

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.PAUL VASANTHAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

W.P.No.18714 of 2014

N.Mohan

... Petitioner

Vs.

- 1.The District Judge,
Tiruvannamalai District,
Tiruvannamalai-606 601.
- 2.The Judicial Magistrate,
Arni,
Tiruvannamalai District.
- 3.The District Munsif,
District Munsif Court,
Polur,
Tiruvannamalai District.
- 4.The Registrar,
High Court,
Chennai-104.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus calling for the records relating to the order passed by the 1st respondent in his office Dis.No.976/13-2, dated 13.2.2013 and quash the same and direct the respondents to grant all monetary and concomitant benefits to which the petitioner is entitled to the post of Head Clerk within the time that may be fixed by this Court.

For Petitioner : Mr.P.Mani

For Respondents : Mr.B.Vijay for R1

ORDER

(Order of the Court was made by P.R.SHIVAKUMAR, J.)

This writ petition has been filed praying for issuance of a writ of certiorarified mandamus calling for the records relating to the order passed by the 1st respondent in his office Dis.No.976/13-2, dated 13.2.2013 and to quash the same and to further direct the respondents to grant all monetary and concomitant benefits, which the

petitioner is entitled to the post of Head Clerk within the time that may be fixed by this Court.

2. While the petitioner was working as Head Clerk in the Judicial Magistrate Court No.II, Cheyyar, he was issued with a charge memo under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules accusing that he did not hand over case properties in respect of as many as 12 cases, which includes three two wheelers (Two TVS-50 two wheelers and One Hero Majestic Panther two wheeler). He was also charged for making corrections in the Property Register. After initiation of disciplinary proceedings and following the procedure, enquiry was conducted, in which, he was found guilty of the charges levelled against him. Ultimately, the petitioner was imposed with the penalty of reversion to the lower cadre, namely to the cadre of Assistant with a direction to place him in the seniority list of Assistants at the bottom as on the date of reversion. In addition to fixing the period of reversion, the Disciplinary Authority has also issued a direction to the petitioner to pay a sum of Rs.18,500/- towards the value of the three two wheelers. The said order of punishment came to be passed on 25.4.2006 in Dis.No.2449/2006.

3. Challenging the said order of punishment dated 25.4.2006, the petitioner has filed an appeal before the 4th respondent on 26.6.2006 and by order dated 04.2.2013 in R.O.C.No.117/2008/C1, the 4th respondent has confirmed the order of reversion, but remitted the matter back to the Disciplinary Authority only to fix the period of reversion setting out specific period in the order of punishment. After the receipt of the said order of the 4th respondent, the Disciplinary Authority, viz., the Principal District Judge, Tiruvannamalai has passed an order on 13.2.2013 in Dis.No.976/13-2, which is impugned in the writ petition, fixing the period of reversion to be 5 years and 7 months only i.e. from the date of reversion till the date of retirement. During the pendency of the appeal, the petitioner attained the age of superannuation on 31.10.2011 and he was permitted to retire, subject to the out come of the appeal. The above said amount of Rs.18,500/- fixed as the cost of the missing two wheelers was also recovered from the DCRG of the petitioner.

4. The 1st respondent has filed the counter-affidavit stating that as per the order dated 25.4.2006, the petitioner was reverted from the post of Head Clerk to the post of Assistant and was placed at the bottom of the seniority list of Assistants as on the date of reversion. It has also been stated that the entire cost of the case properties was ordered to be recovered in the DCRG amount and the said amount of Rs.18,500/- was recovered from the DCRG amount on 24.2.2014 by way of Cheque bearing No.561507 drawn infavour of the Judicial Magistrate, Arni and same was remitted into the Sub Treasury, Arni on 28.2.2014. It has also been contended that the

punishment of reversion for 5 years, 7 months was in accordance with the rules and commensurate with the nature of delinquency.

5. Heard Mr.P.Mani, learned counsel appearing for the petitioner and Mr.B.Vijay, learned counsel appearing for the 1st respondent and perused the materials available on record.

6. The learned counsel appearing for the petitioner has submitted that the Disciplinary Authority ought to have considered the fact that the cost of missing case properties was already deducted from the retirement benefits of the petitioner and fixed shorter period as period of reversion. The learned counsel for the petitioner has submitted further that the order passed by the Disciplinary Authority fixing the period of reversion as 5 years, 7 months was harsh and disproportionate and hence the period of reversion may be reduced.

