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W.P.No.15793 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.15793 of 2016

S.Gururaghavendran

... Petitioner

.. Vs..

1. The Presiding Officer,
The Central Government Industrial Tribunal-cum-
Labour Court, Chennai-6,
First Floor, 'B' Wing,
26, Haddows Road,
Shastri Bhavan,
Chennai – 6.

2. The Deputy General Manager,
Canara Bank, H.R.M Section, Circle Office,
No.524, Anna Salai, Teynampet,
Chennai – 18.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling the records on the file of the First Respondent pertaining to the I.D.No.27 of 2015 dated 24.11.2015 and quash the same and consequently direct the second respondent to reinstate the petitioner in the services of the second respondent bank with continuity of services and all other attendant benefits.



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For Petitioner : Mr. S.Mohan

For Respondents : Mr.Mohamed Hussain
for M/s.Sree and Associates (for R2)

Labour Court (R1)

ORDER

The Writ Petition has been filed to quash the order in I.D.No.27 of 2015 dated 24.11.2015 on the file of the first respondent and to consequently direct the second respondent to reinstate the petitioner in the services of the second respondent bank with continuity of services and all other attendant benefits.

2. The case of the petitioner is that the petitioner joined as Daily Wager on 30.03.1990 in Dharmapuri Branch of the second respondent. He was absorbed as Peon and his service was confirmed after the probation period of six months. During February, 2001, the petitioner and his family members left Dharmapuri due to heavy debt incurred by his brother in Hotel business. Further, the petitioner along with his family members resided at Tirupathi for some time and then shifted to Bangalore. As his mother fell ill in 2002, he has to take care of his mother till her death in 2011. When he approached the Dharmapuri Branch of the second



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respondent, he was informed that the petitioner was deemed to have

voluntarily vacated his employment under the provisions of voluntary

cessation of employment by the end of the year 2005. Thereafter, the

petitioner sent a representation dated 06.02.2012 to the second respondent

by explaining the circumstances under which he could not attend the duty.

The respondent sent reply dated 14.06.2012 stating that the petitioner was

issued with three charge sheets dated 08.11.2001, 17.12.2003 and

12.04.2005 for his unauthorized absence from 14.02.2001 and he was

imposed with the punishments of censure for the first charge, stoppage of

one increment for one year without cumulative effect for the second charge

and finally, dismissed on 30.12.2005 for the third charge, and that there is

no merit in that representation. Further, the petitioner preferred appeal on

24.09.2012 before the Appellate Authority requesting to reconsider the

punishment of dismissal and to reinstate him into service. The Appellate

Authority rejected the appeal by order dated 15.11.2012 on the ground of

delay, without providing a chance of personal hearing to the petitioner.

However, the petitioner raised an industrial dispute before the Assistant

Labour Commissioner (Central), Chennai, which was referred by the

Ministry of Labour and Employment of the Central Government to the

first respondent Tribunal in I.D.No.27 of 2015 for adjudication based on



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the failure report filed to the Government of India. The first respondent after due enquiry, dismissed the industrial dispute in I.D.No.27 of 2015 by impugned award dated 24.11.2015 against which the petitioner has filed the present Writ Petition.

3. The learned counsel for the petitioner submitted that when the long absence of the petitioner has been regulated by sanctioning and treating them as leave on loss of pay regularly at every interval, the second respondent ought not to have construed the same as unauthorized absence. He further submitted that when the petitioner gave a representation to the second respondent challenging his dismissal from service, he was issued with three charge sheets and finally, he was disproportionately dismissed from service. He further submitted that the first respondent has failed to consider the circumstances for the unauthorized absence. Further, the first respondent has failed to note that when the first and second charge sheets were returned unserved, the issuance of the third charge sheet and imposition of the capital punishment cannot be sustained. It is also pointed out that as per the Bipartite Settlement arrived among the Nationalized Banks, the second respondent would have to invoke the scheme of voluntary cessation of employment.



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4. The learned counsel for the second respondent has filed counter affidavit dated 22.07.2016 stating that the first respondent has arrived at the conclusion that the punishment of dismissal from service is proper and not disproportionate for long unauthorized absence based on the judgment of the Hon'ble Apex Court in **State of Rajasthan and Another Vs. Mohammad Ayub Naz** (Appeal Case No. 939/2003). He further made his submissions justifying the stand taken by the second respondent with regard to the representation on the petitioner.

5. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

6. On a perusal of the records, it is seen that after issuance of charge sheets for his unauthorized absence and when the charges were proved, the petitioner was imposed with the punishment of censure at the first instance and only thereafter, he was dismissed from service. The first respondent has rightly quoted the judgement of the Hon'ble Apex Court in **State of Rajasthan and Another Vs. Mohammad Ayub Naz** (Appeal



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Case No. 939/2003) that for willful absence for three years, punishment of removal from service is proper and not disproportionate to the gravity of misconduct. The said ruling squarely applies to the case on the hand. Therefore, the dismissal of the petitioner from service is proper and not disproportionate to the gravity of charges framed against him and he has not made out any justifiable reason for interfering with the order passed by the Tribunal. As such, the claim of the petitioner could not be entertained.

7. For all the reasons stated above, the Writ Petition is liable to be dismissed. Accordingly, the Writ Petition is dismissed confirming the impugned order passed by the Tribunal. No costs.

20.06.2023

Index : Yes/No
Neutral Citation:Yes/No
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To

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V.BHAVANI SUBBAROYAN,J.

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