



W.P.No.3441 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.3441 of 2017
and
W.M.P.No.3415 of 2017

D.Bhavani

... Petitioner

Vs.

1.Tamil Nadu Water Supply and Drainage Board,
Rep by its Managing Director,
31, Kamarajar Salai,
Chepauk, Chennai – 600 005.

2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chepauk,
Chennai – 600 005.

3.The Deputy Chief Accounts Officer,
TWAD Board,
Head Office,
Chennai – 5.

4.The Executive Engineer,
TWAD Board,
RWS Division,
Villupuram District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records to the orders of the 2nd respondent dated 05.08.2014 made in procs.no.42439/Estt. (DP)/A1/2013 as confirmed the 1st respondent in B.P.Ms.No.67 (Estt.(DP)Wing) dated 06.10.2016 and quash the same and direct the 1st and 2nd respondents to appoint the petitioner as Assistant Accounts Officer in the 1st respondent Board with all attendant benefits from 13.02.2012, the date of redeployment of the petitioner.

For Petitioner : Mr.L.Chandrakumar
for Mr.V.S.Sivasundaram

For Respondents : Mr.S.Ravindran
Senior Counsel
for Ms.S.Mekhala

ORDER

The petitioner while working as Assistant Accounts Officer in the respondent board at Villupuram, the project in which the petitioner was working was closed. The petitioner and other officers who were working in the said Project were redeployed to various offices of the respondent board through proceedings No.11511/WCE3/2011 dated 08.02.2012. Through the said order of redeployment, the post of Assistant Accounts Officer held by the petitioner,



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was redeployed to the Special RWS Division, Tindivanam as there was closure of office and redeployed to proposed Major Project Division II, Tirupathur.

The petitioner was relieved through proceedings No.999-1/EA/2012 dated 13.02.2012, requiring the petitioner to join duty after obtaining further reposting orders from the Managing Director of the respondents board. Thereafter, the petitioner represented the respondent board stating that she has met the Managing Director of the respondents board requesting for reposting order, but she was not issued with any reposting orders as on 13.07.2012 and also made a request for sanction of EL from 13.02.2012 to 24.07.2012. Subsequently, she made an application for medical leave with medical certificate from 25.07.2012 to 01.11.2012. It was at that stage, the first respondent issued another proceedings dated 12.11.2012 transferring the petitioner to Maintenance Division, Pudukkottai. However, the petitioner failed to report to duty at the new place of posting also. Under the said circumstances, the respondents board issued a charge memo dated 19.11.2012 with three charges. However, the said charge memo was subsequently modified by another charge memo dated 08.08.2013 with two charges. The said charges framed against the petitioner are as under:-



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“Charge No.I:-

that she has failed to obey the orders of the higher officials, she has not joined duty in Maintenance Division, Pudukkottai where she was posted and failed to hand over the office records such as Service Register and Last Pay Certificate, which proves her willful Insubordination, disobedience and negligence of work as per Regulations 6(i) & 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.II:-

that without obtaining prior intimation, she has proceeded on leave from 13.02.2012 and after a lapse of five months, she has requested the E.L for her absence and continued her absence and thereby committed misconduct under Regulation 6(vii) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.”

2. In response to the said charge memo, the petitioner submitted her explanation and after conducting detailed enquiry, the respondents imposed punishment of removal from service through proceedings no.42439/Estt.(DP)/A1/2013 dated 05.08.2014, on holding that both the charges framed against the petitioner were proved. Aggrieved by the same, the petitioner preferred an appeal before the respondents board. The said appeal



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was rejected by the respondents board through B.P.Ms.No.67 (Estt.(DP)Wing) dated 06.10.2016, confirming the order passed by the Managing Director of the respondents board. Aggrieved by the said order of removal from service dated 05.08.2014 and confirming order dated 06.10.2016, the petitioner approached this Court by filing the present writ petition.

3. Mr.L.Chandrakumar appearing for Mr.V.S.Sivasundaram, learned counsel for the petitioner would submit that the petitioner could not join duty on redeployment and after re-transferring to Pudukkottai, due to her domestic problem and she has already applied for leave. Therefore, the punishment of removal from service for absence from duty cannot be treated as unauthorized absence and hence, the impugned order imposing punishment of removal from service is disproportionate to the charges leveled against the petitioner. He also further submitted that pursuant to order dated 13.02.2012 reliving the petitioner from Villupuram, the petitioner had approached the Managing Director requesting for posting orders, but no such posting order was issued to the petitioner till the month of July, 2012, and hence the petitioner sought for sanction of leave from 13.02.2012 to 24.07.2012. He also further submitted that from 26.07.2012, the petitioner has applied for a medical leave on different



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occasions based upon medical certificates. The learned counsel further contends that there is no scope for unauthorized absence, as such the punishment of removal from service imposed on the petitioner is disproportionate to the charges leveled against the petitioner.

