

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.20110 of 2010

N.Rajendran

.. Petitioner

Vs.

The Principal Secretary to Government,
Home(Tr.II) Department,
Secretariat,
Chennai-9

..Respondent

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the respondent herein in G.O.(2D) No.306, Home(Tr.II) Department, dated 17.06.2010 imposing a punishment of stoppage of increment for a period of two years with cumulative effect and quash the same and consequently direct the respondent herein to grant the petitioner all the consequential monetary and service benefits such as promotion.

For Petitioner .. Mr.Ravi Shanmugam

For Respondents .. Mr.S.Gunasekaran, AGP

ORDER

The petitioner has approached this Court seeking the following relief:

'To issue a writ of certiorarified mandamus to call for the records pertaining to the order passed by the respondent herein in G.O.(2D) No.306, Home(Tr.II) Department, dated 17.06.2010 imposing a punishment of stoppage of increment for a period of two years with cumulative effect and quash the same and consequently direct the respondent herein to grant the petitioner all the consequential monetary and service benefits such as promotion'.

2.The case of the petitioner is as follows:

The petitioner joined the service of the respondent Department as Junior Assistant on 21.10.1994 and he was promoted as Assistant on 07.09.1998. While he was working as Assistant, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for an act of misconduct. With reference to the charge memo dated 31.01.2008, the petitioner has submitted an explanation on 22.03.2008. The charge against the petitioner was that he had allowed one Tr.Ramadoss, a private individual to write the official records thereby violated the circular of the Transport Commissioner that private individual had been employed by the petitioner for the purpose of getting illegal gratification.

3.However, notwithstanding the representation of denial by the respondent that the petitioner was responsible for any private individual being employed in the office, an enquiry was conducted and a report was submitted on 28.05.2009 holding the charges proved. The petitioner has submitted a representation dated 25.02.2010 against the enquiry report. He objected to the report of the enquiry officer stating that this was a clear case of no evidence as no documents were marked nor the said Tr.Ramadoss, who was supposed to be the private individual employed by the petitioner was examined. In the absence of any documents and the evidence of Tr.Ramadoss, the charge cannot be said to be proved at all.

4. However, in spite of representation submitted by the petitioner pointing out the infirmities in the findings of the enquiry report, the Government issued G.O.(2D) No.306, Home (Tr.II) Department, dated 17.06.2010, imposing a punishment of stoppage of increment for two years with cumulative effect. Since the punishment was imposed by the Government itself, there was no appeal provided for in the service Rules and therefore, the petitioner is before this Court challenging the proceedings dated 17.06.2010.

5. According to the petitioner that he was due for promotion as Superintendent for the panel year 2008-2009. The said promotion was not granted to him, even from the subsequent panel years due to pendency of 7 (b) charges against him. Therefore, the grievance of the petitioner is that he was not only imposed a penalty of stoppage of increment with cumulative effect, which will have an adverse financial effect on him but also his due promotion for the panel year 2008-2009 was denied.

6. Upon notice, Mr.S.Gunasekaran, the learned Additional Government Pleader entered appearance for the respondent and filed a detailed counter affidavit. In the counter affidavit,

it is stated that the charge against the petitioner was serious and it was found proved in the departmental enquiry and therefore, the impugned order which was imposed penalty on the petitioner does not call for any interference from this Court.

7. The learned Additional Government Pleader would further submit that the employment of a private individual with corrupt motive is against the code of conduct of the officer of the Regional Transport Office and therefore, such conduct have to be severely dealt with. Therefore, the disciplinary action initiated against the petitioner which culminated in the imposition of impugned penalty is fully justified.

8. Per contra, Mr.Ravi Shanmugam, the learned counsel for the petitioner would submit that in the absence of examination of Tr.Ramadoss, the charges cannot said to be established, since the entire charge memo was premised on the basis that the said Tr.Ramadoss was employed by the petitioner for conducting official work in relation to the official work.

9. According to the learned counsel for the petitioner, no documents were either seized from the said Tr.Ramadoss nor the same were marked in the enquiry. The learned counsel would also rely on the decision of the Hon'ble Supreme Court of India reported in AIR 1969 Supreme Court 983 (Central Bank of India Ltd., Vs. Prakash Chand Jain). The learned counsel would particularly draw the attention of this Court of the above decision holding that mere statements obtained behind the back of the employee concerned cannot be relied upon and hence the same is unsustainable as it must be made in the presence of the person against whom, the enquiry is made.

