



W.P(MD)No.5051 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5051 of 2023

and

W.M.P.(MD)No.4730 & 6025 of 2023

R.Murugesan

... Petitioner

Vs.

1. The District Collector,
Thoothukudi District.

2.The Additional Chief Secretary /
Commissioner of Revenue Administration,
Commissionerate of Revenue Administration,
Ezhilagam, Chepauk, Chennai-5,
Chennai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order in Na.Ka.No.௮7/E-243746/5726/2019, dated 18.01.2023 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.Balasubramani
Special Government Pleader



W.P(MD)No.5051 of 2023

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. By the impugned order dated 18.01.2023 passed by the first respondent, the petitioner has been visited with punishment of stoppage of increment for a period of one year with cumulative effect. As many as four charges were framed against the petitioner on 26.10.2021. The substance of the charges is that the petitioner left his headquarters and did not report for duty without informing or getting permission from his superior officers from 12.09.2021 till 19.09.2021. During the relevant time, special vaccination programmes to prevent Covid were being organized and conduct of the petitioner brought disrepute to the District Administration.

3. The defence of the petitioner was that on 12.09.2021, his minor son Barath Kumar met with an accident at Senkottai and he suffered grievous head injuries including fracture. After the news reached the petitioner, he rushed to make arrangements for his son's medical treatment on emergency basis. The petitioner sent whatsapp message to the District Collector on 16.09.2021. The petitioner had returned to the station on 13.09.2021 itself and submitted a



W.P(MD)No.5051 of 2023

formal leave letter. According to the petitioner, his absence at the Headquarters were necessitated by the aforesaid development. An enquiry officer was appointed and he submitted a report dated 27.05.2022 holding that the charges framed against the petitioner were not proved. When the disciplinary authority namely the first respondent herein did not agree with the findings of the enquiry officer and chose to pass the impugned order dated 18.01.2023 imposing the impugned punishment. This Court granted an order of interim stay at the admission stage itself. To vacate the interim order, the first respondent has filed a detailed counter affidavit.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition.

5. The learned Special Government Pleader took me through the contents of the counter affidavit and submitted that due process was followed and that the impugned order does not call for interference. Reliance was placed on the decisions of the Hon'ble Supreme Court reported in (2015) 2 SCC 610 (Union of India & others Vs. B.Gunasekaran), (2006) 2 SCC 255 (T.N.C.S.CORPN.



W.P(MD)No.5051 of 2023

LTD.and others Vs. K.Meerabai) & 2016 (1) CWC 721. The learned Special Government Pleader pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record. It is true that the impugned order makes reference to the order dated 01.12.2022 and the memorandum dated 02.12.2022 issued by him. However, in the operative portion of the impugned order, there is no reference at all to the aforesaid proceedings. The relevant portion of the impugned order is extracted as follows:-

“விசாரணை அலுவலரின் அறிக்கை

தனியார் விசாரணையின் போது வழங்கிய வாக்குமூலத்தில் அவரது மேல் அலுவலரான வருவாய் கோட்டாட்சியர் அவர்களிடம் நேரில் விவாதித்து அவரது அறிவுரை பெற்ற பின்னரே தலைமையிடத்தை விட்டு சென்றுள்ளார் என்ற விபரத்தினை மறுக்க கூடிய ஆவணங்களின் அடிப்படையில் இக்குற்றச்சாட்டு நிரூபணமாகவில்லை என முடிவு செய்யப்படுகிறது எனத் தெரிவித்துள்ளார்.

