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W.A.No.2002 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM :

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.A.No.2002 of 2023

1.The Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai.

2.The Director of Medical Education,
Chennai-10

3.The Dean,
Chengalpattu Medical College,
Chengalpattu.

.. Appellants

Vs

1.Dr.G.Sivagnanam

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai-2.

.. Respondents

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 11.5.2022 passed by the learned Single Judge in W.P.No.13451 of 2010.



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For the Appellants : Mrs.V.Yamunadevi
Spl. Government Pleader

For the Respondents : Mr.N.Suresh
for respondent No.1

: Mr.R.Bharanidharan
Standing Counsel
for respondent No.2

JUDGMENT

(Delivered by *S.Vaidyanathan, J.*)

The present writ appeal has been preferred by the Government challenging the order of the learned Single Judge dated 11.05.2022 modifying the government orders in G.O.(D) No.1497, dated 10.12.2007 and G.O.(D) No.43, dated 13.01.2009.

2. The writ petitioner, who is the first respondent herein, had initially joined the services as Assistant Surgeon on 28.8.1986 at the Primary Health Centre, Olakkur. Thereafter, he was posted as Tutor in Pharmacology in Chengalpattu Medical College, Chengalpattu, where he joined the duty on 20.11.1987. Later on, he was promoted as Reader in Pharmacology in K.A.P.Viswanathan



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Government Medical College, Trichy, where he joined the service on 24.09.1998. Thereafter, he was posted at Chengalpattu Medical College, Chengalpattu, as Professor of Pharmacology on 4.7.2002.

3. While in service, the writ petitioner/first respondent herein applied for earned leave for the period between 12.7.2004 and 31.7.2004 and the leave was sanctioned. Thereafter, he had applied for extraordinary leave with effect from 1.8.2004 for six months, which was not acceded to and vide communication dated 19.8.2004, the leave was refused with an instruction to the writ petitioner to join duty. Accordingly, the writ petitioner/first respondent joined the duty on 27.5.2005 and worked up to 3.7.2005. Again, he applied for extraordinary leave for a period of three months on 4.7.2005. The said request was rejected and vide communication dated 29.8.2005, the writ petitioner was instructed to join duty.

4. On account of unauthorised absence of the writ petitioner from duty for various periods, referred supra, a charge memo was



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issued and, on 7.9.2006, an Enquiry Officer was appointed. Since the explanation offered by the writ petitioner was not satisfactory, the enquiry was conducted and the Enquiry Officer has submitted his report. The application for voluntary retirement made by the writ petitioner on 25.4.2007 for retiring voluntarily with effect from 28.7.2007 was rejected on the ground that the departmental proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was pending against the writ petitioner. The writ petitioner had participated in the enquiry and after getting comments from the writ petitioner on the report of the Enquiry Officer, vide G.O.(D) No.1497, dated 10.12.2007, punishment for removal from service was passed. The Review Petition filed by the writ petitioner was also rejected by the Government vide order dated 13.1.2009 in G.O.(D) No.43.

5. Questioning the aforesaid two Government Orders, the writ petitioner has filed the writ petition and finally order has been passed on 11.5.2022 by the learned Single Judge converting the order of removal from service into one as compulsory retirement.



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6. Aggrieved by the order of the learned Single Judge, the appellants have contended that the writ petitioner is not an ordinary worker and being a Professor, he has social responsibility towards the society and he has to teach the students and the unauthorised absence had created a problem in running the administration, more so, in imparting education to the Doctors. Though the leave was initially sanctioned up to 31.07.2004, the writ petitioner made an application for extraordinary leave with effect from 1.8.2004. Despite rejection of the said application vide order dated 19.8.2004, the writ petitioner continued to be on leave till the date he sought the extraordinary leave, viz., for a period of six months, and joined duty only on 27.05.2005. Thereafter, in a short span of two months, again he sought for leave for a period of three months. Since the writ petitioner cannot be treated on par with the regular employee who has absented himself and has not discharged his duty and absented from duty without adhering to the directions of the authorities, the punishment of removal from service is perfectly in order and the learned Single Judge ought not to have modified



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the punishment of removal from service as compulsory retirement.

7. A reading of the order of the learned Single Judge makes it very clear that in the light of the law enunciated in the decisions of the Apex Court in the cases of (i) *B.C.Chaturvedi v. Union of India and others*, (1995) 6 SCC 749; and (ii) *The Chairman and Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri*, (2009) 15 SCC 620, and taking into consideration the proportionality of the punishment, the learned Single Judge has interfered with the punishment. The relevant paragraphs of the decisions of the Apex Court in the cases of *B.C.Chaturvedi* and *Mukul Kumar Choudhuri* cases, supra, as referred to by the learned Single Judge in paragraphs (8) and (9), are extracted hereunder:

"8. In this regard, it may be useful to refer to the decision of the Supreme Court in the case of B.C.Chaturvedi where in it was held as under:

'18. ... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the



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appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

...

25. Again, in the case of Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Assn. and Another this court considered the doctrine of proportionality and it was held:

"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise



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unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".

18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise--the elaboration of a rule of permissible priorities.'

9. It may also be relevant to refer to the judgment of the Supreme Court reported in 2009 8 MLJ 460 wherein while dealing with unauthorized absence for which an employee in that case was removed from service, it was held that the punishment was un duly harsh and grossly excessive. The relevant portion is extracted below:



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'26. *The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from*



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duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for



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the proved misconduct of unauthorized absence for six months.'"

8. Though in normal circumstances, we would not have granted any relief as the writ petitioner was a Professor, taking into consideration the aforesaid two paragraphs of the decision referred to by the learned Single Judge, we are of the view that for the actual services rendered, the benefits need not be deprived of. To that extent, we are of the view that the punishment is shockingly disproportionate. The learned Single Judge has also in paragraph 11 of the order has made it very clear that the order passed by the appellants vide the aforesaid two Government Orders are modified as one of compulsory retirement instead removal from service and that the writ petitioner would not be entitled to backwages, except terminal benefits.

9. The grievance of the appellants appears to be that by means of the order, the writ petitioner needs to be treated as in service till the date of superannuation and granted all benefits.



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That is not the order passed by the learned Single Judge. By way of abundant caution, we make it clear and clarify paragraph (11) of the order of the learned Single Judge to the effect that the punishment imposed by the impugned orders in the writ petition is modified into one as compulsory retirement and the writ petitioner would not be entitled to any backwages, but would be entitled to the terminal benefits for the actual service rendered for the period from 28.8.1986 till 31.07.2004. Since the charge against the writ petitioner has been proved for his unauthorised absence from 1.8.2004, no benefits from that date are to be paid to the writ petitioner.

With these observations, the writ appeal is disposed of. There will be no order as to costs. Consequently, C.M.P.No.17012 of 2023 is closed.

(S.V.N., J.) (K.R.S., J.)
30.08.2023

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

The Secretary,
Tamil Nadu Public Service Commission,
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