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W.P.No.6488 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06..11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.6488 of 2010

B.R.Nirmal Kumar

... Petitioner

Vs

1.The Chairman cum Managing Director,
Tamil Nadu Tourism Development Corpn. Limited,
Chennai – 2.

2.The General Manager,
Tamil Nadu Tourism Development Corpn. Limited,
Chennai – 2. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for records of the respondents in connection with the impugned order passed by the respondents 1 & 2 in Proc.No.5789/A1/2002 dated 30.09.2008 and Prpoc.No.5789/A1/2002 dated 20.04.2009 respectively and quash the same and pass such further orders.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

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For Respondents : Mr.L.N.Praghasam

ORDER

This Writ Petition has been filed challenging the punishment imposed by the 1st respondent as confirmed by the 2nd respondent.

2. Heard Mr.K.Venkataramani, learned Senior Counsel for Mr.M.Muthappan, learned counsel for the petitioner and Mr.L.N.Praghasam, learned counsel for the respondents.

3. Mr.K.Venkataramani, learned Senior Counsel would submit that the petitioner was directly recruited as Assistant Manager in service of the respondent/corporation and he was promoted as Senior Manager in the year 1989. He was suspended from service on allegations of corruption charges based on a criminal case in which he was honourably acquitted and was reinstated into service. Based on certain audit objections, the petitioner was originally issued with a charge memo on 13.12.2002. The gist of the charges were that the petitioner had incurred certain expenditure over and above the sanction

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accorded by the Department. The petitioner had submitted a detailed explanation denying the charges and such expenditure was necessitated for maintenance of the Boat Club and other facilities available. The enquiry officer had held the charges 1, 4 to 9 as proved and charge 3 as partly proved and charge 2 as not proved. Based upon the aforesaid report of the enquiry officer and having not been satisfied with the reply of the petitioner to the enquiry officer's report, the 1st respondent imposed a punishment of stoppage of increment for a period of three years with cumulative effect against which the petitioner had preferred an appeal before the 2nd respondent who also rejected the appeal. He would submit that the conclusions that have been arrived at by the enquiry officer was contrary to the oral and documentary evidence available on record. He would submit that it is not a case of misappropriation of funds of the Department. All the expenses were necessitated for up-keeping the hotel as well as the Boat House which were under the control of the Department. He would further submit that this punishment had been imposed with a malice to see that the

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petitioner is ineligible to be promoted to the next promotional avenue namely the Regional Manager.

4. He would submit that the petitioner had sent various request for sanction of the warranted expenditure. He would also further submit that if the petitioner had failed to take appropriate steps to up keep the facilities available, even for that action would be initiated. Further, he would submit that the facilities available is for the benefit of the public from whom that Department charges and if such services had not been given in properly, the Department would have to face the wrath at the hands of its customer for not providing the facilities that were promised to them for utilising the services provided by the Department. Therefore, he would submit that the entire proceedings will have to be set aside for the simple reason that what the petitioner had done is to up keep the facilities that is available with the Department.

5. Countering his arguments, Mr.L.N.Praghasam, learned counsel appearing for the respondent would submit that the petitioner

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had not only exceeded the amount sanctioned for up-keeping of all the facilities available, he also had violated various protocols in making the excess payment contrary to the terms and conditions upon which such services were to be availed of for up-keeping the facilities. He would further submit that the expenditure was also beyond the petitioner's financial power for which he ought to have taken prior permission from his superiors. He would submit that the enquiry officer has conducted a detailed enquiry and had submitted a detailed report holding all the charges as having been proved and therefore, the punishment imposed upon the petitioner by the 1st respondent as confirmed by the 2nd respondent does not suffer from any infirmity or illegality and it is not necessitated to interfere with the same .

6. I have considered the rival submissions made by the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record before this Court.

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7. A perusal of the charge memo would indicate that the petitioner had primarily exceeded the sanctioned limit in maintaining the facilities provided by the Department for the general public at tourist destination. That apart, he had also indulged himself in other delinquencies. As pointed out by the learned counsel, none of the charges alleged any misappropriation by the petitioner in making expenses over the alleged excess amount. All that he is alleged is primarily making expenses over and above the sanctioned amount. The petitioner had been posted as a Senior Manager of the facilities that are provided by the Department to the general public at leading tourist destinations. If such facilities are not being maintained properly, such facilities would not serve the purpose for which it had been created and the Department definitely would suffer loss even for which the petitioner would be held liable. As already pointed out, if there had been an allegation of misappropriation by making excess payment, then it could be seen that there is some serious delinquencies on the part of the petitioner. But, however, what all is alleged is an excess

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expenditure than the sanctioned amount for the up-keeping of facilities which would only benefit the Department.

8. In such view of the matter, I am inclined to hold that the charges framed against the petitioner is wholly uncalled for. Be that as it may, the Department prescribes certain procedure which have to be necessarily followed by its employees. Admittedly, the petitioner had violated those procedures. It has been submitted by the learned Senior Counsel for the petitioner that in spite of the request made by the petitioner to sanction an higher amount, the Department did not sanction, which necessitated the petitioner to carry on the expenditure awaiting the sanction which is only for the up-keep of the facilities.

9. In such view of the matter, I am constrained to hold that the punishment imposed upon the petitioner is disproportionate to the delinquency. As already pointed out by the learned Senior Counsel for the petitioner, in view of the punishment imposed upon him, the

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petitioner has lost his opportunity of a further promotion and he had also superannuated from service, when this Writ Petition is taken up for final hearing. In such circumstances, I having found that the punishment is disproportionate and also that the petitioner had suffered having been denied further promotion and that he had superannuated, I am of the view that the same itself would be a punishment for him.

10. In view of the above, the order of punishment imposed on the petitioner is set aside. The respondent is directed to notionally rework his monetary benefits as on the date of his superannuation and rework his pensionary benefits and grant the same from the date of receipt of this order. Except for the above monetary benefit, the petitioner would not be entitled for any other attendant benefits.

11. In view of the aforesaid findings and reasonings, the impugned order in this Writ Petition is set aside. Accordingly, this Writ Petition is allowed. However, there shall be no order as to costs.

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gba

Index : Yes/No

Speaking order : Yes/No

Neutral Citations : Yes/No

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