10. In the case on hand, the statements obtained behind the back of the petitioner had been relied upon without examining the author of the statement. Therefore, he would submit that the petitioner had been denied an effective opportunity to examine or cross examine the witness in order to prove his innocence. The learned counsel would also draw the Court's attention to the decision reported in 2009 (7) MLJ 578 (K.Ramalingam Vs. Superintendent of Police, Perambalur), in which, the learned single Judge as he then was held that the statements made by the witness, which were not substantiated in the regular enquiry cannot be validly relied on by the disciplinary authority. The ratio laid down by this Court is squarely applies to the present case, where the so-called statements obtained from Tr.Ramadoss had been the only piece of evidence for establishing the charge against the petitioner by the enquiry officer. In the said circumstances, the learned counsel would submit that the entire enquiry proceedings had been vitiated by not following the proper procedure. Therefore,

the findings rendered in the departmental enquiry cannot be relied upon by the disciplinary authority namely the Government for imposing the impugned penalty.

11. This Court has considered the legal and factual aspects advanced by the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the materials and the pleadings placed on record. This Court is in full agreement with the submissions made on behalf of the petitioner that the findings rendered by the enquiry officer is not supported by any worthwhile piece of evidence, particularly non examining the crucial witness Tr. Ramadoss, who was vital to the enquiry proceedings and therefore, the entire findings by the enquiry officer cannot be countenanced both in law or on facts.

12. In the said circumstances, the imposition of penalty by the disciplinary authority without appreciating the infirmities in the conduct of the enquiry in a proper perspective cannot be justified in the circumstances of the case. The disciplinary authority has not appreciated various lacunae in not examining the crucial witnesses and not marking any documents in order to establish any charge against the petitioner. The impugned penalty was imposed on the petitioner mechanically without properly appreciating the defence of the petitioner is therefore, liable to be interfered with.

13. For the above said reasons, the writ petition is allowed and the impugned order passed by the respondent in G.O.(2D) No.306, Home(Tr.II) Department, dated 17.06.2010 is set aside. There shall be a consequential direction to the respondent to consider and grant promotion to the petitioner as Superintendent as the same become due for the panel year 2008-2009 with all attendant benefits, if he is otherwise fit for promotion, within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

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To

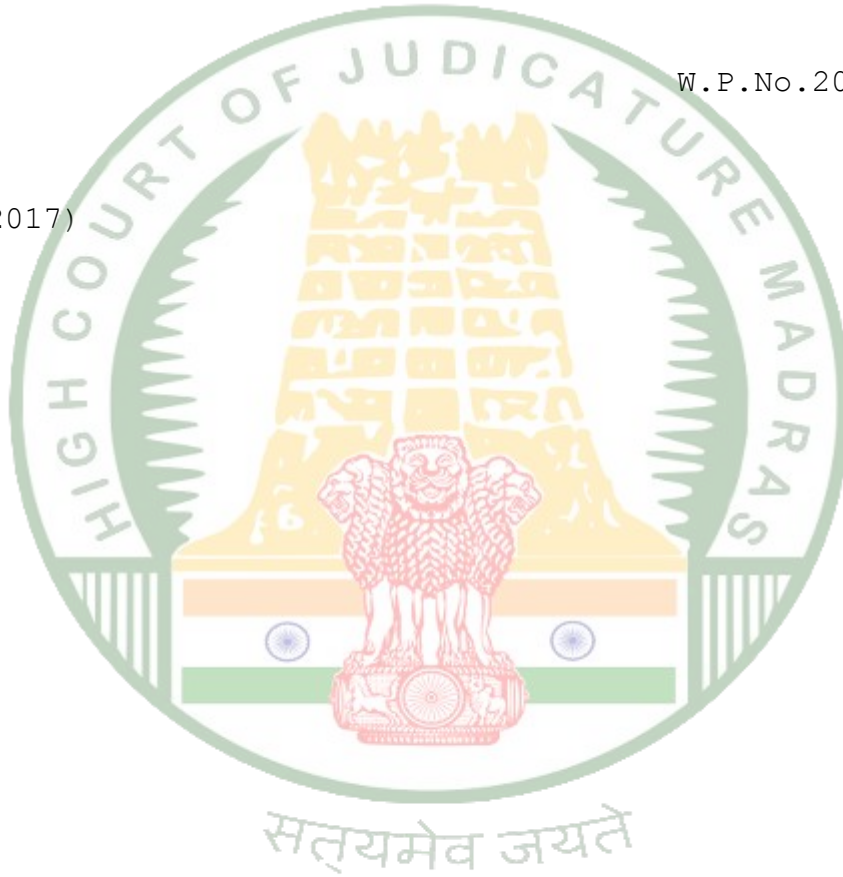
The Principal Secretary to Government,
Home(Tr.II) Department,
Secretariat,
Chennai-9

+1cc to Mr. RAVI SHANMUGAM Advocate, S.R.No. 76303

+1cc to the Government Pleader, S.R.No. 76286

W.P.No.20110 of 2010

MSM (CO)
TR(22/11/2017)



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