

**E. Jayabalan Vs. the Managing Director, Cmwss Board, Chennai and Others**

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**Court :** Chennai

**Decided On :** Aug-16-2012

**Judge :** M. Jaichandren

**Appeal No. :** Writ Petition No.4557 of 2009

**Appellant :** E. Jayabalan

**Respondent :** The Managing Director, Cmwss Board, Chennai and Others

**Advocate for Pet/Ap. :** For the Petitioner: V. Balu, Advocate. For the Respondents: T. Gowthaman, Advocate.

**Judgement :**

**(Prayer:** Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3<sup>rd</sup> respondent dated 10.2.2009 in its Proc.No.CMWSSB/PandA/VC(A)/42507/2008 confirming the appellat order passed by the 2<sup>nd</sup> respondent dated 14.10.2008 in its appellate order Proc.No.CMWSSB/PandA/VC@/000924/2007 and quash the same and direct the respondent to reinstate the petitioner into service and grant all consequential service, monetary benefits and grant the petitioner.)

1. Heard the learned counsel for the petitioner, as well as the learned counsel appearing on behalf of the respondents.

2. It has been stated that the petitioner had joined in service as a demand server, under the respondent Board, in the year, 1982. In consideration of his meritorious service he had been promoted, as a depot manager, and he had been serving in Area VII, Vepery, Chennai. While so, on 29.4.2008, he had been convicted and sentenced to undergo rigorous imprisonment, for a period of six months and had also been asked to pay a fine of Rs.6,000/-, by the decision of the III Additional Sessions Judge, Chennai, in C.C.No.29 of 2004, for an offence said to have been committed, under Section 7 of the Prevention of Corruption Act, 1998.

3. It had been further stated that the petitioner had filed an appeal, before this Court, on 17.6.2008, challenging the conviction and sentence passed against the petitioner. While so, on 24.7.2008, the respondent had issued a show cause notice asking the petitioner to state as to why he should not be dismissed from service on account of his conviction, in C.C.No.29 of 2004. Even though the petitioner had submitted his explanation, in which he had also stated that the sentence imposed on the petitioner, by the trial Court, in C.C.No.29 of 2004, had been suspended, by the High Court, by its order, dated 17.6.2008, made in M.P.No.1 of 2008, in C.A.No.422 of 2008, the respondent had passed an order, dated 14.10.2008, dismissing the petitioner from service. The appeal filed by the petitioner, on 24.10.2008, had been rejected by the third respondent, by his order, dated 10.2.2009. In such circumstances, the petitioner has preferred the present writ petition, before this Court, under Article 226 of the Constitution of India.

4. No counter affidavit had been filed on behalf of the respondents.

5. The learned counsel appearing on behalf of the petitioner had submitted that the impugned orders passed by the respondent concerned are arbitrary and invalid in the eye of law. The impugned orders had been passed without following the principles of natural justice and therefore, they are liable to be quashed. No proper reasons had been given for passing the order against the petitioner, dismissing him from service. He had also submitted that the punishment imposed on the petitioner is disproportionate in nature and therefore, it is liable to be set aside. He had further submitted that, when the sentence imposed on the petitioner, by the trial Court, in C.C.No.29 of 2004, had been set aside by this

Court, in the criminal appeal, in C.A.No.422 of 2008, and when it is an honourable acquittal, it is not open to the respondents to dismiss the petitioner from service stating that he had committed an act of moral turpitude and that he had been convicted based on the allegations levelled against him.

6. The learned counsel appearing on behalf of the petitioner had relied on the following decisions in support of his contentions.

1) G.M. Tank Vs. State of Gujarat (2006) 5 SCC 446

2) M. Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679

3) S. Karuppuchamy Vs. The Special Commissioner and Transport Commissioner (W.P.No.698 of 2011, dated 29.7.2011)

7. The learned counsel appearing on behalf of the respondents had submitted that the petitioner had been dismissed from service, as he had been convicted, by a criminal Court, on charges involving moral turpitude. However, he had admitted that the sentence passed against the petitioner, by the trial Court, in C.C.No.29 of 2004, had been set aside by this Court, in the Criminal Appeal, in C.A.No.422 of 2008. He had also submitted, on instructions, that the decision of this Court in the criminal appeal, in C.A.No.422 of 2008, had not been challenged, by the respondent Board, till date.

8. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, and in view of the decisions cited supra, this Court is of the considered view that the impugned orders passed by the respondent concerned, dismissing the petitioner from service, ought to be set aside. The said impugned orders had been passed, based on the sentence imposed on the petitioner, by the trial Court, in C.C.No.29 of 2004. However, it is seen, from the records available, that the sentence passed against the petitioner had been set aside, by this Court, in the criminal appeal, in C.A.No.422 of 2008. Hence, the charge made against the petitioner that he had suffered a sentence, based on the allegation of moral turpitude, cannot be sustained in view of the setting aside of the sentence passed against the

petitioner, in the criminal appeal filed by him, before this Court. Accordingly, the impugned orders passed against the petitioner, dismissing him from service, are set aside. Consequently, the respondents are directed to reinstate the petitioner in service, with all attendant benefits, within a period of two weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.

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