

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.06.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.A. NO. 228 OF 2015

AND

M.P. NO. 1 OF 2015

1. The Principal Secretary to Govt.
Home (Transport) Department
Fort St. George, Chennai - 9.
 2. The Principal Secretary/
Transport Commissioner
Chepauk, Chennai - 5.
- Appellants

- Vs -

G.Muniraju Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 04.04.2014, passed by the learned single Judge, made in W.P. No.8386 of 2014.

W.P. No.8386 of 2014 : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents in connection with the impugned charge memo issued by the 2nd respondent in Memo.R. No.40610/VA2/2008 dated 23.10.2008 and quash the same and direct the respondents to consider the claim of the petitioner for promotion to the post of Deputy Transport Commissioner for the panel year 2012-13 and promote him as Deputy Transport Commissioner and grant him all consequential service and monetary benefits .

For Petitioner : Mr. Sugumar, AAG for
Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

For Respondents : Mr. R.Thiyagarajan, Senior Counsel
for Mr. A.Ganesan

JUDGMENT
(DELIVERED BY HULUVADI G.RAMESH, J.)

This writ appeal is filed by the appellant against the order passed by the learned single Judge whereby the learned single Judge had allowed the writ petition filed by the petitioner by quashing the charge memo as well as the consequential proceedings initiated by the appellants herein and directed the appellants to promote the petitioner.

2. While the petitioner was working as Regional Transport Officer in the Transport Department, he was visited with disciplinary proceedings initiated by the 2nd respondent by framing charges and enquiry was also conducted and after completion of the enquiry, the enquiry officer submitted his report holding that while 3 of the charges have not been proved, only one charge alone was partly proved. Though the enquiry officer submitted his report, no order was passed on the same by the respondents. Therefore, the petitioner filed W.P. (MD) No.14595 of 2011 before the Madurai Bench of this Court, wherein direction was issued to the respondents to pass appropriate orders on the enquiry report within a period of three weeks. In spite of a copy of the order being duly served on the respondents, no final order was passed. Citing pendency of the disciplinary proceedings, the petitioner was not granted promotion, though persons junior to the petitioner were promoted as Deputy Transport Commissioner, which is the next avenue of promotion to the petitioner. Hence, the writ petition was filed by the petitioner.

3. Learned single Judge, after hearing the matter at length, in para-17 of the order, has held as under :-

"17. The facts of the instant case are similar. Here also though a time limit of three weeks was prescribed by this Court in W.P. (MD) No.14595 of 2011, by an order dated 21.12.2011, neither any order was passed within the time limit nor any request was made to this Court stating the reasons for extension of time. As a matter of fact, no extension of time was given. So far as gravity of charges are concerned, as I have already pointed out, all the four charges relate to the slack supervision. Admittedly, the petitioner was not the one, who was personally handling the money which was stolen away. It was only his subordinate, who was responsible for keeping the money safely. It was his subordinates, who have to remit the amount on the same day, if the total amount exceeded Rs.1 Lakh. Here in this case, his subordinates have failed to adhere to the directions of the P&AR Department and had kept such huge amount in the

office. It is also not the case that the said amount was kept in the office either after taking any permission from the petitioner or to his knowledge. The only allegation against the petitioner was that he had failed to exercise strict and close control over his subordinates with regard to remittance of the amount exceeding Rs.1 Lakh and to keep the balance in the iron safe. For this simple act, he has been made to suffer for about six years, as he has been denied promotion when his turn came up, though his juniors have been promoted. All this mental agonies and sufferings faced by the petitioner also should weigh in the mind of this Court."

4. Accordingly, the learned single Judge allowed the writ petition by quashing the charge memo as well as the consequential proceedings initiated by the appellants herein and directed the respondents/appellants herein to promote the petitioner. Aggrieved against the said order, the appellants are before this Court by filing the present appeal.

5. Heard Mr.Sugumar, learned Addl. Advocate General appearing for the appellants and Mr.R.Thiyagarajan, learned senior counsel appearing for the respondent and perused the materials available on record as also the order passed by the learned single Judge.

6. It is evident from the records that four charges were levelled against the petitioner of which three charges were not proved and insofar as the last charge is concerned, it is stated that it is only due to the negligence of the petitioner in not monitoring the work properly in keeping the amount exceeding Rs.6 Lakhs in the safe, which has led to the commission of the theft. To put it short, it is only negligence, which is attributed to the petitioner and nothing else.

7. Learned single Judge has observed that it cannot be said that the money was kept in the office with the knowledge of the petitioner or that permission was given by the petitioner to keep the money in the office safe. In such circumstances, learned single Judge held that liability cannot be fastened on the petitioner, more so when he has already suffered for six years without promotion for no fault of him as no orders were passed by the respondents on the enquiry report. Further, learned single Judge has also taken into account the mental agonies and sufferings the petitioner would have faced during the said period.

8. From the above undisputed factual position it is clear that for the above act of the petitioner, he has already suffered for six years. Further, this Court is of the opinion

that a duty is cast only on the section in-charge to remit the amount, which is collected everyday to the Treasury well before the closure of the Treasury/Office hours. But any amount exceeding Rs.1 Lakh, if it is kept in the locker/safe of the office and the same gets stolen, for the said occurrence, the petitioner/respondent herein cannot be blamed. At the most, it can only be said to be negligence on the part of the petitioner. However, the appellants have not shown that it was within the knowledge of the petitioner that cash was kept in the safe or that he had authorised to keep the said cash in the safe. Further, as observed by the learned single Judge, the petitioner having already suffered for six years without promotion, due to the pendency of the disciplinary proceedings, for no fault on his, the mental agony and sufferings underwent by him should also be taken into consideration.

9. Considering the entire factual matrix and also the delay on the part of the appellants in passing any order on the enquiry report, this Court feels that no interference is called with the order passed by the learned single Judge. Accordingly, this writ appeal is dismissed directing the respondents to promote the petitioner as Deputy Transport Commissioner on the date on which his immediate junior was promoted, if there is no other legal impediment. It is informed that the petitioner is superannuating on 30.6.2016. The respondents are directed to give consequential promotion to the petitioner as directed above within a period of eight weeks from the date of receipt/production of a copy of this order. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Principal Secretary to Govt.
Home (Transport) Department
Fort St. George, Chennai - 9.

2. The Principal Secretary/
Transport Commissioner
Chepauk, Chennai - 5.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.35007

W.A. NO. 228 OF 2015

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