



W.P.No.31180 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

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J.Mahboob Khan

.... Petitioner

VS

1. The Managing Director,
TBCSC Head Office,
No.12, Thambusamy Street,
Kilpauk,
Chennai – 600 010

2. The Senior Regional Manager,
TBCSC Chennai, (North) Region,
No.9, Conron Smith Road,
Gopalapuram,
Chennai – 600 086.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus by calling for the records relating to Proceedings Se.Mu.Aanai.No.AD4/51122/13 dated 30.10.2014 issued by the First Respondent and quash the same and to direct the first respondent to reinstate the petitioner to the service of Bill Clerk with all consequential



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benefits.

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For Petitioner : Ms.S.Rajeni Ramadoss

For Respondents : Mr.P.Senthilkumar

ORDER

This writ petition has been filed by the petitioner challenging the order passed by the first respondent, removing the petitioner from service and to direct the first respondent to reinstate the petitioner to the service of Bill Clerk with all consequential benefits.

2. i) The case of the petitioner is that he was appointed as Bill Clerk and his service was regularised with effect from 28.04.1999. In the month of November, 2007, as he was sick and was not mentally stable, he applied for earn leave from 29.11.2007 to 13.12.2007 and he specifically informed the same to the second respondent that he was going to Erwadi Dharka in Ramanthapuram District for taking treatment for his mental illness. Thereafter, he was not in a position to apply for extension of leave.

ii) While so, he received a charge memo dated 28.06.2010 from the 2nd respondent for unauthorised absence from service from 14.12.2007 till the date of charge memo. The said charge memo was sent to Erwadi Dharka



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at Ramanathapuram District where he was taking treatment. After recovery from his mental illness completely in August 2010, he came back to Chennai and submitted his reply dated 12.08.2010 to the 2nd respondent stating that due to his illness, he was not able to join duty after 13.12.2007. He also enclosed a letter dated 08.08.2010 issued by the management Committee of Erwadi Dharka which would confirm that he was mentally ill during the unauthorised absence and taking treatment under them.

iii) On receipt of the reply, the 2nd respondent, with the consent of the 1st respondent, referred the petitioner to Regional Medical Board, Government General Hospital for getting certificate of fitness to return to duty and sent the letter dated 8.12.2010 to the said Medical Board. Subsequently, the petitioner was examined by the Medical Board and issued certificate of fitness to return to duty dated 04.02.2011.

iv) In the meantime, the enquiry was conducted against him in respect of the charge memo dated 28.06.2010 and the charge was held proved and on the basis of the enquiry report dated 29.10.2010, the order dated 2.3.2011 was passed by the 2nd respondent imposing penalty of stoppage of increment for one year without cumulative effect. The petitioner did not file any appeal against the said order and thereafter posted as Bill clerk in the new shop in



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Royapuram, by order dated 8.3.2011 of the 2nd respondent and continued to render service.

v) The petitioner was not paid annual increment even after expiry of period of penalty of stoppage of increment of 1 year i.e., 1.4.2012 till date. Whiles, after expiry of two and a half years from the date of order of penalty passed by the 2nd respondent, the first respondent suo motu issued the show cause dated 4.10.2013 to explain why an appropriate punishment should not be imposed. The petitioner sent reply dated 08.11.2013 and 14.11.2013.

vi) In the meantime, the first respondent issued promotion list, in which, the petitioner was not found although his juniors were promoted to the post of Junior Assistants. Therefore, he filed Writ petition in W.P.No.4739 of 2014 and by order dated 10.06.2014, this Court disposed of the writ petition directing the 2nd respondent to promote the petitioner as Junior Assistant from the date on which his immediate junior was promoted provided, if there is no other legal impediment for the same. However, such promotion was subject to the outcome of the suo moto review pending before the 1st respondent. It was held that after disposal of the review, appropriate orders may be passed either restoring the petitioner to his



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original position as Bill Clerk or any other suitable order.

vii) Despite receipt of the said order, the respondents failed to promote the petitioner although the next list to the promotion to the post of Junior Assistant was published by the 1st respondent and all his juniors were promoted. Therefore, contempt notice was issued by the petitioner and received by the respondents but there was no response from them. Thereafter, the first respondent has passed the impugned order dated 30.1.2014, through which, the petitioner has been imposed a major penalty of removal from service. Hence, the writ petition with the aforesaid relief.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

4. i) Learned counsel for the petitioner would submit that it was only with the consent of the first respondent, after getting fitness certificate from the Medical Board, the petitioner was posted as Bill Clerk after his long leave. While so, the action of the 2nd respondent in revising the said order, *suo motu* and imposing a major punishment of removal from service is with malafide intention as the petitioner sent the contempt notice against the



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respondents for violation of the order of this Hon'ble Court.

