
(2013) 01 MAD CK 0219
In the Madras High Court
Case No : W.A. (MD) No. 1047 of 2012

M. Umayasekar

APPELLANT

Vs

The Principle Secretary to Government

RESPONDENT

Date of Decision : 29-01-2013

Acts Referred:

Citation : (2013) 3 LLN 358

Hon'ble Judges : P. Devadass, J; K.N. Basha, J

Bench : Division Bench

Advocate : P. Ganapathi Subramanian, for the Appellant; M. Govindan, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—This Writ Appeal has been filed against the order of the Writ Court dated 3.4.2012 made in W.P. (MD) No. 4205/2012. The learned Counsel for the Appellant contended that the Appellant challenged the termination order in the Writ Petition wherein termination order was passed on the ground of unauthorized absence for a period of 12 days. It is further contended that the Appellant is working as Police Constable and the Appellant said to have absented for duty for a period of 12 days due to advanced stage of pregnancy of his wife and also in view of complication in the pregnancy. It is also contended that the absence of the Appellant is neither wilful nor wanton but only due to the above said circumstance. The learned Counsel for the Appellant also placed reliance on the decision of the Hon'ble Supreme Court in (I) Krushnakant B. Parmar Vs. Union of India (UOI) and Another, and (II) Chairman cum Managing Director, Coal India Limited and Another Vs. Mukul Kumar Choudhuri and Others,

2. Heard Mr. M. Govindan, learned Special Government Pleader on the submissions made by the learned Counsel for the Appellant.

3. We have carefully considered the submissions of both sides and perused the entire materials available on record including the impugned order passed by the

First Respondent.

4. The undisputed fact remains that the Appellant was unauthorizedly absent for duty for a period of 12 days. It is pertinent to note that the explanation offered by the delinquent, namely, the Appellant is to the effect that his absence is due to advanced stage of pregnancy of his wife and also in view of complication in the pregnancy. We are of the view that the absence of the Appellant cannot be considered to be a wilful or deliberate absence, more particularly, considering the period of absence viz., for a period of 21 days. We are also constrained to state that the Writ Court has failed to note this important aspect and the impugned order was also passed overlooking the said factors by awarding major punishment of termination.

5. The learned Counsel for the Appellant has rightly placed reliance on the decision of the Hon''ble Supreme Court in *Krushnakant B. Parmar v. Union of India and another*, 2012(3) LLN 116 (SC) : 2012(4) MLJ 595 (SC) . The Hon''ble Supreme Court in the said decision has held as hereunder:

In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the Disciplinary Authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.

The Inquiry Officer on appreciation of evidence though held that the Appellant was unauthorizedly absent from duty but failed to hold the absence is wilful; the Disciplinary Authority as also the Appellate Authority, failed to appreciate the same and wrongly held the Appellant guilty.

In yet another decision in *Chairman-cum-Managing Director Coal India Limited and another v. Mukul Kumar Choudhuri and others*, 2009(3) TNCJ 485 (SC), the Hon''ble Apex Court in a case of unauthorized absence of 6 months has held as hereunder:

22. The question, however, remains is the punishment of removal grossly disproportionate to the proved charge of unauthorized absence for more than six months?

23. In order to answer the aforesaid question, it would be appropriate to refer to a few decisions of this Court wherein doctrine of proportionality has been considered....

25. Again, in the case of *Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another*, , this Court considered the doctrine of proportionality and it was held:

17. So far as the Doctrine of Proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various Administrative

Authorities, certain principles have been evolved by Courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a Court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "Doctrine of Proportionality.

26. The Doctrine of Proportionality is, thus, well recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable Employer have imposed such punishment in like circumstance? Obviously, a reasonable Employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher Authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable Employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily, we would have sent the matter back to the Appropriate Authority for reconsideration on the question of punishment but in the facts and circumstance of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.

27. Consequently, both these Appeals are allowed in part. The Appellants shall reinstate Respondent No. 1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement..

We are of the view that the principles laid down by the Hon"ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant case. The Hon"ble Supreme Court in the above cited decisions have set aside the impugned order and directed the Authorities to reinstate the delinquent officer in those matters without Back Wages.

In view of the above, this Writ Appeal is allowed and the order of this Court made in W.P. (MD) No. 4205 of 2012 dated 3.4.2012 is hereby set aside.

Consequently, the Third Respondent herein is directed to reinstate the Appellant, however the Appellant shall not claim any arrears of salary. No costs.