



W.P.No.32537 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.32537 of 2023
and
W.M.P.No.32143 of 2023

V.Candane,
working as Captain / Supervisor,
Le-Cafe' Restaurant,
Pondicherry Tourism Development Corporation,
Puducherry – 605 001.

.. Petitioner

Vs.

The Managing Director,
Pondicherry Tourism Development Corporation,
Puducherry – 605 001.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent with No.DE-01/I.O./2018 dated 17.12.2018 and the punishment order with No.1048/பு.ச.வ.க./நிர்வாகம்/2018/ dated 18.10.2019 and to quash the same.

For petitioner : Mr.V.Ajayakumar

For Respondent : Mr.R.Sreedhar
Standing Counsel



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ORDER

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This writ petition has been filed challenging the proceedings of the respondent in No.DE-01/I.O./2018 dated 17.12.2018 and the punishment order in No.1048/பு.ச.வ.க./நிர்வாகம்/2018/ dated 18.10.2019, wherein the petitioner was imposed with the punishment of stoppage of one increment without cumulative effect.

2.The case of the petitioner is that he was working as a Supervisor in Le-Cafe' Restaurant run by the Pondicherry Tourism Development Corporation. He has been holding that post from the year 2015 onwards. The petitioner is also involved in union activities.

3.On 05.03.2018, a suspension order was passed against the petitioner on the ground that disciplinary proceedings were contemplated against the petitioner as per the standing orders of the Corporation. After two months, he was reinstated into service. Thereafter, a charge memo dated 08.03.2018 was issued to the petitioner. The charge is that one of the tourist named Santosh Achari had given a written complaint to the effect that he came on 21.02.2018 to the Hotel and ordered for two cups of tea. When he attempted to pay the amount through debit / credit card,



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the petitioner refused to receive the card and was insisting for payment by way of cash. In view of the same, the said person was compelled to go to the nearby ATM and withdraw the amount. When the amount was paid to the petitioner, he had put it in his pocket and walked away.

4.An Enquiry Officer was appointed by the respondent. The Enquiry Officer after considering the complaint and also the defense version given by the petitioner and also the evidence of the witnesses, came to the conclusion that the charge against the petitioner stands proved.

5.A copy of the enquiry report was given to the petitioner and the petitioner was asked to give his explanation. On receipt of the explanation from the petitioner, the respondent through the impugned proceedings dated 18.10.2019 imposed the punishment of stoppage of one increment without cumulative effect. This order has been put to challenge in the present writ petition.

6.Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent.



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7.The main ground that was urged by the learned counsel for the petitioner is that the petitioner was not even present in the hotel on the date of the incident (i.e.,) on 21.02.2018 and he was on a weekly off. The complainant has not come forward to give his evidence before the Enquiry Officer and at one stage, he was also willing to withdraw the complaint. The witnesses who were examined also have stated that the petitioner was on a weekly off and he was not present on the relevant date in the hotel and it was therefore contended that the respondent has proceeded to impose the punishment even without there being any shred of evidence against the petitioner.

8.Per contra, the learned Standing Counsel appearing on behalf of the respondent submitted that the complainant had given the complaint through an e-mail communication. Along with this complaint, he had also attached two photographs which clearly shows that the petitioner was present on that day in the hotel even though it was a weekly off. The learned counsel submitted that in a service industry, maintaining discipline becomes very important since the respondent Corporation has to handle customers on a regular basis. That apart, there as no need for



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the complainant to give a false complaint against the petitioner.

Therefore, the respondent has taken into consideration all these factors and has only imposed a minor punishment in order to ensure that the petitioner does not indulge in any such activities in future. The learned counsel submitted that the order passed by the respondent does not suffer from any illegality warranting the interference of this Court.

9.This Court has carefully considered the submissions made on either side and the materials available on record.

10.The specific charge against the petitioner is that on 21.02.2018, the complainant namely Santosh Achari visited Le-Cafe' Restaurant and had ordered two cups of tea. He has stated that the petitioner had served the two cups of tea and when he was about to make the card payment, the petitioner insisted that the payment should be made only by way of cash. Therefore, he had gone to the nearby ATM, withdrawn money and thereafter paid to the petitioner. The petitioner on receiving the same, had put that money into his pocket. Since the complainant felt that he was not properly treated in the hotel, he had given a complaint and this complaint has acted upon to initiate disciplinary proceedings against the petitioner.



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11. There is no dispute with regard to the fact that on 21.02.2018, the petitioner was on a weekly off. Even in the attendance register, the petitioner has not marked his attendance. The fact that the petitioner was not present in the hotel has been spoken by D.W.2 & D.W.3. Therefore, the very presence of the petitioner in the hotel on the date of the incident has been questioned. The complainant who belongs to Hyderabad was not in a position to participate in the enquiry before the Enquiry Officer. In fact for the notices that were sent by the Enquiry Officer, he has sent an e-mail stating that he could not appear and that he would like to further withdraw the case. Therefore, it is quite evident that there was no occasion to examine the complainant in this case.

12. The Enquiry Officer has come to a conclusion that the petitioner was present in the hotel on 21.02.2018, based on the complaint given by the said Santosh Achari and the two photographs which he had annexed along with the complaint. According to the Enquiry Officer, the presence of the petitioner is proved by those two photographs which were annexed along with the complaint given by the said Santosh Achari.



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13.In view of the above, the Enquiry Officer came to a conclusion that the charges against the petitioner has been proved.

14.In the considered view of this Court, when the petitioner has denied his very presence in the hotel on 21.02.2018 and defense taken by the petitioner has also been supported by two witnesses and the attendance register also does not show that the petitioner had marked his attendance on that date, some strong evidence is required to establish the presence of the petitioner on 21.02.2018.

15.The complainant himself has stated that he regularly visits this hotel when he comes to Puducherry. There is no indication regarding the date on which those photographs were taken. It did not contain any date. Therefore, merely based on the complaint and two photographs, it cannot be assumed that the petitioner was present in the hotel on 21.02.2018. The presence of the petitioner in the hotel on 21.02.2018 has not been proved even by applying the test of preponderance of probabilities.

16.The respondent while passing the order of punishment did not take into consideration this vital aspect and has proceeded to impose a



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minor penalty against the petitioner of stoppage of one increment without cumulative effect.

17.The report of the Enquiry Officer and also the impugned order passed by the respondent are liable to be interfered by this Court. Accordingly, the impugned proceedings No.DE-01/I.O./2018 dated 17.12.2018 and the punishment order bearing No.1048/பு.ச.வ.ச./நிர்வாகம்/2018/ dated 18.10.2019 are hereby quashed.

18.Accordingly, this Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No



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To

The Managing Director,
Pondicherry Tourism Development Corporation,
Puducherry – 605 001.

N.ANAND VENKATESH, J.

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