இறுதி ஆணை

தனியார் மீது ஏற்படுத்தப்பட்ட குற்றச்சாட்டுகள் மற்றும் அவரது விளக்கங்கள் மற்றும் விசாரணை அலுவலரின் அறிக்கை ஆகியவை கவனமுடன் பரிசீலனை செய்யப்பட்டன. தனியர் விடுப்பு கோரிய 13.09.2021 அன்று மாவட்ட ஆட்சித் தலைவர் அவர்களுக்கு whatsapp-ல் தெரியப்படுத்தாமல் 16.09.2021 அன்று தான் whatsapp-ல் 13.09.2021 முதல் 19.09.2021 வரை விடுப்பு எடுத்துள்ளேன் என மாவட்ட ஆட்சித் தலைவர் அவர்களுக்கு தகவல்



W.P(MD)No.5051 of 2023

தெரியப்படுத்தப்பட்டுள்ளது. மேலும் பொறுப்பான வட்ட நிர்வாக அதிகாரி விடுப்பில் செல்வதற்கு முன்பாக மாவட்ட ஆட்சித் தலைவர் அவர்களிடம் முன் அனுமதி பெறாமலும் தனக்குப் பதிலாக வட்ட நிர்வாக பதவிக்கு ஒரு பதிலியை நியமனம் செய்யாமல் தனது பொறுப்பான பதவிக்கு ஊறு விளைவிக்கும் வகையில் நடந்து கொண்டது. எனவே தனியர் மீது ஏற்படுத்தப்பட்ட குற்றச்சாட்டுகள் நிரூபணமாவதால். தனியரின் அடுத்து வரும் ஊதிய உயர்வை ஒரு வருட காலத்திற்கு திரண்ட பயனுடன் தள்ளி வைத்து உத்தரவிடப்படுகிறது.□

7. Admittedly, the enquiry officer's findings are in favour of the petitioner. The disciplinary authority had disagreed with the findings of the enquiry officer. In such an event, the petitioner must have been put on notice. The Hon'ble Supreme Court in the decision reported in **(2006) 9 SCC 440 (Lav Nigam Vs. Chairman & MD, ITI Ltd., and another)** had held that in case, the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give notice setting out his tentative conclusions to the delinquent and only after hearing the delinquent, the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed. The Hon'ble Supreme had relied on a earlier Judgment reported in **(1998) 7 SCC 84 (Punjab National Bank Vs. Kunj Behari Misra)**.



W.P(MD)No.5051 of 2023

8. In this case, the aforesaid procedure was not followed by the first respondent. On this ground of clear violation of principles of natural justice, the order impugned in the writ petition is set aside. When this Court interferes such technical ground invariably, the matter is remitted to the file of the disciplinary authority to pass an order afresh on merits and in accordance with law. But I do not want to adopt such course of action in this case. This is primarily for the reason that the petitioner has not committed any act of misconduct. The Hon'ble Supreme Court in the decision reported in **(1979) 2 SCC 286 (Union of India Vs. J.Ahmed)** had held that misconduct arises from ill motive and that acts of negligence, errors of judgment or innocent mistakes would not constitute such misconduct. In this case, the petitioner received information that his 17 years' old son met with an accident and that he suffered head injury and also fracture. The natural response of any parent would be to rush to be with his child. Section 114 of Indian Evidence Act empowers a court of law to make presumptions with regard to normal human conduct. When the petitioner received information regarding his son's accident, he would have definitely intimated his colleagues. Definitely the news would have reached the superiors. The learned counsel appearing for the petitioner would state that after the petitioner's superior, namely, the Revenue Divisional Officer received information, he got in touch with the medical officer in Tenkasi Hospital where



W.P(MD)No.5051 of 2023

the petitioner's son had been admitted. That is why, the enquiry officer rightly exonerated the petitioner of all charges.

9. I fail to understand as to why the first respondent should have taken such a perverse and insensitive approach. I hold that the petitioner had not committed any act of misconduct. The impugned order is set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

31.03.2023

Index : Yes / No
Internet : Yes/ No
rmi

To

1. The District Collector,
Thoothukudi District.
2. The Additional Chief Secretary /
Commissioner of Revenue Administration,
Commissionerate of Revenue Administration,
Ezhilagam, Chepauk, Chennai-5,
Chennai.



WEB COPY



W.P(MD)No.5051 of 2023

G.R.SWAMINATHAN, J.

rmi

W.P(MD)No.5051 of 2023

31.03.2023