4. The learned counsel for the petitioner also placed reliance on the decision of the Hon'ble Supreme Court in the case of **Jagadish Singh Vs. Punjab Engineering College & Ors.**, reported in AIR 2009 SC 2458 and another decision of the Division Bench of this Court in Review Application No.83 of 1999 dated 11.09.2009 and yet another decision of the learned Single Judge of this Court in W.P.No.6075 of 2010 dated 18.10.2011. He also relied upon yet another decision of the learned Single Judge of the Madurai Bench of this Court in W.P.(MD).No.11380 of 2008 dated 10.02.2007.

5. On the other hand, Mr.S.Ravindran, learned senior counsel appearing for the respondents contended that the charges that were leveled against the petitioner is not on the ground of unauthorized absence. As the petitioner who was relieved from service on 13.02.2012 failed to report the duty till the date of passing of orders of removal from service i.e., on 05.08.2014 for almost two



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years six months and the petitioner is out of service unauthorizedly without any appropriate permissions. It is further contended that it is not on the ground of unauthorized absence, and after due enquiry, the petitioner was removed from service by the impugned order. Thus, it is contended that the order of punishment of removal from service is commensurate with the charges leveled against the petitioner. He would also placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Union of India and others Vs. Ex.Constable Ram Karan*** reported in 2022 (1) SCC 373 and also in the case of ***Life Insurance Corporation of India Vs. R.Dhandapani*** reported in 2006 13 SCC 613.

6. There is no dispute on factual aspects. The petitioner was relieved from Villupuram on 13.02.2012 requiring her to approach the Managing Director of the respondents board and to seek appropriate posting orders. There is nothing on record to show that the petitioner had reported before the Managing Director of the respondents board after 13.02.2012 expect a representation dated 13.07.2012 addressed to the Finance Officer of the respondent board and there was a reference in the said representation that the petitioner has approached the Managing Director of the respondents board.



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That representation addressed to the Finance Officer is after a lapse of five months since the petitioner was relieved from service on 13.02.2012. Even in the said representation also, the petitioner though stated that she reported before the Managing Director and requested for reposting orders, but the petitioner made a request for sanction on EL from 13.02.2012 to 24.07.2012. If no posting order was issued inspite of petitioner approaching Managing Director, the question of the petitioner applying for sanction of EL from 13.02.2012 does not arise. If for any reason, no reposting orders are issued by the Managing Director, there is no necessity for the petitioner to seek sanction of EL with effect from 13.02.2012. Therefore, the contentions of the learned counsel for the petitioner that the petitioner has reported before the Managing Director after 13.02.2012 cannot be accepted. However, subsequently when re-transferring order was issued through proceedings dated 12.11.2012 transferring the petitioner to Maintenance Division, Pudukottai also, the petitioner had not reported the duty at the new place of posting.

7. It is thereafter the petitioner was issued with a charge memo dated 19.11.2012 and modified with another charge memo dated 08.08.2013. From the explanation submitted by the petitioner in response to the charge memo, it is



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evident that the petitioner is not willing to join in the new place of posting due to her family problem ie. ill health and also to maintain her old age mother.

The contents of the said explanation of the petitioner is extracted hereunder:-

“I am not able to join in the new station due to my family problem, due to my ill health and mental agony, and also maintaining the oldage mother in my position, due to her illness (suffering from Neuro Problem). Frequently I have to take her medical treatment she needs my presence and support.

At the time of closure the L.P.C. along with service Register is given to me for handing over the same at the time of joining duty in the new station. The LPC along with Service Register is in my safety custody, in the safety manner for handing over the same at the time of joining duty in the new station. I am not able to join duty in the new station due to the above reason. So the LPC and service Register are kept in my safety custody in the safety manner.”

8. In so far as Charge No.2 is concerned the petitioner has contended that no orders are issued to the petitioner for joining at new place of posting and therefore made a request for sanction of EL from 13.07.2012 to 24.07.2012, and as such there is no authorized absence from service. From the explanation of the petitioner extracted above, it is evident that the petitioner has not joined



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the new place of posting, pursuant to order issued by the respondents dated 12.11.2012 till the date of passing the impugned order of removal on 05.08.2014.

9. In the above circumstances, rightly both the charges that are framed against the petitioner were held proved and consequently the impugned orders came to be passed.

10. The next question that arise for consideration is as to whether the punishment of removal from service on the charges leveled and proved against the petitioner is commensurate to the charges or not?

11. The Hon'ble Supreme Court in the case of ***Union of India and Others Vs. Ex.Constable Ram Karan*** reported in 2022 (1) SCC 373 dealing with the issue of proportionality of punishment and the disciplinary proceedings held as under:-

“Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the



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appellate authority should be directed to reconsider the question of imposition of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the Court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the Court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.”

12. Similarly in the case of *Life Insurance Corporation of India Vs. R.Dhandapani* reported in AIR 2006 SC 615, the Hon'ble Supreme Court as under:-

“8.In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction



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of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. (See Kerala Solvent Extractions Ltd v. A.Unnikrishnan).”