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ii) Learned counsel would further submit that the show cause notice and the consequent impugned order has been passed by the 1st respondent after expiry of 2 ½ years of the initial order passed by the 2nd respondent. The first respondent, ought to have reviewed the order of the second respondent within a reasonable period. The impugned order has been passed with a malafide intention to harass the petitioner as he issued contempt notice to the respondents for not complying with the order dated 10.06.2014 passed by this Hon'ble Court. After initial order dated 02.03.2011 of the 2nd respondent, the petitioner was permitted to continue in service for the past 3 ½ years and also granted Pay Fixation benefits of VI Pay Commission.

iii) Learned counsel would further submit that the action of the first respondent in giving consent to the 2nd respondent to grant posting to the petitioner for the post of Bill Clerk pursuant to the order of penalty of stoppage of increment for 1 year without cumulative effect after obtaining Medical Fitness Certificate of the petitioner from the Medical Board shows that initially the 1st respondent did not have any intention to review the order of the 2nd respondent. The action of the 1st respondent in issuing the show cause notice after a period of 2 ½ years after the impugned order of penalty



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and thereafter imposing a major penalty of removal from service on the petitioner is in violation of principle of promissory estoppel.

5. i) Per contra, the learned counsel for the respondents would submit that the petitioner was absent from duty unauthorizedly for a period of 1165 days from 27.11.2007 to 03.02.2011. The primary responsibility of the Bill Clerk is to maintain the stocks and records correctly without giving any room for complaints from the card holders and without any adverse opinion among the public about the Public Distribution System. But due to the petitioner's absence of duty, the normal working of the fair price shop was very much affect.

ii) Learned counsel would further submit that the 2nd respondent, on magnanimous mind referred the petitioner to Regional Medical Board to ascertain about his health fitness to join duty. Pursuant to the fitness certificate issued by the medical board, the 2nd respondent permitted the petitioner to resume for his duty at Royapuram Shop from 04.02.2011. As the charges have been held proved, he was imposed with the penalty of stoppage of increment for one year without cumulative. The petitioner did not file any appeal before the appellate authority against the said order. The



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1st respondent was not satisfied with the final order of 2nd respondent on the disciplinary proceedings of the petitioner. Hence, the 1st respondent initiated suo moto action against the petitioner and issued show cause notice dated 04.10.2013 and the petitioner submitted his explanation.

iii) Learned counsel would further submit that in the mean time, the petitioner challenged the promotion order issued by the 2nd respondent to some of the Bill Clerk in W.P.No.4739/2014 and this Court has passed an order on 10.06.2014 with the direction to the respondents to promote the petitioner as Junior Assistant from the date, on which, his immediate junior was promoted, provided, there is no other legal impediment for the same. However, such promotion shall be subject to the outcome of the suo moto review pending before the 2nd respondent regarding the disciplinary proceedings.

iv) Learned counsel would further submit that the entire disciplinary file were transferred to 1st respondent for initiating suo moto action against the petitioner as per rules of the respondent Corporation for his unauthorized 1165 days. Not convinced with the explanation given by the petitioner, the 1st respondent passed final order, removing the petitioner



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from service and there is no illegality or infirmity in the order passed by the respondents.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. Admittedly, in this case, initially a charge memo dated 28.06.2010 was issued to the petitioner by the 2nd respondent for unauthorised absence from service from 14.12.2007. Subsequently, the first respondent has giving consent to the 2nd respondent to grant posting to the petitioner for the post of Bill Clerk, after the order of penalty of stoppage of increment for 1 year without cumulative effect was passed, after obtaining Medical Fitness Certificate of the petitioner from the Medical Board. Therefore, initially, the 1st respondent did not have any intention to review the order of the 2nd respondent. The action of the 1st respondent in issuing the show cause notice after a period of 2 ½ years after passing the impugned order of penalty of stoppage of increment for one year without cumulative and thereafter, imposing a major penalty of removal from service on the petitioner would show that it is nothing but a colourable exercise of power. The first



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respondent ought to have reviewed the order of the 2nd respondent within a reasonable period. The very fact that the show cause notice was issued on a close proximity of time, when the Contempt notice was issued to the respondents by the petitioner, would show that the impugned order was passed on extraneous consideration and therefore, liable to be interfered with both on the grounds of malice in fact and malice in law.

8. After reinstatement, the petitioner was permitted to continue in service for 3½ years and also granted Pay Fixation benefits of VI Pay Commission. There is no explanation on the part of the respondents for the delay in passing the final order, terminating the petitioner from service. Moreover, the mental agony and sufferings undergone by the petitioner due to the protracted disciplinary proceedings for these long years would be much more than the punishment. The order passed by the respondent removing the petitioner from service is only for the reason that the petitioner has demanded for promotion and has approached this Court, by which, a contempt notice came to be issued. Therefore, this Court is of the opinion that the impugned order is liable to be set aside.



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9. In the result, this Writ Petition is allowed and the impugned order dated 30.10.2014 passed by the 1st respondent is set aside. The respondents are directed to reinstate the petitioner to the service of Bill Clerk with all consequential benefits within a period of eight weeks from the date of receipt of a copy of this order. No costs.

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Index: Yes/No
Speaking/Non-speaking order
vsi

To

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