



WEB COPY



W.A. No. 2309 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2024

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

AND

THE HONOURABLE MR. JUSTICE G. ARUL MURUGAN

W.A. No. 2309 of 2021
&
C.M.P. No. 14670 of 2021

1. The State of Tamil Nadu
rep. by its Secretary to Govt.,
Home Department,
Fort St. George,
Chennai – 600 009.
2. The Director of Fire Services &
Rescue Department,
Egmore, Chennai – 600 008.
3. The Divisional Fire Officer,
Thanjavur.

..Appellants

Vs.

K.V. Lakshmanan

..Respondent

Prayer: Writ Appeal under Clause 15 of Letters Patent as against the
order dated 23.07.2020 passed in W.P. No. 34972 of 2013.



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For Appellants :: Mr.P. Anandakumar,
Govt. Advocate

For Respondent :: Mr.R. Prem Narayan

J U D G M E N T

(Delivered by G. ARUL MURUGAN,J.)

The intra-court appeal has been preferred as against the order dated 23.07.2020 passed in W.P. No. 34972 of 2013 whereby the punishment of dismissal from service was modified into one of compulsory retirement.

2. The factual matrix, in a nut shell, that led to the filing of this writ appeal is as hereunder:

(i) The respondent/writ petitioner was working as Fireman in the Fire Services Department from 01.09.1980. While so, he proceeded on casual leave from 18.05.1993 for a period of three days till 20.05.1993. After the expiry of his leave period, he did not report for duty on and after 21.05.1993. Even thereafter, as the writ petitioner remained unauthorisedly absent, a charge memo dated 09.09.1993 was issued. As the same could not be served on the respondent/writ petitioner, it was affixed at his residence. The respondent failed to offer any explanation consequent upon which an



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enquiry officer was appointed and since respondent/writ petitioner did not participate in the enquiry, enquiry proceedings were conducted *ex parte*. On conclusion of enquiry proceedings, the charges were held proved and based on the enquiry report, the Disciplinary Authority/3rd appellant herein imposed the punishment of dismissal from service by order dated 14.07.1994.

(ii) As against the said order, the respondent/writ petitioner claims to have preferred an appeal to the 3rd appellant instead of the 2nd appellant, who is the competent authority. However, no orders were passed in the appeal. Thereafter, the respondent/writ petitioner filed a mercy petition before the 2nd appellant, which came to be dismissed by order dated 24.09.1997. Again, the respondent/writ petitioner filed a mercy petition to the Government, i.e., the 1st appellant and the same was also rejected by order dated 27.09.2000. Challenging the said orders and also the order dated 06.04.2011, by which the request of the respondent/writ petitioner to permit him to join duty was turned down by the 2nd appellant, W.P. No. 34972 of 2013 came to be filed.



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(iii) The Writ Court, taking note of the fact that though the enquiry proceedings had been conducted in a fair and proper manner, since the respondent/writ petitioner had put in 13 years of unblemished service and had been a recipient of good service honours award for more than a dozen times from the Department and also that the order of the 1st appellant was silent on the medical condition of the respondent/writ petitioner notwithstanding the medical records annexed with the mercy petition, interfered with the punishment of dismissal from service imposed and modified the same, by the order under challenge, into one of compulsory retirement. Assailing the said order, the present intra court appeal has been preferred at the instance of the State.

3. Learned Government Advocate for the appellants contended that the Writ Court having held that the enquiry was conducted in a fair and proper manner, ought not to have modified the punishment as it is for the Disciplinary Authority to impose the punishment proportionate to the delinquency and interference by the Writ Court under Article 226 of the Constitution of India is unsustainable. The Writ Court cannot sit as an Appellate Authority, but can only consider the manner in which the decision



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was arrived at. It is his further submission that the respondent/writ petitioner was unauthorisedly absent from duty resulting in issuance of charge memo.

Since the charge memo was not received by the respondent/writ petitioner, it was affixed at his residence. The respondent/writ petitioner did not take any steps to participate in the enquiry and ultimately, the enquiry proceedings were conducted *ex parte* and based on the report submitted by the enquiry officer, the Disciplinary Authority, while concurring with the enquiry officer, imposed the punishment of dismissal from service by order dated 14.07.1994. The learned Government Advocate further submitted that the respondent/writ petitioner failed to prefer an appeal to the appropriate authority and the mercy petitions filed by the respondent/writ petitioner to the 2nd and 1st appellants were also dismissed. Therefore, the order of the Writ Court modifying the punishment imposed is erroneous and sought for interference of this Court.