13. In yet another case of the Hon'ble Supreme Court in the case ***Jagdish Singh Vs. Punjab Engineering College & Ors.***, reported in AIR 2009 SC 2458 held as under:-

“10.The instant case is not a case of habitual absenteeism. The appellant seems to have a good tract record from the date he joined service as a sweeper. In his long career of service, he remained absent for 15 days on four occasions in the month of February and March 2004. This was primarily due to sort out the problem of his daughter with her in-laws. The filial bondage and the emotional attachment might have come in his way to apply and obtain leave from the employer. The misconduct that is alleged, in our view, would



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definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. We hasten to add if it were to be habitual absenteeism, we would not have ventured to entertain this appeal.”

14. The Division Bench of this Court in the case of ***V.Senthurvelan Vs. The High Court of Judicature at Madras, Rep by the Registrar, High Court, Madras – 600 104 and others*** in Review Application No.83 of 1999 dealing with similar aspect as under:-

“Though the petitioner was unauthorisedly absent from 3.11.1989, he has produced the medical certificate to show that because of his ill-health he could not attend the office. He is a probationer and except the present charge of unauthorized absence that too on production of medical certificate, no other charge has ever been framed or proved against him. However, the slackness on the part of the petitioner in not submitting his explanation till the third reminder, also cannot be ignored. The other aspect to be kept in mind is that the petitioner has himself admitted his guilt, pleading clemency, which has not at all been taken into consideration either by the disciplinary authority or the appellate authority or by the Division Bench of this Court, while confirming the order of removal from



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service.”

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15. The learned Single Judge of this Court in W.P.No.6075 of 2010 by an order dated 18.10.2011, wherein, it is held as under:-

“Therefore, taking into consideration of the above said facts, this Court is of the view that inasmuch as the petitioner has since retired and she having been put in 33 years of service, the order of dismissal would require interference as disproportionate to the charges framed. Accordingly, the order impugned is hereby set aside and the punishment imposed on the petitioner is hereby modified from that of dismissal to that of voluntary retirement. It is made clear that this order will enable the petitioner to get all her retiral and pensionary benefits and she is not entitled for any other backwages. The said appointment will come into effect from the date of the original order of dismissal passed by the first respondent. Consequently, the first respondent is directed to compute the terminal benefits to the petitioner, within a period of eight weeks thereafter.”

16. From the various decisions as noted above, the law in this regard is well settled, and once this Court comes to a conclusion that the punishment imposed on the delinquent officer is not commensurate or shockingly



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disproportionate to the charges proved against the petitioner, this Court is entitled to interfere with such punishment. But the question is whether the matter needs to be remanded back to the disciplinary authority for fresh consideration or this Court itself pass appropriate orders.

17. Even assuming that the petitioner is unauthorizedly absent from 13.02.2012 till the date of passing of the orders of removal from service on 05.08.2014 without any sanction of leave and the same may not resulted in punishment of removal from service. No doubt, charges framed against the petitioner is not mainly on the ground of unauthorized absence, but on the ground of not obeying the orders passed by the higher officials. Though the petitioner was relieved on 13.02.2012 and re-transferring orders were issued to the petitioner on 12.11.2012 there is nothing to show that the leave applications submitted by the petitioner were rejected and petitioner was required to join duty, by any subsequent communication.

18. Thus taking into consideration the totality of the circumstances, this Court is of the considered view that the punishment of removal from service imposed on the petitioner is shockingly disproportionate.



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19. In the facts and circumstances of the case, especially the fact that the petitioner had during the pendency of the writ petition, attained the age of superannuation, this Court is of the considered view that this is not a case which can be remanded back. There is nothing to reveal that there are any other disciplinary proceedings that are initiated or any instances the petitioner being punished during the entire service. The petitioner was appointed by the respondents initially on 19.01.1987 and till the year 2013, when charge memo dated 08.08.2013 was issued there were no disciplinary proceedings against the petitioner. By the date the petitioner was relieved from service on 13.02.2013, the petitioner was aged about 51 years and by which date the petitioner has completed the total service of 27 years.

20. Considering the fact that the petitioner has already attained the age of superannuation, during the pendency of the writ petition and the petitioner also stated to be suffering from various ailments this Court does not deem it fit to remit the matter back to the disciplinary authority for taking the decision afresh for imposing appropriate punishment on the petitioner and this Court is of the considered view that it would be appropriate to put a quietus to the matter at



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this stage itself.

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21. Accordingly, the impugned order dated 05.08.2014 as confirmed by the respondents board through B.P.Ms.No.67 (Estt.(DP)Wing) dated 06.10.2016 are modified substituting the punishment of compulsory retirement from service on the petitioner with effect from 13.02.2012, the respondents shall pass appropriate consequential orders and extend terminal benefits to the petitioner for which she is entitled in accordance with rules.

22. Accordingly, this Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

04.07.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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MUMMINENI SUDHEER KUMAR, J.

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