



WEB COPY

WP No. 23200 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2025

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

WP No. 23200 of 2018

1. P.Thulasingham, S/o.Palayam
10, Vignesh street, Kattabomman
Nagar, Old Pallavaram, Chennai 600
117

Petitioner(s)

Vs

1. The Deputy Chairman
Chennai Port Trust, Rajaji salai,
Chennai 600 001

2.The Deputy conservator
Marine Department, Chennai Port
Trust, Rajaji Salai, Chennai 600 001

Respondent(s)

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a certiorari mandamus calling for the records of the impugned order passed by the 2nd respondent herein in his proceeding No. D2 / 1599 / 2013 / M dated 27.02.2018 and the order passed by the 1st respondent in



proceeding NO. D2 / 1599 / 2013 / M dated 29.05.2018 and quash the same and consequently direct the respondents herein to reinstate the petitioner into service with all monetary, continuity of service and other attendant benefits.

For Petitioner(s): M/s.K.Raja

For Respondent(s): S.Haja Mohideen Gisthi For R1
And R2

ORDER

The Writ petition has been filed challenging the impugned order passed by the 2nd respondent in his proceeding No. D2 / 1599 / 2013 / M dated 27.02.2018 and the order passed by the 1st respondent in proceeding NO. D2 / 1599 / 2013 / M dated 29.05.2018 and consequently to direct the respondents to reinstate the petitioner into service with all monetary, continuity of service and other attendant benefits.

2. The petitioner who has been initially appointed as Assistant Technician on 04.10.1999 with the respondent port trust was promoted to the post of Greaser on 28.12.1996. In order to acquire higher qualification (MEO Class – III NCV) for carrier prospects, the petitioner applied “leave on loss of pay” and the same was granted on 30.11.2010 for a period of 18 months and the petitioner was relieved on 02.02.2010. Thereafter, the petitioner had undergone the required classes pertaining to his higher qualification. However, the



petitioner could not complete his studies within a period of 18 months. Hence, he sought further leave on 15.05.2012 but the same was negatived by the second respondent 29.05.2012. As the petitioner did not join duty, he was issued with an order on 08.05.2013 directing him to report duty immediately. The petitioner gave his representation on 08.06.2013 but he was issued with a memo for initiating disciplinary proceedings against him vide letter dated 23.07.2013. Despite the petitioner has sent his representation on 02.08.2013 he was given with charge memo on 13.09.2013 by alleging that he had committed misconduct for being on unauthorized absence. Thereafter, disciplinary action has been initiated unmindful of the petitioner's writ petition filed challenging the charge memo in W.P.No.4035/2014 which was dismissed on 11.10.2017. Thereafter the petitioner was dismissed from service on 27.02.2018. The appeal filed by him challenging the above order was also rejected on 29.05.2018. Aggrieved over the same the petitioner has filed this writ petition.

3. Mr.K.Raja, the learned counsel for the petitioner, submitted that the respondents deliberately refused to grant further time despite the petitioner needed further time to acquire qualification. The petitioner has spent a sum of Rs.20,00,000/- towards the educational expenses and lost his pay also to an extent of Rs.40,00,000/- during this period. Had the respondents not given 18 months time initially, the petitioner would not have gone for further studies. Not accommodating with further leave to the petitioner had resulted in heavy loss to the petitioner. Persons similar to the petitioners have obtained long leave and



completed the higher qualification (MEO Class – III NCV). The order passed in the appeal is without application of mind and hence the same should be quashed.

4. Mr.S.Haja Mohideen Gisthi, the learned Government Advocate, for the respondents, submitted that the petitioner has been given with extraordinary leave for a period of 1 ½ years to do services in a coastal area ship which will enable him to attend the preparatory course and for appearing MEO Class-III (NCV) Examination) from 02.12.2010 to 01.06.2012. After having given the required undertaking, the petitioner had availed his leave. The respondents needed to appoint one substitute in the place of the petitioner as a stop gap arrangement to carry out the petitioner's duties without any dislocation of the ship movements. The persons similar to the petitioners have joined duty after having availed the period of extraordinary leave given to them. One of the conditions for availing extraordinary leave is to remit 1/3rd of their earnings. All the mariners who would like to do MEO Class – III NCV, can only avail 18 months time and not beyond that and 18 months is more than enough to complete the course. Instead of joining duty as per his undertaking, the petitioner was sending requests repeatedly for extension of leave which was rejected by the respondents. The petitioner did not remit 1/3rd of his earnings also as per the conditions imposed and the undertaking given by him. Despite the petitioner was ordered to report duty immediately through the letter of the second respondent dated 08.11.2012, the petitioner did not opt to join duty and



that would amount to misconduct.

