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W.A.No.486 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.486 of 2022

and

C.M.P.No.3517 of 2022

1.The Tamil Nadu Civil Supplies Corporation,
Represented by its Managing Director,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

2.The General Manager (Administration),
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.

... Appellants

Vs.

E.Kandasamy (died)

2. K.Poongodi

3. K.Dinesh

4. Divya

... Respondents

(R2 to R4 are brought on record as
legal representatives of the deceased first respondent
vide order dated 13.10.2023 made in
C.M.P.No.21632 of 2023 in W.A.No.486 of 2022)

Writ Appeal filed under Clause 15 of the Letters Patent, against the order
dated 22.07.2021 passed by the learned Judge in W.P.No.7192 of 2017.

For Appellants

: Mr.C.Selvaraj



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For Respondents : Mr.T.Saikrishnan
For Mr.R.Saravanan

JUDGMENT

(Judgment of the court was delivered by R.Mahadevan,J)

The appellants are the Tamil Nadu Civil Supplies Corporation and its General Manager (Administration). This writ appeal is directed against the order passed by the learned Judge in W.P.No.7192 of 2017 on 22.07.2021.

2.The short facts leading to the filing of this appeal are as follows:

2.1. The first respondent / writ petitioner joined as Office Assistant in the appellant Corporation and while working as such, he was subjected to disciplinary proceedings for unauthorised absence from 16.02.2014, followed by transfer from the Estate Section to the Engineering Section within the same office premises *vide* order dated 04.02.2014. After conducting enquiry, in which the first respondent / writ petitioner admitted his unauthorized absence, the Enquiry Officer submitted his report to the effect that the charges were held as proved. Consequently, the Disciplinary Authority imposed the punishment of dismissal from service on the first respondent *vide* order dated 24.07.2015. The first respondent's appeal against this punishment order was rejected by the Appellate Authority by order dated 20.02.2017. Aggrieved by the same, the first respondent filed a writ petition in WP. No. 7192 of 2017 seeking to quash the orders so



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passed by the appellant authorities and consequently, direct the appellants to reinstate him into service with backwages, service and all other benefits.

2.2. After hearing both sides, the learned Judge, by the order dated 22.07.2021 which is impugned herein, allowed the aforesaid writ petition. While so, it was held that although the respondent / writ petitioner admitted his unauthorized absence, the Inquiry Officer failed to give due weightage to the medical evidence produced by the first respondent, explaining his absence for treatment purposes. It was further held that the procedure prescribed under Regulation 4 of the Service Regulations was not followed by the appellants before awarding the major penalty of dismissal. Considering the fact that the respondent / writ petitioner had already attained the age of superannuation and the employees of the appellant Corporation are entitled to only *ex gratia* amount of Rs.2,500/- per month instead of pension, the learned Judge set aside the orders passed by the appellant authorities and modified the punishment imposed on the respondent into one of stoppage of increments for two years with cumulative effect. Further, the appellants were directed to pay retirement benefits and monthly *ex gratia* amount of Rs.2,500/- to the first respondent as he would be deemed to have undergone the modified punishment.

2.3. Challenging the order so passed by the learned Judge, the appellants have filed this writ appeal.

3. During the pendency of this appeal, the first respondent / writ petitioner



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died and hence, his legal heirs were brought on record as the respondents 2 to 4 herein.

4.The learned counsel appearing for the appellants would submit that the first respondent / writ petitioner remained unauthorisedly absent for a prolonged period of nearly 17 months without any genuine or tangible reason, despite being asked to report to duty through memos, and his transfer from one section to another within the same office premises, was an administrative decision. Continuing further, the learned counsel would submit that the Enquiry Officer rightly held the charges as proved based on the first respondent's own admission of unauthorized absence, and there was no duty cast upon the Enquiry Officer or the Disciplinary Authority to give credence to the belated medical certificate produced by the first respondent. It is also submitted that even after the first respondent admitted his guilt, the procedure laid down under the Service Regulations was duly adhered to and thereafter only, the first respondent was imposed with the punishment of dismissal from service. It is also submitted that such punishment of dismissal from service was imposed after taking into account the first respondent's explanation, evidence, and all the relevant materials. Thus, according to the learned counsel, in the facts and circumstances of the case, where the first respondent disobeyed the order transferring him from one section to another, within the same office premises and remained absent unauthorisedly,



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for over 17 months, the punishment of dismissal inflicted on him is quite reasonable and proportionate to the charges proved against him. Without considering all these aspects in proper perspective, the learned Judge erred in setting aside the orders passed by the appellant authorities. That apart, the learned Judge modified the punishment imposed on the first respondent / writ petitioner and directed the appellants to pay retirement benefits and monthly *ex gratia* of Rs.2,500/- to the respondent, which is contrary to the Service Regulations. Hence, the learned counsel prayed for setting aside the order so passed by the learned Judge in the writ petition.

