



WEB COPY



WA No. 3193 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2024

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No. 3193 of 2023
and
C.M.P. No. 26150 of 2023

1. The Managing Director
TNCSC Head Office
No.12, Thambusamy Road
Kilpauk
Chennai - 600 010

2. The Senior Regional Manager
TNCSC Chennai (North) Region
No.9, Conron Smith Road
Gopalapuram
Chennai - 600 086

.. Appellants

Versus

J. Mahboob Khan

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 13.03.2023 passed by the learned Judge in Writ Petition No. 31180 of 2014.

For Appellants : Mr. Haza Nazirudeen, Additional Advocate General
for Mr. C. Selvaraj, Additional Govt. Pleader

For Respondent : Ms. S. Rajeni Ramadass
for M/s. Rajini Associates



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JUDGMENT

WEB COPY (Judgment of the Court was delivered by R. MAHADEVAN, J)

The appellants have filed this intra-court appeal, assailing the Order dated 13.03.2023 passed by the learned Judge, allowing the Writ Petition No. 31180 of 2014 filed by the respondent herein.

2. The respondent herein has filed the aforesaid Writ Petition praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Se.Mu.Aanai.No.AD4/51122/13 dated 30.10.2014 issued by the first appellant herein, quash the same and to direct the first appellant to reinstate the respondent in service as Bill Clerk with all consequential benefits.

3.(i) In the affidavit filed in support of the writ petition, the respondent / writ petitioner herein has stated that he was appointed as Bill Clerk in the appellant Corporation on 23.04.2009 temporarily and after completion of two years, his service was regularised in the cadre of Bill Clerk with effect from 28.04.1999. While he was working as such, in the month of November 2007, he applied for earned leave from 29.11.2007 to 13.12.2007 by specifically stating that he was going to Erwadi Dargah in Ramanathapuram District to take treatment for his mental illness. Subsequently, he extended his leave



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without informing the appellants. Therefore, the second appellant issued a charge memo dated 28.06.2010 to the respondent/writ petitioner for his unauthorised absence from 14.12.2007 till the date of charge memo namely 28.06.2010.

(ii) According to the respondent / writ petitioner, he got recovered fully during August 2010 and therefore, he came back to Chennai and submitted his reply dated 12.08.2010 to the charge memo dated 28.06.2010. On receipt of the explanation offered by the respondent / writ petitioner, the appellants, through letter dated 08.12.2010, referred him to the Regional Medical Board, Government General Hospital for getting a certificate of fitness. The Medical Board also issued a certificate of fitness to return to duty on 04.02.2011. However, even before the issuance of certificate of fitness, an enquiry was conducted departmentally in respect of charge memo dated 28.06.2010 and an enquiry report dated 29.10.2010 was submitted holding the charge against the respondent / writ petitioner as proved. On the basis of the enquiry report, the second appellant has passed the order dated 02.03.2011, imposing the punishment of stoppage of increment for a period of one year without cumulative effect. Aggrieved by the said order dated 02.03.2011 of the second appellant, the respondent did not file any appeal. Thereafter, the respondent was posted as Bill Clerk by order dated 08.03.2011 of the 2nd



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appellant. Even after expiry of one year period, he was not paid any increment.

While so, the first appellant *suo motu* issued a show cause notice dated 04.10.2013 calling upon the respondent to explain as to why an appropriate punishment should not be imposed. The respondent/writ petitioner sent replies dated 08.11.2013 and 14.11.2013 in which it was stated that due to his mental illness, he was not in a position to apply for extension of leave. However, no order was passed by the first appellant.

(iii) In such circumstances, the first appellant published a promotion list dated 10.02.2014, in which, the names of the juniors of the respondent / writ petitioner were included, but his name was omitted to be included. Feeling aggrieved, the respondent/writ petitioner filed WP No. 4739 of 2014 challenging the promotion list dated 10.02.2014 published by the first appellant, and to direct the appellants to consider his candidature for promotion to the post of Junior Assistant. In the said writ petition, the respondent herein has impleaded one Vedanayaki as third respondent, to whom, promotion was given by overlooking him. It was contended on behalf of the respondent before the writ court that the currency of punishment imposed on the respondent by the second appellant was over and therefore, there is no embargo to include his name for promotion to the post of Junior Assistant.

(iv) By order dated 10.06.2014, the aforesaid writ petition bearing No.