WEB COPY

4.1. As the petitioner had violated the terms and conditions as stated in the second respondent's letter dated 30.11.2010, and he omitted to join in response to the letter dated 08.11.2012, the charge memo has been issued to him. Even for the enquiry proceedings he did not choose to attend despite receiving communications. As the petitioner has obtained an order of stay by suppressing the material facts, the respondents could not proceed the enquiry. Ultimately when the writ petition was dismissed on 11.10.2017, the respondent had passed an order of dismissal on 27.02.2018.

5. The fact that the petitioner has been given with the required leave for a period of 18 months to pursue special studies to acquire qualification suiting him to have a better progress in his carrier, is not disputed. If the petitioner had felt it impossible to complete his course within a period of 18 months, he may not have opted to avail the leave. Having opted the leave as per the terms and conditions imposed by the second respondent and had also given undertaking as required by the conditions of service, the petitioner had violated the same. Despite intimation was given to the petitioner that no extension of leave will be granted him, the petitioner remained absent. Even thereafter the petitioner was issued with an order calling upon him to join duty. Thereafter also the petitioner was not alert enough to come and join duty but he continued to sent representations. As the representations sent by the petitioner were not



considered positively the respondents thought it fit to take disciplinary action against the petitioner. The petitioner did not even chose to participate in the disciplinary proceedings despite he was communicated about the date of enquiry. The petitioner had filed a writ petition challenging the charge memo issued to him and that was also dismissed.

6. The petitioner has taken risk at each stage of his employment despite knowing that he has given an undertaking that he would join duty after the expiry of the leave. The petitioner is trying to draw parity with some persons who have been given with leave for years together for completing the special courses. In a few cases such liberty might have been given, but the petitioner cannot take it as a precedent or a Rule that he should also be given with extension of leave whenever he wanted. If the petitioner finds that it is not possible for him to acquire the required qualification within 18 months, he should not have taken risk and should have returned to duty. Within the knowledge of the petitioner, he did not even remit 1/3rd of his salary for availing EOL as per the terms. When persons similar to him who availed EOL had chosen to join duty and remitted 1/3rd of their salary as per the undertaking given by them, the petitioner cannot expect a different treatment.

7. The learned counsel for the petitioner submitted that for being in unauthorized absence, the punishment of dismissal is disproportionate. The conduct of the petitioner would only show that he did not choose to remain



absence for a few days but he had taken the risk of abandoning the service itself by not reporting duty for several months despite knowing that he was not given with any extension of leave. As the petitioner's conduct was found to be a serious misconduct and the records also prove the same, the order has been passed by the second respondent after the writ petition filed by the petitioner got dismissed. The order was to the effect of imposing the capital punishment of dismissal from service. However, the petitioner had preferred an appeal challenging the orders of punishment but the same got it rejected on 29.05.2018.

8. One of the grievance raised by the petitioner as to the orders passed in the writ appeal preferred by him is that the appellate authority has passed the order of rejection without application of mind and that it is not a speaking order. As it appears from the order dated 29.05.2018 the first respondent / appellate authority has stated the following:

“ I have perused the appeal submitted and all relevant papers connected with the subject. I have found that the appellant has not brought out any fresh material justifying intervention in the action taken and penalty imposed. Therefore, I uphold the penalty imposed by the Disciplinary Authority.”

9. It is observed in the above order that as the appellant has not brought any fresh material justifying his intervention, the action has been taken and penalty has been imposed. As the appellate Authority is also bound to appreciate



the merits of the order passed in the disciplinary proceedings. It appears that the order of the appellate authority is a cryptic one.

WEB COPY

10. Hence, the writ petition is partly allowed and the order of the appellate authority / first respondent in proceeding No.D2/1599/2013/M dated 29.05.2018 alone is quashed without touching upon the order of dismissal which is in force and the first respondent is directed to re-appreciate the grounds of appeal raised by the petitioner and pass a speaking order afresh, within a period of four weeks from the date of receipt of a copy of this order. No costs.

14-02-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

bkn



WP No. 23200 of 2018



To
WEB COPY

1. The Deputy Chairman
Chennai Port Trust, Rajaji salai,
Chennai 600 001

2. The Deputy conservator
Marine Department, Chennai Port
Trust, Rajaji Salai, Chennai 600 001



WEB COPY

WP No. 23200 of 2018



R.N.MANJULA J.

bkn

WP No. 23200 of 2018

14-02-2025