and accordingly, directed the authorities to reinstate the respondent in service forthwith and to grant him all other benefits like notional fixation of pay, continuity of service and other consequential service benefits as if he had been continued in service without any break.



W.A.No.1426 of 2023

9. In the given factual matrix, it is no doubt true that the quantum of punishment imposed on the respondent, is highly disproportionate to the charge levelled against him. The learned Judge has properly analysed the issue and has passed the impugned order and hence, the same does not require any interference in the hands of this Court.

10. In the result, the writ appeal fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J.] [M.S.Q., J.]
07.07.2023

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To
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