



W.P. No.17988/2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.02.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.17988 OF 2010

R.Vadivelu

.. Petitioner

- Vs -

1. The Managing Director
Metropolitan Transport Corporation
Pallavan Illam, Pallavan Salai
Chennai – 2.

2. The Joint Managing Director
Metropolitan Transport Corporation
Pallavan Illam, Pallavan Salai
Chennai – 2.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing the respondents herein, 1. The Managing Director, Metropolitan Transport Corporation, Pallavan Illam, Pallavan Salai, Chennai 2 (2) the Joint Managing Director, Metropolitan Transport Corporation, Pallavan Illam, Pallavan Salai, Chennai 2 to provide the petitioner R.Vadivelu, his usual work.



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For Petitioner : Party-in-Person –
No Appearance

For Respondents : Mr. Ramanlal, AAG
Assisted by Mr. C.Gauthamraj

ORDER

The present writ petition has been filed by the petitioner seeking a direction to the respondents to provide the petitioner his usual work.

2. Pending the writ petition, the domestic enquiry conducted against the workman/petitioner resulted in the petitioner being removed from service upon paying the amount mandated u/s 33 (2)(b) of the Industrial Disputes Act and approval petition filed in this regard has also been approved by the Labour Commissioner. In spite of the same, the prayer has not been amended. However, considering the fact that the petition is of the year 2010, in view of the petition being filed under the extraordinary jurisdiction of this Court, this Court is inclined to take up the matter and dispose of the same on merits.



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3. It is the case of the petitioner that he entered the services of the respondents as a conductor on 7.11.1989 and has been discharging his unblemished service till then. During the course of his work, with regard to the shortage in the cash in the issuance of tickets, which, according to the petitioner, was on account of certain fraud being committed by the computer officials, which, even after being brought to the notice of the authorities by means of various representations, did not evoke any response. However, contrarily, the petitioner was targeted and his wages were cut and he was not paid any wages. Since the petitioner was denied work and was not paid wages inspite of repeated representations, the petitioner preferred a complaint to the State Human Rights Commission as his right to livelihood was being infringed. Therefore, the present petition has been filed with the prayer aforesaid.

4. Pending the writ petition, the petitioner was issued with an order of transfer, which the petitioner failed to honour and did not report for duty inspite of the said order being communicated to the residential address of the petitioner, which has also been received. Since the petitioner, after receipt of



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the order of transfer did not join duty by obeying the said order, departmental proceedings were initiated by issuance of show cause notice to which no explanation was submitted by the petitioner leading to the framing of charges. In spite of repeated adjournments and grant of sufficient time, the petitioner did not participate in the enquiry, which resulted in the petitioner being set ex parte and report came to be filed holding the petitioner guilty of the charges.

5. It further transpires from the materials that paper publication was also given putting the petitioner on notice to come and join duty and in the meanwhile the petitioner filed this writ petition and this Court, through its direction directed the petitioner to report for duty at the transferred place, but the petitioner did not follow the said direction and in spite of notices issued to the petitioner, the petitioner failed to appear and join duty prompting the petitioner to remove the petitioner from service by paying the mandated compensation u/s 33 (2)(b) of the Act and also file a petition before the Labour Welfare Officer.



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6. The Labour Welfare Officer, upon adjudication of the approval petition granted approval with regard to the removal of the petitioner from service holding that the provisions of the Act have been duly complied with and that the persistent absence of the petitioner had evoked the said order. However, curiously, the said order is not put in issue before this Court, but this petition, which has been filed seeking a direction was pending consideration of this Court and, as stated above, in view of the pendency of the issue, instead of directing the petitioner to file a fresh petition, this Court, called upon the respondents to address the legality of the order passed by the Tribunal approving the removal of the petitioner from service.

7. Pending the writ petition, the petitioner passed away on 3.10.2020 and his wife had filed W.P. No.10962/2021 and this Court vide order dated 26.7.2021 had directed consideration of her representation and passing of orders by the respondents. However, the demise of the petitioner was not brought to the notice of the Court when the said petition was disposed of. The only cause espoused is that the punishment of removal from service is severe and the delinquency committed by the petitioner.



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8. Per contra, learned counsel appearing for the respondents submitted that the petitioner was afforded with all opportunities to join duty in the transferred post and even in this writ petition, this Court had directed the petitioner to join the transferred post, however, without giving scant respect to the orders of this Court as also the directions of his higher authorities, the petitioner remained absent without permission and even in the enquiry, opportunity was given and he did not participate in the enquiry, which clearly exhibited his disinclination to adhere to the directions of the employer necessitating his removal from service. It is further submitted that the provisions of the Act had been scrupulously followed while removing the petitioner from service, including compliance of Section 33 (2)(b) of the Act and also filing of approval petition. Rightly appreciating all the aforesaid facts, the Labour Welfare Officer has approved the removal of the petitioner from service, which does not require any interference at the hands of this Court.



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9. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

10. The facts surrounding the enquiry proceedings and the outcome of the said enquiry proceedings are not in dispute. Equally, no dispute is raised with regard to the manner in which the enquiry has been conducted. The petitioner has not questioned the manner in which the enquiry has been conducted and he could not question the enquiry purely for the reason that the petitioner has not participated in the same; rather, it is the case of the petitioner that a solitary incident in which the petitioner had raised certain complaints against some alleged fraud committed, which has resulted in the petitioner being tested in the departmental proceedings leading to his removal from service.

