



W.P.No.19022 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2024
Pronounced on : 26.06.2024

C O R A M:

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.19022 of 2014
and
M.P.No.1 of 2014

1. R.Rangaraj (Deceased)
2. R.Jayanthi
3. R.Aravindkumar
4. R.GeethanjaliPetitioners

Vs.

The Secretary to Government,
Agriculture Department,
Fort St.George, Chennai - 600 009.

...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a writ of certiorarified mandamus to call for the records connected with the Government orders issued in G.O.(3D) No.230 Agriculture (Ve.Ni.6) Department dated 22.12.2010 and G.O.(2D) No.147 Agriculture (Ve.Ni.6) Department dated 08.11.2013 passed by the respondent and quash the same



W.P.No.19022 of 2014

and consequently direct the respondents to disburse the pensionary benefits to the petitioner.

For petitioners : Mr.S.Ilamvaludhi
For respondent : Mr.Vadivelu Deenadayalan
Additional Government Pleader

ORDER

This writ petition is filed seeking for certiorarified mandamus to quash the orders issued in G.O.(3D) No.230 Agriculture (Ve.Ni.6) Department dated 22.12.2010 and G.O.(2D) No.147 Agriculture (Ve.Ni.6) Department dated 08.11.2013 and consequently directing the respondents to disburse the pensionary benefits to the petitioner.

2. During the pendency of this writ petition the first petitioner who has filed this writ petition has passed away and thereby, his legal representatives were brought on record as second, third and fourth petitioners.

3. The facts in brief as per the affidavit are as follows:



W.P.No.19022 of 2014

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The first petitioner joined as Assistant Engineer in the respondent Department on 18.02.1983. He had applied for leave from 04.07.2002 to 31.03.2003. However, from 01.04.2003 he was absent from duty without any valid reason in violation of Rule 18 (3) of the Fundamental Rules. A charge memo was issued to the first petitioner, he has submitted explanation. As the respondent not satisfied with the explanation an enquiry officer was appointed and enquiry was conducted and basing on the report of the enquiry officer the Secretary to Government has issued a G.O.(3D) No.230 Agriculture (Ve.Ni.6) Department dated 22.12.2010 removing the first petitioner from service. He has preferred a review against the said Government Orders dated 22.12.2010 however same was dismissed. Both the said orders are now challenged in the writ petition.

4. It is submitted by the learned counsel for the petitioners that the first petitioner was not deserted from duty and the punishment of removal from service is totally disproportionate for the alleged mis-conduct and that the opinion of Public Service Commission should not have been taken prior to imposing the punishment and impugned orders have been passed mechanically.



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5. It is mentioned by the respondent in the counter affidavit that the first petitioner was absenting from work unauthorisedly thereby, charges were framed for violation of Rule 18 (3) of Fundamental Rules. The enquiry officer after conducting due enquiry has submitted the report on 14.10.2005 holding that the charges framed against the first petitioner were proved. The respondent has sought for explanation from the first petitioner by communicating the enquiry report dated 17.12.2007, but the first petitioner has not submitted his explanation. In the meanwhile, the first petitioner has reached the age of superannuation on 31.03.2010, however he was placed under suspension and was not permitted to retire. Prior to passing of final orders the disciplinary authority has addressed a letter to Tamil Nadu Public Service Commission for its views. On which TNPSC vide its communication dated 31.03.2010 has recommended the respondent to impose the punishment of removal from service on the first petitioner and accordingly the disciplinary authority has issued impugned proceedings of removing the first petitioner from service.

6. Heard both sides and perused the materials on record.



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7. The first petitioner has initially applied for leave without pay from 04.07.2002 to 31.03.2003 and the same was considered. On 01.04.2003 he was supposed to have joined the duty but he has not reported. The first petitioner submitted to the respondent that his brother died on 02.07.2002, his mother fell sick and that he also became unwell thereby, was unable to attend his work. The second respondent by way of a letter dated 13.10.2003 has rejected the request of the first petitioner for leave and directed him to join the service. But he has not reported.