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4739 of 2014 came to be disposed of, by directing the appellants to promote the respondent herein to the post of Junior Assistant from the date on which his immediate junior i.e., third respondent therein, was promoted, however, such promotion shall be subject to the outcome of the *suo motu* review pending before the first appellant herein. The said order has not been complied with by the appellants. But, the appellants published the successive promotion list, conferred promotion to several juniors of the respondent and thereby deprived the chance of promotion to him. Therefore, the respondent issued a contempt notice dated 24.09.2014 and stated that the order dated 10.06.2014 passed in WP No. 4739 of 2014 has not been complied with. While so, by order dated 30.10.2014, the first appellant passed an order removing the respondent / writ petitioner from service. Therefore, the respondent / writ petitioner has filed WP No. 31180 of 2014 for the relief as stated supra.

4. On notice, a counter affidavit was filed by the first appellant stating that the respondent, as a Bill Clerk, has responsibility to maintain the stocks and records correctly to effectively implement the public distribution system. However, due to his prolonged absence from duty for a period of 1165 days, he has caused administrative inconvenience. Even though the second appellant imposed the punishment of stoppage of increment by order dated



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02.03.2011, taking note of the period of absence, a *suo motu* show cause notice was issued by the first appellant to the respondent calling upon him to explain as to why the punishment be not enhanced. After receipt of explanation from the respondent, the punishment of removal from service was imposed and such punishment is befitting the nature of delinquency committed by the respondent. In any event, after following all the procedures as contemplated under law, the order of removal from service was rightly passed and therefore, the appellants prayed for dismissal of the writ petition.

5. The learned Judge, taking note of the rival contentions and upon examining the records, concluded that the respondent was referred to Medical Board and after issuance of a fitness certificate, he was reinstated in service. Further, after more than three years of reinstatement, the first appellant has passed the order of removal from service belatedly. There was no reason assigned by the first appellant for terminating the respondent from service. It was also reasoned by the learned Judge that the mental agony and suffering undergone by the respondent-writ petitioner due to protracted disciplinary proceedings for long years would be much more than the punishment. It was also concluded that the order of removal was passed due to the fact that the respondent has approached this Court with a Writ Petition No. 4739 of 2014



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seeking promotions and for having issued a notice for contempt. Accordingly, the learned Judge allowed the instant writ petition No. 31180 of 2014 filed by the respondent and directed the appellants to reinstate him in service as Bill Clerk with all consequential benefits.

6. Aggrieved by the order dated 13.03.2023 passed in WP No. 31180 of 2014, the appellants are before this Court with the present writ appeal.

7. The learned Additional Advocate General appearing for the appellants submitted that the learned Judge ought not to have interfered with the order of removal from service passed by the first appellant especially when the respondent/writ petitioner absented himself from duty for a period of 1165 days, unauthorisedly. The respondent has not produced any acceptable evidence to show that he was taking treatment for his mental illness for a period of more than three years. Taking note of the fact that the prolonged unauthorised absence of the respondent/writ petitioner had resulted in chaos in the administration, the first appellant has rightly passed the order of removal dated 30.10.2014. Such an order has been passed after putting the respondent on notice regarding the intention of the first respondent to enhance the



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punishment imposed by the second appellant and therefore, the learned Judge ought not to have interfered with the order of punishment dated 30.10.2014.

The learned Additional Advocate General also invited the attention of this Court to the Employees Service Regulation 1999 - Chapter I under Regulation 6 and submitted that when an employee did not resume duty and remained on leave for a continuous period of one year, he shall be removed from service as per the Regulation. It is on the basis of the Service Regulations of the appellants Corporation, the first appellant had *suo motu* issued a show cause notice dated 04.10.2013 proposing to enhance the punishment. After receipt of the explanation from the respondent/writ petitioner, the order dated 30.10.2014 was passed by the first appellant removing the respondent / writ petitioner from service. According to the learned Additional Advocate General, the order dated 30.10.2014 has been passed in terms of the Service Regulation of the Corporation, which has not been taken note of by the learned Judge. On the other hand, the learned Judge, on a mistaken sympathy interfered with the order of punishment ignoring the fact that the respondent- writ petitioner had literally abandoned his service and remained absent for a period of more than three years. It is also submitted that if an employee like the respondent-writ petitioner, who remained absent unauthorisedly for more than a period of three years, are ordered to be reinstated, it would send a wrong signal to other



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employees. With these submissions, the learned Additional Advocate General prayed to quash the order of the learned Judge and allow this writ appeal.