11. It is borne out by record as also accepted by the 1st respondent that barring this incident, there is no blemish in the record of the petitioner.



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However, for the solitary incident, the petitioner has been inflicted with the punishment of removal from service.

12. True it is that the petitioner has not participated in the enquiry inspite of adequate opportunity having been given to him. It is the case of the respondents that for the allegations raised, the petitioner has not submitted any evidence and that he has gone on leave inspite of the same being rejected and that he was directed to report for duty and the petitioner not adhering to the directions, the respondents have inflicted the said punishment. However, it is to be pointed out that when certain allegations are raised, non-furnishing of proof cannot be taken to mean that it is done with some ulterior motive. The petitioner may not be in a position to gather evidence, but that does not mean that he cannot raise allegations. The act of the petitioner really requires to be deprecated, but the infliction of punishment of removal from service for leave of absence of a period of eight days is really disproportionate to the delinquency as it is the case of the petitioner that many a times he was denied work, thereby, he was losing wages. This clearly shows that all is not well with



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the two sides. But for the same, it cannot be one side, which should bear the entire burnt.

13. In the course of day to-day work, there arise ill-feelings between the employer and the employee and between the superiors and subordinates and not for all such quarrels and ill-feelings require the extreme punishment of removal. Cases of this nature, which arise for the first time, which most often arise in the heat of the situation, requires to be handled with tact and a reprimand or a minor punishment by the employer with a piece of advice to the subordinate is the order, which should be followed so as to instil confidence and a sense of humanity in the mind of the subordinate that the employer is interested in the welfare of the subordinates. The voice raised by the subordinates, out of sheer stress out of the employment to the superior, not in all cases and all occasions, require the stringent punishment of removal from service.

14. In the present case, that denial of leave to the petitioner and calling upon the petitioner to join duty had not been adhered to by the petitioner,



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which is insubordination, but definitely not of its highest order. The petitioner has also raised grounds that when he attended duty he was not assigned any work. This clearly shows the ill-feelings between the petitioner and his superiors at the work place.

15. Further, it is borne out by records that the respondents were kind enough to offer the petitioner employment by transferring him to another place which has not been adhered to by the petitioner. It should be noted by the petitioner that it is his duty to obey and adhere to the directions issued by the employer and the orders of transfer issued to him, necessarily has to be complied with by him. Even when this Court showed benevolence to the petitioner by directing him to join duty at the transferred place in the present writ petition, the petitioner, according to the respondents, has not obeyed the said direction. Therefore, it is to be noted that all it not well with the petitioner too.

16. It is to be pointed out that it is the first time in the career of the petitioner, spanning over a decade and a half, an allegation of insubordination



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had been pressed against the petitioner. Such being the case, would the imposition of highest penalty of removal from service is warranted, which is disproportionate to the delinquency, alleged against the petitioner, is the question that falls for consideration.

17. The precedents on the issue of interference with the punishment imposed has been oft considered by the Courts and it has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Article 226. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Supreme Court held as under :-

“20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer,



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entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

18. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him



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is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

19. In the present case, as aforesaid, the service record of the petitioner does not reveal the petitioner to be a chronic trouble maker. In fact, the whole of the order of the Tribunal does not deal with the service records of the petitioner and also the report of the enquiry officer also does not paint the petitioner to be a trouble maker. However, definitely there are ill-feelings between the petitioner and the respondents and the petitioner has acted in insubordination against the dictates of the respondents, which is definitely an act of delinquency requiring imposition of punishment. However, this factum of the matter has been lost sight of by the Tribunal when the approval petition was taken up and order was passed confirming the same.

20. In the aforesaid circumstances, considering the fact that the petitioner has put in more than a decade and half of service with the



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respondents and it is a solitary incident alleged against the petitioner, which is naturally disturbing to the respondents, stripping the petitioner from his employment is highly disproportionate, but at the same time not punishing the petitioner would also be not in the interest of the employer, as it would send a wrong signal to the other employees. In such view of the matter, this Court is of the considered view that while setting aside the punishment of order of removal from service, if the petitioner is inflicted with a punishment of stoppage of increment for a period of two years without cumulative effect, the same would subserve the cause of justice.

21. In such view of the matter, the impugned order passed by the Tribunal approving the order of removal of the petitioner from service passed by the respondents is set aside and instead this Court imposes the punishment of stoppage of increments for a period of two years without cumulative effect on the petitioner.

22. It is brought to the notice of this Court that pending this writ petition, the petitioner died and his wife had filed a writ petition in W.P.



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No.10962/2021 seeking consideration of her representation for receiving the benefits and entitlements of the petitioner in which this Court had directed the respondents to pass orders on the same within a particular period. In view of the fact that this Court had modified the punishment, the petitioner, who is since deceased is entitled to all the monetary and attendant benefits and the said retirement benefits shall be paid to the wife of the petitioner upon proper establishment of legal heirship. Since the petitioner has not been under employment, the petitioner not entitled to backwages. In the light of the proceedings dated 30.09.2021 of the respondents directing the wife of the petitioner to submit the requisite documents along with legal heirship certificate so as to disburse the retirement benefits of the petitioner, the respondents, upon receipt of the requisite documents, are directed to pay the retirement benefits to which the petitioner is entitled by computing the retirement benefits on the basis of the punishment imposed by this Court above and pay the same to the wife of the petitioner within a period of six weeks from the date of receipt of a copy of this order.



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