4. Learned counsel for the respondent/writ petitioner contended that even though the respondent/writ petitioner did not participate in the enquiry proceedings, the Writ Court considered the service put in by the writ petitioner for a period of 13 years and also considered the awards and



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honours received by him. The learned counsel would also submit that the

Writ Court took note of the fact that the medical certificates annexed by the writ petitioner along with the appeal had not been considered by the Department and that the delinquency and other relevant factors had not been viewed in proper perspective and thereby interfered with the punishment imposed by the Department as it was found to be disproportionate and modified the same into one of compulsory retirement. According to the learned counsel, the order under challenge is perfectly valid and sought for dismissal of the writ appeal.

5. Heard the rival submissions and perused the materials on record.

6. The respondent/writ petitioner, who was working as a Fireman in the appellant Department, admittedly, availed casual leave for three days from 18.05.1993 to 20.05.1993. On expiry of his leave period, he did not report for duty on 21.05.2024 and remained unauthorisedly absent thereafter resulting in initiation of disciplinary proceedings under Section 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules by issuance of charge memo dated 09.09.1993. As it could not be served on the



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respondent/writ petitioner, it was affixed at his residence. However, the respondent/writ petitioner did not come forward with any reply.

7. Subsequently, an enquiry officer was appointed and as the respondent/writ petitioner did not participate in the enquiry, it was conducted ex parte. On completion of enquiry proceedings, report was submitted stating that the charges framed were proved and by order dated 14.07.1994, the Disciplinary Authority imposed the punishment of dismissal from service. If at all, the respondent/writ petitioner was aggrieved by the punishment imposed, he had the right of appeal to challenge the same before the appropriate authority, i.e., the 2nd appellant herein. However, from the records, it could be seen that the writ petitioner did not file the appeal before the appropriate authority, i.e., 2nd appellant and filed it before the 3rd appellant, who is not the competent authority. Even the mercy petitions filed by the respondent/writ petitioner before the 2nd and 1st appellants came to be rejected by orders dated 24.09.1997 and 27.09.2000 respectively.

8. A perusal of the impugned order shows that the Writ Court found that the enquiry was conducted in a fair and proper manner. Having



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concluded so, the Writ Court proceeded to interfere with the punishment imposed on the ground of proportionality and also considering the past unblemished service rendered by the respondent/writ petitioner for a period of about 13 years coupled with the awards and honours received by the respondent/writ petitioner as claimed by him. The Writ Court had also observed that the medical certificates claimed to have been enclosed along with the appeal filed by the writ petitioner had not been taken into account by the authorities.

9. Be that as it may, once the Writ Court had come to the conclusion that the enquiry proceedings against the writ petitioner had been conducted in a fair and proper manner, then it is for the Disciplinary Authority to decide on the quantum of punishment to be imposed on the delinquent. The Writ Court, by exercising the power of judicial review under Article 226 of the Constitution of India, cannot sit in appeal over the decision arrived at, unless the enquiry conducted is found to be perverse or without any evidence. In this regard, it would be useful to refer to the decision of the Supreme Court in ***B.C. Chaturvedi V. Union of India and Others*** reported in ***1995 SCC (6) 489*** wherein the Apex Court held that the



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Appellate Court, while exercising the power of judicial review cannot re-appreciate the evidence and arrive at its own independent findings on the evidence.

10. Besides, in the instant case, it could be found that though the writ petitioner claims to have submitted medical certificates in respect of the injuries sustained by him in 1993, a perusal of the order dated 27.09.2000 passed by the 1st appellant rejecting the mercy petition filed by the writ petitioner shows that the medical certificates produced by him pertain to the treatment taken by him from 03.08.1996 to 13.11.1996 while the writ petitioner claims that he sustained injuries in 1993 when he was on leave. Therefore, the case of the writ petitioner that only because of the injury sustained and treatment undergone, he was unauthorisedly absent from duty deserves to be rejected. Further, when the respondent/writ petitioner is a Fireman in an Essential Service, the unauthorised absence for a long period is a serious charge and the punishment imposed is commensurate with the proved charges. The order of the Writ Court in interfering with the punishment is only on misplaced sympathy.



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11. For the aforesaid reasons, we are of the considered view that the Writ Court, having held that the enquiry was conducted in a fair and proper manner, ought not to have interfered with the punishment imposed and modified the same, as it is beyond the scope of judicial review under Article 226 of the Constitution of India. In such circumstances, we do not have any hesitation to interfere with the order under challenge.

12. Resultantly, the impugned order passed by the learned Single Judge is set aside and the writ appeal stands allowed. No costs. Connected C.M.P. is closed.

nv

(A.S.M.J.) (G.A.M.J.)
06.11.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No

To

1. The Secretary to Govt.,
Home Department,
Fort St. George,
Chennai – 600 009.

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Rescue Department,
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