8. The petitioner has never responded to the notices given by the respondents even prior to initiation of the disciplinary proceedings and also subsequent proceedings. The attitude of the first petitioner in not responding to many memos gives rise to an impression about his mental condition. A man of ordinary prudent should have responded to the memos and directions given by the respondent in whatever manner he feels. However, the first petitioner decided not to respond for any of the notices. The first petitioner did not chose to attend the enquiry proceedings. He has not submitted any explanation even to the enquiry report. Since there was no response from the first petitioner, Enquiry officer has conducted an enquiry and has submitted



W.P.No.19022 of 2014

his report finding the first petitioner guilty of all the charges and thereafter, impugned orders were passed by the respondents. Considering the above, the enquiry report cannot be found fault.

9. It is submitted by the learned counsel for the petitioners that respondent should not have consulted Public Service Commission prior to inflicting the punishment to the first petitioner. His contention cannot be accepted. According to Article 320 of the Constitution of India, Public Service Commission can be consulted by the State Government in respect of disciplinary matters, thereby petitioners cannot contend that respondents should not have consulted TNPSC prior to imposing the punishment. Further, merely because Public Service Commission has given some advice to the respondents in respect of punishment to be imposed to the first petitioner, that itself will not vitiate the punishment awarded on the first petitioner, basing on the enquiry report.

10. The first petitioner who has filed this writ petition is no more. His legal representatives have come on record and submitted that in case if this Court confirms the finding of the Enquiry Officer and disciplinary authority that first petitioner is guilty of misconduct, it is submitted to convert the



punishment of dismissal from service to that of the compulsory retirement stating that on account of removal of first petitioner from service the dependants of the first petitioner are not getting any pensionary benefits.

11. This Court has given anxious consideration as to whether the punishment of dismissal from service can be converted to one of compulsory retirement. Normally, punishment imposed by the disciplinary authority cannot be interfered with by the High Court under Article 226 of the Constitution of India, however, if the punishment found to be highly disproportionate, and shocks the conscience of this Court, this Court can examine to alter the punishment in exceptional cases.

12. The first petitioner has served the Department for about 20 years. There is no record that he has committed any misconduct earlier. It is not the case that the petitioner has committed illegality or fraud or misappropriation, etc. The only misconduct alleged against the first petitioner is unauthorised absence, that too for the reasons known to the petitioner, he has not responded to any of the notices and not participated in the enquiry, thereby report was submitted basing on the records. This Court is of the opinion that for the unauthorised absence, imposition of capital



punishment of dismissal from service is highly disproportionate. There are many major punishments including stoppage of increments and compulsory retirement, lowering the stage, etc., but the Disciplinary Authority has not explained as to how this case is so special which deserves capital punishment. It is not the case of the respondent Department that the first petitioner is a chronic absentee for which disciplinary proceedings were initiated previously. Added to it, the first petitioner is no more and that the family members have no other source of income and they were depending solely on the income of the first petitioner. The family members of the first petitioner must get the benefit of 20 years of service rendered by the first petitioner.

13. In view of all the above, this Court is of the opinion that this is a fit case where this Court can interfere with the punishment imposed by the disciplinary proceeding. Considering the circumstances discussed above, and on perusal of the documents and on hearing of both sides, this Court is of the opinion that for the mis-conduct committed by the first petitioner, dismissal of service is not proportionate and the punishment imposed does not commensurate with the misconduct proved. Therefore, the punishment is hereby converted from the dismissal of service to the compulsory



W.P.No.19022 of 2014

retirement.

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14. In the result, this **writ petition is partly allowed**, confirming the finding that the first petitioner was guilty of misconduct. The punishment of dismissal of service is converted as compulsory retirement. However, the first petitioner is not entitled for any monetary benefits from the date of dismissal to the date of retirement. The previous service rendered by him shall be counted for the pension and in addition to that the service from the date of dismissal until the date of retirement shall be counted notionally for the purpose of calculation of pension. This case shall not be treated as a precedent and this order is passed taking into consideration the peculiar facts on hand.

No costs. Consequently, M.P.No.1 of 2014 is closed.

26/6/2024

vca/mvs.

Index : Yes/No

Citation : Yes/No



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W.P.No.19022 of 2014

To:

1. The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Revenue Administration,
Chepauk, Chennai - 600 005.
3. The District Collector,
Trichy District.



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W.P.No.19022 of 2014

DR. D.NAGARJUN,J

vca/mvs.

Pre-delivery order made in
W.P.No.19022 of 2014



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W.P.No.19022 of 2014

26/6/2024