

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

Writ Petition No.32185 of 2013 and
M.P.Nos.1 and 2 of 2013

A.Theerthagiri

... Petitioner

Versus

1. The Principal Secretary to Government,
High ways & Minor Ports (HL1) Department,
Fort St. George, Chennai - 9.
2. The Chief Engineer (General) Highways,
Chepauk, Chennai -5.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent in connection with the impugned order passed by him in GO(D) No.217 High Ways & Minor Ports (HL1) Department, dated 25.10.2013 and quash the same.

For Petitioner : Mr.T.Ayngaraprabhu

For Respondents : Mr.A.Kumar,
Special Government Pleader

O R D E R

The 1st respondent initiated disciplinary proceedings against the petitioner and other engineers, including Thiru M.Kamaraj, alleging that all these officers colluded and created records, as if they have undertaken the work of restoration of rain damage without actually executing them. The 1st respondent issued a charge memo dated 14.05.2009 containing as many as four charges. Similar charges were framed against other employees also.

2. The Enquiry Officer appointed by the 1st respondent concluded that charges 1 and 2 have not been proved. With respect to Charge

No.3, the Enquiry Officer held that it was partly proved. Since Charge No.3 was partly proved, the Enquiry Officer opined that Charge No.4 was also proved. The disciplinary authority issued second show cause notice to the petitioner, pursuant to the charge memo and ultimately imposed the punishment of stoppage of increment for a period of 3 months without cumulative effect. Similar punishment was given to Thiru M.Kamaraj. However, the disciplinary authority exonerated Thiru.R.Shanmugam, Joint Chief Engineer and H.Mohammed John, Divisional Accountant from the disciplinary proceedings by accepting the report submitted by the Enquiry Officer.

3. The petitioner has taken up a substantial contention in support of his plea that the first respondent erred in punishing him pursuant to Charge No.3. According to the petitioner, there was undue delay in initiating and concluding the proceedings. The petitioner has also taken up a contention that the explanation submitted by him to the second show cause notice was not considered by the first respondent before imposing the punishment and as such, there was statutory non-compliance, sufficient to set-aside the punishment.

4. This Court considered the charge memo issued to the co-delinquent by name M.Kamaraj in W.P.No.33208 of 2013. The contentions raised by the petitioner herein were also raised by the said delinquent in W.P.No.33208 of 2013. I have considered the entire charge memo and in the light of the report submitted by the Enquiry Officer, concluded that there were no materials to connect the delinquent with the misconduct. I have also arrived at a finding that the disciplinary authority failed to follow Sub-clause (ii) of 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, which provides that before imposing the punishment, representation submitted by the delinquent to the second show cause notice shall be taken into consideration. The impugned order passed by the first respondent does not contain any indication that second representation submitted by the petitioner was considered before imposing punishment. The petitioner is similarly placed and as such, the reasoning given in the connected order in W.P.No.33208 of 2013 would extend to the case of the petitioner also. I am therefore of the view that the petitioner is entitled to succeed.

5. In the result, by following the earlier order, dated 09.03.2015 in W.P.No.33208 of 2013, the impugned order dated 25.10.2013 in GO(D) No.217 Highways & Minor Ports (HL1) Department is set aside.

6. In the upshot, I allow the writ petition. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

svki/mrp

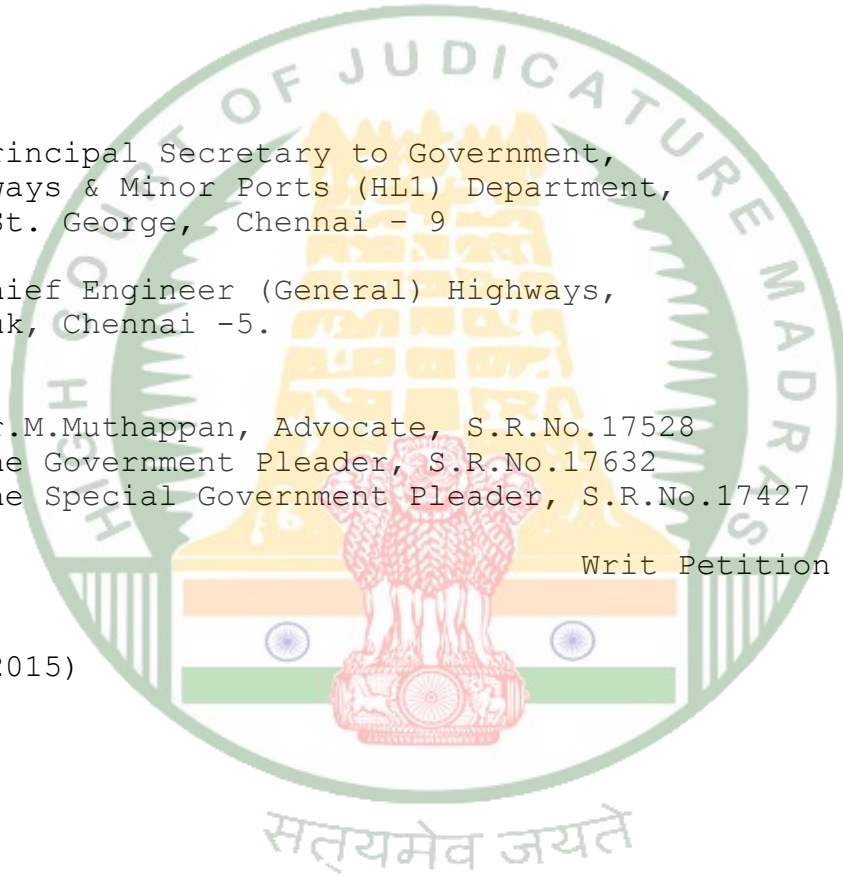
To

1. The Principal Secretary to Government,
High ways & Minor Ports (HL1) Department,
Fort St. George, Chennai - 9
2. The Chief Engineer (General) Highways,
Chepauk, Chennai -5.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.17528
+1cc to the Government Pleader, S.R.No.17632
+1cc to the Special Government Pleader, S.R.No.17427

Writ Petition No.32185 of 2013

KSJ(CO)
CA(06/04/2015)



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