7. According to the submission made by the learned counsel appearing for the 1st respondent, the punishment is not harsh and the fixing of the period of reversion at 5 years 7 months, besides being in consonance with the rules and in any event the period of reversion is inconsequential as no one junior to him in the revised seniority list of Assistants prepare on his reversion.

8. On perusal of the impugned order of the 1st respondent dated 13.02.2013, we are satisfied that it has been passed in accordance with F.R-29. It reads as follows:-

"If a Government servant is reduced as a measure of penalty to a lower service, grade or post or to a lower stage in his time-scale, the authority ordering such reduction shall state the period for which it shall be effective and whether on restoration, the period of reduction shall operate to postpone future increments and if so, to what extent.

Ruling 1(a)(iii) under F.R.29, the extent can be in terms of years and months."

In terms of the above said rule, the Disciplinary Authority has fixed the period as 5 years and 7 months. It is also brought to our notice that after the reversion of the petitioner to the post of Assistant and placing below the last name in the seniority list of Assistants that was in force at the time of his reversion, no one junior to him was given promotion.

9. Considering the gravity of charges levelled against the petitioner, we are of the considered view that the Disciplinary Authority has taken a lenient view and imposed the above said punishment. In such view of the matter, we are not in a position to accept the contention of the petitioner that the punishment is harsh requiring interference by this Court. There is no merit in the writ petition and the same deserves to be dismissed.

10. In fine, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar
Dated:20.1.15

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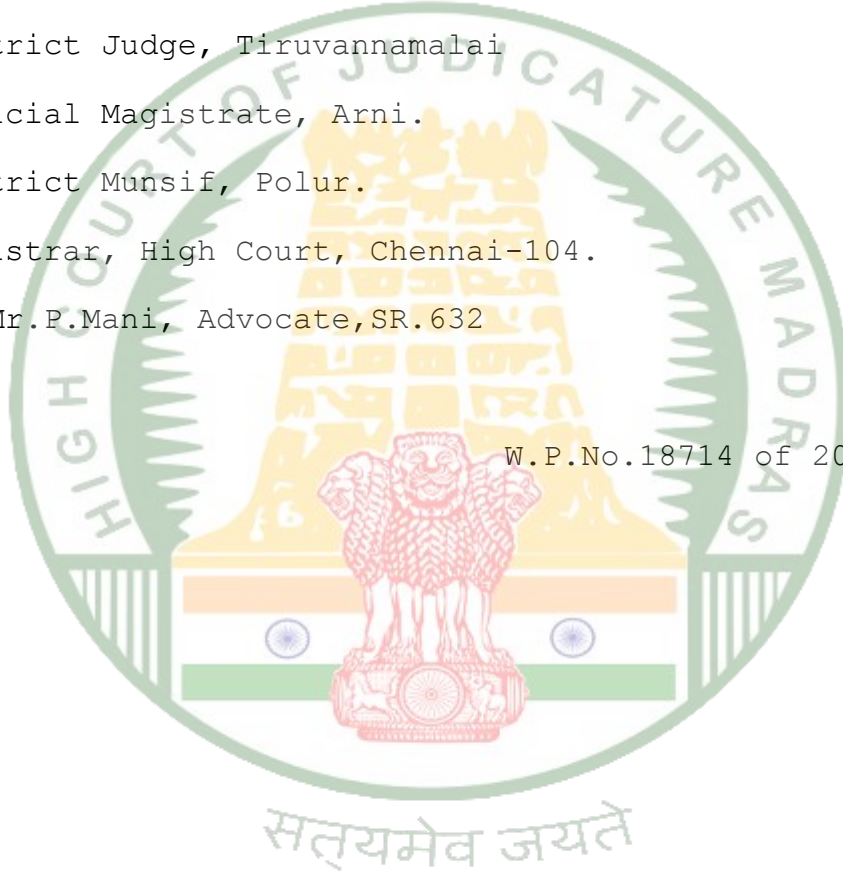
Sub Assistant Registrar

To

- 1.The District Judge, Tiruvannamalai
 - 2.The Judicial Magistrate, Arni.
 - 3.The District Munsif, Polur.
 - 4.The Registrar, High Court, Chennai-104.
- +1 cc to Mr.P.Mani, Advocate,SR.632

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krd 28/1

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