5.Per contra, the learned counsel for the respondents would submit that the first respondent's unauthorized absence was due to his health condition of Peripheral Neuropathy, for which, he was undergoing Siddha treatment, and he had produced the relevant medical records before the Enquiry Officer. However, the Enquiry Officer and the Disciplinary Authority failed to give due consideration and weightage to the medical evidence produced by the first respondent, while holding the charges as proved and imposing the punishment of dismissal from service respectively. It is also submitted that the procedure contemplated under Regulation 4 of the Service Regulations was not followed by the authorities as the first respondent was not informed of the list of documents relied upon and the list of witnesses whose versions formed the basis for the charges framed against him.



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The learned counsel would further submit that the punishment of dismissal from service is disproportionate to the charges leveled against the first respondent, considering his health condition coupled with the fact that he had already attained the age of superannuation. Therefore, the order of the learned Judge modifying the punishment inflicted on the first respondent and directing the appellants to pay retirement benefits and monthly *ex gratia* amount to him, by exercising the power under Article 226 of the Constitution of India, is perfectly correct and the same does not require any interference by this court.

6.Heard the learned counsel on either side and perused the materials available on record.

7.Admittedly, the first respondent / writ petitioner remained unauthorisedly absent for a prolonged period of nearly 17 months, despite being instructed to report to duty. This unauthorized absence was subsequent to his transfer from one section to another within the same office premises, which was purely on administrative reasons. The Enquiry Officer held the charges as proved based on the first respondent's own admission of unauthorized absence. That apart, the first respondent had not produced the concrete materials, to explain his unauthorised absence, during the enquiry proceedings. Therefore, the punishment of dismissal from service was slapped on the first respondent, based



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on the available oral and documentary evidence. The gravity of misconduct committed by the respondent, defying a lawful transfer order and remaining absent for over 17 months without any justifiable reason, cannot be brushed aside slightly. In such circumstances, the order of dismissal from service, cannot be said to be disproportionate to the charges proved against him or unreasonable.

8.Further, the findings rendered by the learned Judge that the first respondent / writ petitioner had already attained the age of superannuation and that the employees of the appellant Corporation were only entitled to an *ex gratia* amount of Rs.2,500/- per month, instead of pension, are not justifiable for modification of the punishment imposed on the first respondent. These factors do not mitigate the first respondent's grave misconduct or render the punishment of dismissal slapped on him as disproportionate to the charged proved against him. Furthermore, it is the specific plea of the appellant corporation that all retired employees are receiving only eligible pension under the EPF Act, 1952, and granting *ex gratia* to the first respondent at Rs.2,500/- per month is nothing but an undue benefit to an insubordinate and recalcitrant employee, who wilfully refused to obey the transfer order and remained absent unauthorisedly for a long period, without any justifiable reason. That apart, as per the provisions of law, *ex gratia* payment was not admissible to those who were dismissed or removed



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from the service of the Corporation. Hence, the first respondent / writ petitioner is not eligible for the *ex gratia* payment as ordered by the learned Judge.

9.In view of the foregoing reasons, we are inclined to interfere with the order passed by the learned Judge. Accordingly, the writ appeal is allowed by setting aside the order dated 22.07.2021 passed by the learned Judge in W.P. No. 7192 of 2017. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]
27.03.2024

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Index: Yes / No.
Speaking order/ Non-speaking order
Neutral Citation: Yes / No.

To

- 1.The Managing Director,
Tamil Nadu Civil Supplies Corporation,
No.12, Thambusamy Road,
Kilpauk, Chennai - 600 010.
- 2.The General Manager (Administration),
No.12, Thambusamy Road,
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