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W.P.No. 5163 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.P.No.5163 of 2020

S.N.Ashokan

....Petitioner

Vs

1. The Chairman cum Managing Director,
The Tamil Nadu Power Generation and
Distribution Corporation Limited (TANGEDCO),
10th Floor, NPKRR Maaligai,
144, Anna Salai,
Chennai – 600 002.
2. The Chief Engineer/Peronnel,
The Tamil Nadu Power Generation and
Distribution Corporation Limited (TANGEDCO),
10th Floor, NPKRR Maaligai
144, Anna Salai,
Chennai – 600 002.
3. The Chief Engineer,
The Tamil Nadu Power Generation and
Distribution Corporation Limited (TANGEDCO),
Gas Turbine Schemes,
Chennai – 600 002.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceeding issued in (Per.) CMD/TANGEDCO



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proceedings No.80, dated 29.11.2019 on the file of the 1st Respondent confirming the order of the 3rd respondent issued in Memo No.CE/GTS/Estt/A4/F.F.O/C.591/14, dated 02.07.2014, quash the same and consequently direct the Respondents -1 and 2 to permit the petitioner to relieve under the Compulsory/Voluntary Retirement Scheme' so as to enable the petitioner to avail all the retirement benefits .

For Petitioner : M/s. U.Ramya for Mr.R.Bharath Kumar
For Respondents : Mr.C.Manokar for TANGEDCO

ORDER

The instant Writ Petition has been filed challenging the impugned proceeding issued in (Per.) CMD/TANGEDCO proceedings No.80, dated 29.11.2019 in which the awarding of punishment of removal from service dated 02.07.2014 was confirmed.

2. The learned counsel for the petitioner would earnestly submit that the petitioner has 20 years of unblemished service, and that only on submitting leave applications, he availed various leaves, however on urgent personal exigencies, he was compelled to travel Dubai and Kolalampur, therefore by inadvertence, he did not obtain permission as contemplated under Rule 27(A) of the TNEB Employees Conduct Regulations.



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3. The learned counsel also further contend that having served 20 years with unblemished service, the respondent not even considered his request for resignation and voluntary retirement, but levied the capital punishment of removal from service, which is shockingly disproportionate, as there were no other misconduct except taking the leave. Hence, prayed to interfere with the order of the respondents.

4. Per contra, the learned Government Advocate would submit that, petitioner without sanctioning any leave has availed almost 2½ years under 7 spells between 11.03.2008 to 18.08.2010 and thereby the Department has suffered very much and he would further submit that, during the relevant period, he went to Dubai and also he submitted false medical certificate and therefore, punishment of removal from service is proportionate to the gravity of the charges. Hence, he would submit that there is no ground to interfere with the order of the authority.

5. I have given my anxious consideration to either side submissions.

6. The charge against the petitioner is that the petitioner has availed



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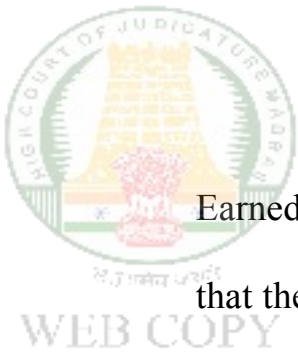
the following leaves without Board's permission.

- 1) 11.03.2008 to 23.03.2008 – 13 days EOL without pay and allowance
- 2) 26.03.2008 to 09.05.2008 – 45 days UEL on MC
- 3) 14.05.2008 to 30.10.2008 – 170 days Earned Leave
- 4) 03.11.2008 to 23.12.2008 – 51 days UEL on MC
- 5) 26.12.2008 to 12.02.2009 – 49 days UEL on MC
- 6) 19.02.2009 to 18.08.2009 – 181 days without pay and allowances
- 7) 19.08.2009 to 18.08.2010 – One year EOL without pay and allowances

7. During the above period, he also traveled to Dubai three times ie on 17.05.2008, 18.12.2008 and 15.05.2009 without the permission of the Board.

8. It is the settled principle of law that the finding of the Enquiry Officer cannot be re-appreciated as the Appellate Authority. However, in the present case there is no serious dispute in respect of the absence of the petitioner on the above mentioned dates. But, it is his contention that, his leave application though submitted no order passed.

9. It is the specific submission of the learned counsel for the petitioner that, petitioner traveled to Foreign due to his personal reasons and also would submit that he is eligible to travel abroad as he was availed



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Earned Leave, Medical Leave on private affairs. However the fact remains that the petitioner was unauthorizedly absent during that period. As already indicated herein above, the long absence of more than two years would definitely cause prejudice to any administration and furthermore, the petitioner's travel to abroad that too without getting permission from the authority concerned would show his scant regard to the great institution which provide essential service to the public at large. Therefore, the findings of the Enquiry Officer that the charges against the petitioner has been proved cannot be found faulted.

10. Coming to the proportionality of the punishment, it is the contention of the petitioner that the punishment of removal from service is shockingly disproportionate. As we already discussed, the petitioner being in a responsible position as Assistant Executive Engineer, his conduct of absenting himself unauthorizedly for more that 2½ years cannot be construed as a minor misconduct, and to further fan the fire, during the interregnum, he also traveled to abroad thrice without obtaining permission. We must keep in mind that the respondent Corporation is doing sensitive essential service, and any interruption in that service would gravely affect the State and it's Citizen. It is in that background this



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unauthorized absent, and leaving abroad without permission is grave misconduct. In such a scenario, this Court could not find any disproportionality with the punishment imposed by the respondent.

11. At this juncture, the learned counsel would draw the attention of this Court about the discrimination between himself and one Kumar, wherein when he traveled to abroad, without permission he was treated leniently by imposing lesser punishment of compulsory retirement. Learned counsel taken this Court through the order of punishment imposed against said Kumar.

12 While perusing the punishment of the said Kumar dated 25.11.2014, it is clear that he was unauthorizedly absent only for 95 days though he traveled thrice as like the present petitioner. In the case in hand, petitioner was unauthorizedly absent for more than 2½ years and traveled to abroad. It is thus, petitioner cannot be termed as the similarly placed person. Therefore, this Court could not find any discrimination between the petitioner and the said Kumar. Thus, this Court do not find any merits in this Writ Petition.



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13. In the result, the Writ Petition is dismissed. No costs.

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Index : Yes/No
Neutral Citation : Yes
Speaking order : Yes
Sma

To

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C.KUMARAPPAN, J

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