IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:19.06.2023	Delivered on: 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.3832 of 2017
&
W.M.P.No.3896 of 2017

S. Manoharan ... Petitioner

Vs.

1.The Principal Secretary to Government
Commercial Taxes and Registration
Department, Fort Saint George
Chennai-9

2.The Chairman
Sales Tax Appellate Tribunal
Chennai-600 104 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent in proceedings Na.Ka.No.1086/11/B2 dated 25.02.2013 and Na.Ka.No.1095/2015/E2 dated 17.08.2015 and quash the same in so far as it denies the period from 31.05.2007 to 20.10.2011 as duty period and consequently direct the respondents to treat the period from 31.05.2007 to

20.10.2011 as duty period.

For Petitioner : Mr.N.Kolandaivelu

For Respondents : Mr.Haja Nazirudeen, AAG
assisted by
Mr.M.Venkateswaran, Spl.G.P(Taxes) for R1

ORDER

Petitioner has filed this Writ Petition seeking issuance of a Writ of Certiorarified Mandamus to quash the proceedings of the 2nd respondent in Na.Ka.No.1086/11/B2 dated 25.02.2013 and Na.Ka.No.1095/2015/E2 dated 17.08.2015 and to consequently direct the respondents to treat the period from 31.05.2007 to 20.10.2011 as duty period.

2. The petitioner's case is that he registered himself with Employment Exchange for job of a driver having possessed of a valid driving license. The petitioner was sponsored by the District Employment Officer (Technical), Chennai to be appointed as driver in Sales Tax Appellate Tribunal, Chennai. The petitioner was successfully interviewed and he was appointed vide proceedings dated 30.03.2007. The petitioner was served with the

proceedings dated 31.05.2007 removing him from service with effect from 31.05.2007 alleging that he was on unauthorised absence from duty on 27.04.2007, 28.05.2007 afternoon and 29.05.2007. The petitioner's case is that he was never absent from duty unauthorisedly on 27.04.2007 he left the Hon'ble Chairman residence only after the Hon'ble Chairman left for a camp at Cuddalore. In so far as the next date, 28.05.2007, the petitioner states that he left only after completing all the work allotted to him and he was very much present at the residence of the Hon'ble Chaiman for the whole day. Even on 29.05.2007, according the petitioner he was physically present at the residence of the Hon'ble Chairman for the whole day.

3. Though the petitioner was ousted from service, he was called upon to pay back the salary. The petitioner challenged the said order in W.P.No.23788 of 2008. However, he was permitted to withdraw the said Writ Petition and instead file an appeal before the Government. Thereafter, the petitioner preferred an Appeal before the 1st respondent on 28.01.2009. The 1st respondent allowed the appeal giving liberty to initiate fresh

disciplinary proceedings against the petitioner. Thereafter, the petitioner was reinstated on 19.10.2011. Subsequently, the petitioner was issued with a charge memo by the 2nd respondent under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and the punishment order viz., stoppage of increment without cumulative effect for a period of one year and treating the period of dismissal from 31.05.2007 to 20.10.2011 as extra-ordinary leave without allowance came to be passed, which is subject matter of challenge in the present Writ Petition, on various grounds set out in the affidavit in support of the Writ Petition.

4. The respondents have filed a counter denying the factual averments set out in the affidavit in support of the Writ Petition and also justifying the action taken, considering that even immediately upon being appointed as a driver the conduct exhibited by the petitioner was far from satisfactory and unauthorised absence or leave is not a matter that can be left lightly. It is also contended that the punishment imposed on the petitioner continued to be in force and he was not reinstated. The period of absence cannot be treated as

duty period, enabling the petitioner to get backwages.

5. Heard Mr.N.Kolandaivelu, learned counsel appearing for the petitioner and Mr.Haja Nazirudeen, Additional Advocate General assisted by Mr.M.Venkateswaran, Special Government Pleader (Taxes) appearing for the 1st respondent.

