IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2023

CORAM

**THE HON'BLE MR.JUSTICE S. VAIDYANATHAN**

**AND**

**THE HON'BLE MR.JUSTICE K. RAJASEKAR**

W.A.No. 2768 of 2023

&

C.M.P. No. 23258 of 2023

1. The State of Tamil Nadu,
represented by the Revenue Secretary,
Fort St. George, Chennai – 600 009.

2. The Special Commissioner,
Commissioner of Revenue Administration,
(Appellate Authority),
Fort St. George, Chennai – 600 005.

3. The Joint Commissioner,
Revenue Administration,
(Disaster Management & Mitigation
Department),
Chepauk, Chennai 600 005. ..Appellants

Vs.

P. Ganesh Prasad ..Respondent

Prayer: Writ Appeal as against the order dated 11.05.2022 in WP. No. 34060 of 2007.

For Appellants :: Mr.A. Silambanan,
Addl. Advocate General II
assisted by
Mrs.V. Yamuna Devi,
Special Govt. Pleader

For Respondent :: Mr.B. Manoharan

**J U D G M E N T**

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

The present writ appeal has been preferred by the Department questioning the order of the learned Single Judge granting the relief of reinstatement without backwages but with continuity of service.

2. The respondent was appointed as Junior Assistant under compassionate grounds on 22.10.1997 in Revenue Administration Department and he had put in 10 years of service. For his unauthorised absence/leave/staying away from duty, charge memo dated 03.06.2006 was issued to the respondent containing four charges. The respondent submitted his explanation to the charge memo. However, the Enquiry Officer, who was not convinced with the explanation offered, proceeded to hold that all the four charges were proved and the enquiry officer's report was also

furnished to the respondent for his explanation. On receipt of his explanation, the Disciplinary Authority came to the conclusion that all the four charges were proved. As the respondent had been habitually abstaining from duty and though imposed with lesser punishments on previous occasions, did not mend his ways and had continued to commit the same misconduct, the 3rd appellant herein by order dated 06.02.2007 dismissed the respondent from service. The said order was also confirmed by the Appellate Authority/2nd appellant by orderdated 20.05.2007 and the revision filed before the first appellant as against the order passed by the Appellate Authority also came to be rejected vide Government Order (1D) No. 531 dated 14.09.2007 confirming the order of dismissal passed by the 3rd appellant. Challenging the said orders, the respondent filed W.P. No. 34060 of 2007 and by the order under challenge, the learned Single Judge modified the punishment of removal from service into one of reinstatement without payment of backwages but with continuity of service. Aggrieved by the said order, the appellants have preferred the intra court appeal.

3. According to the appellants, though the respondent cited health reasons for his unathorised absence/leave/abstinence from duty, no evidence was let in before the competent authority to substantiate the said stand and

and the learned Single Judge ought to have taken the said aspect into consideration. Further, the appellants would submit that the respondent has got bad past record and only in order to provide him an opportunity to mend his attitude and behaviour, he was imposed with lesser punishments for similar misconduct on previous occasions, which was of no avail as he continued to commit the same misconduct. That being so, the learned Single Judge ought not to have modified the punishment of dismissal from service into one of reinstatement.

4. According to the respondent, the capital punishment imposed by the appellants is excessive and harsh on the doctrine of proportionality, which was rightly set aside by the learned Single Judge and therefore, the order passed by the learned Single Judge does not call for any interference.

5. Heard both sides.

6. Though the respondent has been unauthorisedly absent for long periods without prior permission, the learned Single Judge has observed that on the ground of unauthorised absence, eventhough the employee was found guilty of the said misconduct, without taking note of the medical ailment of the respondent/workman, the authorities, in a perfunctory manner, have

brushed aside the same and imposed the puishment of dismissal from service. The learned Single Judge, in the light of the judgment of the Apex Court in ***Chairman cum MD, Coal india Limited V. Mukul Kumar Choudhuri*** reported in ***2009 (8) MLJ 460 (SC),*** more so, with regard to proportionality of punishment, granted the relief.

7. A reading of the order under challenge would make it very clear that the employee had absented on earlier occasions and imposed with punishments and the learned Single Judge has also referred to the punishments imposed on the employee in paragraph No. 6 of the order and the same is extracted below:

| ***Sl.No.*** | ***Punishment*** | ***Proceedings No.*** |
|---|---|---|
| 1. | Stoppage of increment without cumulative effect for a period of one year | O.P. 1(1)/40456/2002, dated 23.07.2002. |
| 2. | Stoppage of increment without cumulative effect for a period of one year | O.P. 1(1)/19064/2002, dated 05.09.2002. |
| 3. | Stoppage of increment with cumulative effect for a period of two years | O.P. 1(1)/74757/2004, dated 18.11.2005. |

8. The particulars of absence referred to by the employer at Page No. 88 of the typed set and the details given above would make it very clear that eversince the employee entered into service, he had been absenting

himself periodically and regularly and that there has been continued unauthorised absence. It is true that on some occasions, medical certificates were produced. Taking note of the totality of circumstances and that the employee had suffered three previous punishments, in order to render justice on equity, more so, when there has been a delay of 410 days in preferring the writ appeal by the employer and that the employee has bad past record, apart from the fact that he had absented for more than 1000 days during his entire service, we are inclined to interfere with the order of the learned Single Judge and modify the same as follows:

> *(i) The respondent/employee shall be reinstated in service* ***on or before 1st November, 2023*** *as a fresh entrant;*
>
> *(ii) The respondent/employee will not be entitled to get any backwages and the continuity of service granted by the learned Single Judge is interfered with;*
>
> *(iii) The respondent/employee shall be posted at a far off place other than Chennai. In case, the employee absents himself for any reason whatsoever, the previous misconduct including the absence, which we have condoned only for the purpose of granting relief, especially taking note of his past record though the employee has been reinstated as a fresh*

*entrant, can be taken into account to impose punishment and also for confirmation of services It is made clear that the employee's past service shall not be counted for any purpose including Provident Fund, Gratuity, Pension, etc. The respondent/employee shall be placed under probation initially and depending upon his performance during the period of probation, the authorities may take a decision to confirm the services.*

9. The writ appeal is disposed of with the above observations. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (K.R.S.J.)
29.09.2023

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To

1, The Revenue Secretary,
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**S. VAIDYANATHAN,J.**

**AND**

**K. RAJASEKAR,J.**

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