

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.29378 of 2013

T.R.Lakshminarayanan

.. Petitioner

Vs.

1. The Registrar General,
The High Court of Judicature at Madras,
Chennai - 104.

2. The Principal Judge,
City Civil Court,
Chennai - 104. .. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records in proceedings of the first respondent in R.O.C.No.519/2011/C1 dated 07.08.2013 in confirming the order of the second respondent in D.I.No.13 of 2003, dated 30.05.2011 and quash the same as illegal incompetent and unconstitutional and further direct the respondents to provide the consequential benefits belongs to the petitioner.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.V.Ayyadurai, Senior Counsel

ORDER

(Order of the Court was delivered by Justice V.PARTHIBAN)

The writ petitioner, who is a subordinate Court staff has approached this Court with the following prayer:

Writ of Certiorarified Mandamus to call for the records in proceedings of the first respondent in R.O.C.No.519/2011/C1 dated 07.08.2013 in confirming the order of the second respondent in D.I.No.13 of 2003 dated 30.05.2011 and quash the same as illegal, incompetent and unconstitutional and further direct the respondents to provide the

consequential benefits belongs to the petitioner.

2. The petitioner was working as a Bench Clerk of the II Assistant City Civil Court, Chennai. During the relevant time, while working as Bench Clerk, a suit in O.S.No.6816 of 1996 was listed for hearing for the purpose of filing of amended plaint copy on 05.04.2002 and the suit hearing was adjourned from 05.04.2002 to 07.06.2002 for the purpose of complying with certain defects of the amended plaint copy. It appears that the adjournment was also recorded in A Diary maintained in the Court. Subsequently, on 07.06.2002, the suit was not listed and on enquiry, it was found that the suit papers were missing and this information appears to have been conveyed to the Presiding Officer, II Assistant City Civil Court, Chennai by the Bench Clerk who was posted in the place of writ petitioner at that time. It is relevant to mention that the petitioner was transferred to VII Assistant City Civil Court on 25.04.2002.

3. Issue was brought to the knowledge of the second respondent herein in January 2003 and on receipt of the information, the petitioner was charge sheeted on 23.10.2003 alleging dereliction of duty. Along with writ petitioner, few other staff were also charge sheeted for the act of misconduct in being negligent.

4. In response to the charge sheet, reply was submitted by the writ petitioner denying any knowledge of missing of the suit papers and not with standing the reply, an enquiry was conducted and enquiry report was submitted on 25.11.2008 holding that the charges were proved against the petitioner along with the other Bench Clerk who took charge after the transfer of the petitioner.

5. Pursuant to the finding of the enquiry officer, the petitioner was directed to submit his explanation and he submitted his explanation on 28.03.2010 stating that the suit in question on the file of II Additional Court was called before III Assistant Court as there was no sitting by the II Additional Judge on 05.04.2002 and the diary was written by the Assistant Bench Clerk of II Assistant Court and thereafter he had no occasion to see the bundle as he was transferred to VII Assistant Court within two weeks. In spite of the representation pending before the second respondent, disciplinary authority slapped the petitioner with punishment of stoppage of increment for a period of one year with cumulative effect excluding the period spent on leave by proceedings dated 30.05.2011. As against the order of punishment, the appeal was filed by the petitioner with the first respondent herein raising several grounds. On consideration of the appeal, an order was passed on

07.08.2013 rejecting the same and confirming the order passed by the second respondent. Against the above orders, the present writ petition was filed.

6. Heard the learned counsel appearing for the parties.

7. On behalf of the petitioner it was submitted that the enquiry was not conducted as per the procedure contemplated under the rules and there was no evidence to establish the guilt of the writ petitioner as to the charges filed against him. According to the counsel for the petitioner, the department's case was not established at all as against the petitioner, particularly, in view of the factual position that the writ petitioner was transferred to a different court immediately after the subject suit was adjourned on 05.04.2002 and hence he cannot be held liable for missing of suit papers which could have happened, subsequent to his transfer. This could be particularly seen from the fact that the next date of hearing of the suit was fixed on 07.06.2002 by which date, the petitioner was not attached to the II Assistant City Civil Court but was transferred to VII Assistant City Civil Court. Moreover it was further submitted that earlier to the enquiry which held the writ petitioner as guilty, in the original enquiry which was conducted, it was actually held that the charge was not proved against the petitioner. That being the case, ordering a second enquiry in order to fill up the lacuna in the earlier enquiry proceedings was not at all warranted. In that view of the matter, the punishment imposed on the writ petitioner was not in order, which cannot be countenanced in law.

8. According to the counsel appearing for the respondents, the petitioner having been found guilty of the charge, was imposed with the punishment imposed and it was also confirmed in the appeal preferred and therefore, the impugned orders are not liable to be interfered with.

9. In considering the above submissions, this Court is of the view that the responsibility for missing of suit papers cannot be fully attributable to the writ petitioner, since, admittedly, the petitioner was transferred to a different court immediately after the adjournment of the suit on 05.04.2002. From 05.04.2002 and till 07.06.2002 there was a long gap of two months and the suit papers could have gone missing, on any day, in between the adjournments. Therefore, there cannot be any definite finding that the writ petitioner is directly responsible for the missing of the suit papers. Therefore, imposition of penalty of stoppage of increment even without cumulative effect does not appear to be commensurate with the extent of responsibility to be fixed on the writ petitioner for the act of misconduct, if at all, there is one. However, being a responsible bench clerk, the

writ petitioner ought to have been little more careful in handling the case papers. Therefore, in the interest of justice, the punishment imposed on the writ petitioner is liable to be interfered with and however same is substituted to one of censure. The said punishment is imposed by taking note of the facts and circumstances of the case.

10. In the light of the above, the writ petition is partly allowed as indicated above, by modifying the penalty from stoppage of increment for a period of one year with cumulative effect to one of censure.

adl

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Registrar General,
The High Court of Judicature at Madras,
Chennai - 104.
2. The Principal Judge,
City Civil Court, Chennai - 104

W.P.No.29378 of 2013

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RVR 10/01/2017

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