6. Learned counsel for the petitioner, besides contending that the petitioner was never absent from duty and that he cannot be punished twice for the same offence, prayed for Writ Petition being allowed. He also relied on the decisions of this Court in the case of ***C.Arun Vs. Director General of Police and Others***, reported in ***2019 SCC Online Mad 3500*** and ***S.Dakshinamoorthy Vs. Deputy Inspector General of Police, Vellore Range, Vellore and another***, reported in ***2015 SCC Online Mad 4595.*** This Court has held that discretion should be exercised in accordance with well considered principles of law and that F.R.54(B) gives a discretion to the authority to regularize the period of suspension. The authority should

necessarily consider all relevant background facts and the refusal to treat suspension period as one spent on duty would amount to double jeopardy as the petitioner has already been punished for misconduct in question and consequently set aside the impugned orders in that Writ Petition. In ***C.Arun's*** case, this Court held that the authorities cannot act mechanically and should consider the punishment already suffered by the employee under R.3(b).

7. Per contra, learned Additional Advocate General would draw the attention of this Court to the judgment of the Hon'ble Supreme Court in ***State of Punjab Vs. Dr.P.L.Singla*** reported in ***(2008) 8 SCC 469***, in Civil Appeal No.4969 of 2008 dated 31.07.2008, that was a case where the punishment for unauthorized absence was not cancelled or withdrawn and subsequently an order came to be passed. Accordingly with regard to extra-ordinary leave and the period of absence, the Hon'ble Supreme Court found that the intention or letter and spirit of the order was not to revoke the punishment and such an order would not have the effect of erasing the punishment already imposed.

8. This Court at the outset finds that the enquiry officer has found all charges proved against the petitioner and thereafter the 2nd respondent passed the punishment order of stoppage of increment, without cumulative effect, for a period of one year and also treated the period of dismissal as extra-ordinary leave without allowance. The ratio laid down by the Hon'ble Supreme Court would squarely apply to the facts of the present case. The contention of the counsel for the petitioner is that it would amount to double jeopardy is not acceptable. The impugned order passed by the 2nd respondent ordering stoppage of increment without cumulative effect for a period of one year and treating the period of dismissal from 31.05.2007 to 20.10.2011 as extra-ordinary leave without allowance cannot be faulted. The second part viz., treating the period of dismissal from 31.05.2007 to 20.10.2011 as extra-ordinary leave can at best be a consequential direction in furtherance of the order of punishment. Infact the Hon'ble Supreme Court has held in para 8 of the said judgment as follows:

> *"8. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an*

employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which even the misconduct stood condoned. The second is to treat the unauthorized absence as misconduct, hold an enquiry and impose a punishment for the misconduct."

9. The Hon'ble Suprme Court also further held in para 10 of the said judgment that a consequential order directing how the period of absence should be accounted, would merely be an accounting and administrative procedure and will not in anyway affect or supercede the order imposing punishment. As rightly pointed out by learned Additional Advocate General, the punishment imposed on the petitioner continues to be in force and therefore as long as he was not reinstated, the period of absence cannot be treated as one on duty, thereby enabling the petitioner to get backwages. The judgments relied on by the counsel for the petitioner cannot be applied to the facts of the present case.

10. In ***S.Dakshinamoorthy's*** case, it was a case of minor punishment

that was imposed on the petitioner. Therefore, this Court held that the impugned order therein refusing to treat suspension period as spent on duty would amount to double jeopardy as the petitioner has already been punished for misconduct. In ***C.Arun's*** case, no ratio was ladi down and the matter was merely remanded the matter for fresh consideration, in accordance with law. Therefore, both the cases cited by the learned counsel for the petitioner do not come to the rescue of the petitioner.

For all the reasons mentioned above, the Writ Petition fails and accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023.

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Index:Yes/No
Neutral Citation:Yes/No
Speaking/Non-speaking order
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P.B.BALAJI, J.,
kpr

To

1.The Principal Secretary to Government
Commercial Taxes and Registration
Department, Fort Saint George
Chennai-9

Pre-delivery order in
W.P.No.3832 of 2017

23.06.2023