8. Per contra, the learned counsel for the respondent/writ petitioner submitted that the punishment of removal from service is shockingly disproportionate to the nature of delinquency committed by the respondent. According to the learned counsel for the respondent, at the first instance, when the respondent availed leave from 29.11.2007 to 13.12.2007, he has clearly indicated that he was suffering from mental ailment and he was proceeding to Erwadi Dargah, Ramanathapuram, for treatment. Subsequently, he could not intimate the employer during his stay at Erwadi. In fact, the charge memo itself was addressed to Erwadi where the respondent was taking treatment. While so, the first appellant, without taking note of the reason for taking leave, has imposed the capital punishment of removal from service, which is uncalled for. The learned Judge, taking note of the nature of delinquency and the reason for the first appellant to pass the order soon after receipt of a contempt notice dated 24.09.2014 for non-compliance of the order dated 10.06.2014 passed in WP No.4739 of 2014, has rightly interfered with the order of punishment. In any event, the removal from service is not warranted especially when the respondent/writ petitioner had explained the reasons for his unauthorised



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absence and substantiated the same with documentary evidence. Therefore, the learned counsel for the respondent prayed for dismissal of the writ appeal.

9. We have heard the learned Additional Advocate General appearing for the appellants and the learned counsel for the respondent-writ petitioner and also perused the materials placed.

10. It is seen that the respondent/writ petitioner submitted his application seeking earned leave from 29.11.2007 to 13.12.2007 by stating that he was going to Erwadi Dargah at Ramanathapuram to take treatment for his mental illness. However, he had extended his period of leave from 14.12.2007, for which, he has not submitted any leave application. Thus, from 14.12.2007 till the date of issuance of charge memo dated 28.06.2010, he absented himself from duty. The respondent/writ petitioner also submitted his explanation on 12.08.2010 to the charge memo dated 28.06.2010 narrating the circumstances which reasonably prevented him from attending to his duties. It is not in dispute that after he submitted a letter requesting to join duty, the respondent/writ petitioner was referred to Medical Board and the Medical Board issued a certificate of fitness to return to duty on 04.02.2011. For his unauthorised absence, an enquiry was conducted and by order dated



02.03.2011, the punishment of stoppage of increment for one year without cumulative effect, was imposed by the second appellant on the respondent.

However, after a period of 2 1/2 years, the first appellant *suo motu* issued a show cause notice dated 04.10.2013 proposing to enhance the punishment imposed on the respondent/writ petitioner by stating that the same is not proportionate to the delinquency committed by him. It is to be noted that though the respondent submitted his explanation to the show cause notice on 08.11.2013 and 14.11.2013, the first appellant, by order dated 30.10.2014, inflicted the punishment of removal from service, only after receipt of the notice in the contempt petition on 24.09.2014.

11. Undoubtedly, the respondent/writ petitioner did not turn up for his duties continuously for a period of three years. However, the reason for his absence was that he had taken treatment for his mental illness at Erwadi Dargah. Such reason assigned by the respondent was also substantiated by documentary evidence. In fact, the charge memo dated 28.06.2010 was sent to Erwadi Dargah, where the respondent was taking treatment. Therefore, the reason assigned by the respondent for his absence appears to be *bona fide*. That apart, the respondent, in his reply dated 12.08.2010 to the charge memo, has clearly stated that he had been to Erwadi Dargah, Ramanathapuram for



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getting treatment for his mental ailment. Even before the enquiry officer, he has reiterated the same. The enquiry officer, in his report dated 29.10.2010, has stated that the respondent had produced documentary evidence to show that he had taken treatment for his ailment at Erwadi Dargah, Ramanathapuram. Yet, he has concluded that the charge against the respondent was proved. Thus, it is clear that owing to his mental illness, he was constrained to remain absent from his duties. Taking note of the same, the second appellant imposed the punishment of stoppage of increment for one year without cumulative effect. However, the said punishment was enhanced into one of removal from service, by the first appellant by exercising his *suo motu* power. We are of the view that the order of removal passed by the first appellant, in the facts and circumstances of this case, is shockingly disproportionate to the charge and shocks the conscience of this Court and hence, the same is not legally sustainable. Therefore, the order of the learned Judge allowing the writ petition and directing the appellants to reinstate the respondent in service, does not require any interference by this court.

12. However, with respect to regularisation of the period of absence, we make it clear that the respondent/writ petitioner is not entitled to salary for the period of his absence from 14.12.2007 till the date of his reinstatement in



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service i.e., on 04.02.2011 and the said period is directed to be treated as "no work no pay", which would meet the ends of justice.

13. For the foregoing reasons, the order passed by the learned Judge in the writ petition is modified and this writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(R.M.D., J) (M.S.Q., J)

12.03.2024

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

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