

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 14.07.2017

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.18124 of 2010 &
M.P.No.1 of 2010

M.Saraswathy

.. Petitioner

versus

The Principal Secretary to Government,
Home (Tr.II) Department,
Secretariat, Chennai-09

... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein in G.O.(2D) No.304, Home (Tr.II) Department, dated 17.6.2010 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 with all consequential monetary and service benefits, such as promotion as Motor Vehicle Inspector (Non-technical) from the date of promotion of the petitioner's immediate junior.

For petitioner: Mr.M.Muthappan

For respondents: Mr.M.Pappiah, Spl.G.P.

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein in G.O.(2D) No.304, Home (Tr.II) Department, dated 17.6.2010 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 with all consequential monetary and service benefits, such as promotion as Motor Vehicle Inspector (Non-technical) from the date of promotion of the petitioner's immediate junior.

2. The petitioner at the relevant point of time, was working as Office Superintendent. Earlier he was appointed as a Typist on 19.12.1986 and was promoted as Assistant on 5.8.1994

and further promoted as Office Superintendent on 6.7.2005. She was due for promotion as Motor Vehicle Inspector (non-technical) for the year 2008-09. While working as Office Superintendent, the petitioner was charge sheeted under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1953 (in short, 'the Rules') alleging that on 25.10.2005, when appropriate authority conducted surprise check, found some private individuals were doing official work unauthorizedly and the petitioner has failed to ensure control over her subordinates. The said act of misconduct was in violation of instructions issued by the Transport Commissioner vide Circular No.45/91 and 22/02. The allegations were denied by the petitioner. Moreover, the petitioner had contended before the authority that in identical situation, other officer was proceeded against under Rule 17(a) which is a minor penalty proceedings and not under Rule 17(b) which is a major penalty proceedings. In the said circumstances, the petitioner appears to have approached this Court in W.P.No.7753 of 2009 seeking for Mandamus for conversion of 17(b) charges into 17(a) charges. This Court, while disposing the Writ Petition vide order dated 8.6.2009, directed the petitioner to submit a representation to the authority concerned since departmental proceedings had already commenced and were underway. On conclusion of the departmental enquiry, a report was submitted on 29.12.2009 and in response to the enquiry report, an explanation was submitted by the petitioner on 25.3.2010. However, without proper consideration of the reply to the enquiry report, vide order dated 17.6.2010, penalty was imposed on the petitioner with stoppage of increment for a period of two years with cumulative effect. The said penalty order is the subject matter of the present Writ Petition.

3. Shri M.Muthappan, learned counsel appearing for the petitioner would strongly contend that the impugned order passed by the disciplinary authority is bereft of reasons and there was no proper consideration of the explanation offered by the petitioner. In the said circumstances, he would contend that the impugned order is in violative of provisions of the Rules, wherein, the authority has to mandatorily give proper reasons for arriving at a conclusion.

4. The learned counsel would contend that there was absolutely no evidence in support of the charge framed against the petitioner and as could be seen from the enquiry report, the Enquiry Officer relied upon the statement given one Rajendran who was enquired in the preliminary enquiry, was not cited as a witness in the departmental enquiry. In the said circumstances, the petitioner was denied proper and effective opportunity to cross-examine him, who supposed to have given statement against the serving officers of the department.

5. Upon notice, Mr.Pappiah, learned Special Government Pleader entered appearance and vehemently opposed the Writ Petition. He would contend that since the enquiry report was on the basis of the available evidence on record and same was accepted by the disciplinary authority and passed the detailed order. In such circumstances, on consideration of the report which concluded that the charge against the petitioner was proved, the Disciplinary Authority passed order imposing the punishment of stoppage of increment for a period of two years with cumulative effect and hence, there is nothing wrong in the decision making process adopted by the respondent and there is no infirmity in the conduct of the disciplinary proceedings and subsequent imposition of penalty and therefore, the impugned penalty against the petitioner does not call for any interference from this Court.

6. On the other hand, Mr.Muthappan, learned counsel for the petitioner would draw the attention of this Court to the order passed by the Disciplinary Authority, in which, absolutely no consideration of lacunae pointed out by the petitioner in the conduct of the enquiry, particularly, the fact that there was not even an iota of evidence available in establishing the charges against the petitioner. The Enquiry Officer who relied upon the evidence of a sole witness, one Rajendran, had lost sight of the fact that the said Rajendran was not cited as a witness and there was no occasion for the petitioner to rebut the evidence by cross-examining him. Except single piece of evidence, there was no other evidence available on record.

7. After appreciating the rival submissions of the learned counsel and on perusal of the material and pleadings, this Court finds that there is considerable force in the contentions put forth by the learned counsel appearing for the petitioner that the enquiry report does not unequivocally conclude that the charge framed against the petitioner was proved. The only reliance, as contended by the learned counsel for the petitioner, placed by the Enquiry Officer is the evidence of one Rajendran, whose statement was recorded during the preliminary enquiry, cannot be taken into consideration when the said person was not cited as a witness and was also not subjected to chief or cross-examination. Except the evidence of Rajendran, there is no other evidence available on record in connection with the charge memo against the petitioner. There is also considerable force in the contention of the learned counsel appearing for the petitioner that the disciplinary authority, the respondent herein, while passing the order, has not appreciated the legal infirmity in the conclusion of the Enquiry Officer, however, the Disciplinary Authority passed the order of penalty overlooking the vital aspects which were in favour of the petitioner. The order passed by the Disciplinary Authority does not specify the legal parameters as laid down in the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, as per which, it is mandatory to give reasons for arriving at a decision, particularly adverse decision against the delinquent.

8. This Court is satisfied that the requirement of the Rule is not complied with and this Court also finds that not even an iota of evidence available on record in support of the charge, although the charge framed against the petitioner was quite serious in nature. The Disciplinary Authority has failed to record any evidence of independent witness or to let in any evidence to corroborate the evidence adduced. In the absence of any clinching evidence, the charge as it framed, cannot be said to be established and therefore, the punishment imposed based on the flawed evidence, cannot be countenanced both in law and on facts.

9. The learned counsel for the petitioner would contend that de hors the pendency of the charge, the next avenue of promotion as Motor Vehicle Inspector (non-technical) for the year 2008-09 had been denied to the petitioner while her juniors were promoted. Therefore, the petitioner had not only been punished, but had also been denied due promotion in view of the pending of the charge under Section 17(b). In the said circumstances, the learned counsel would pray that the Writ Petition may be allowed with all consequential benefits.

10. In the light of the above narrative, this Court has no hesitation to allow the Writ Petition by setting aside the impugned order in G.O.(2D) No.304, Home (Tr.II) Department, dated 17.6.2010. Consequently, the respondents are directed to grant consequential and attendant benefits to the petitioner including promotion as Motor Vehicle Inspector (non-technical) from due date. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected MP is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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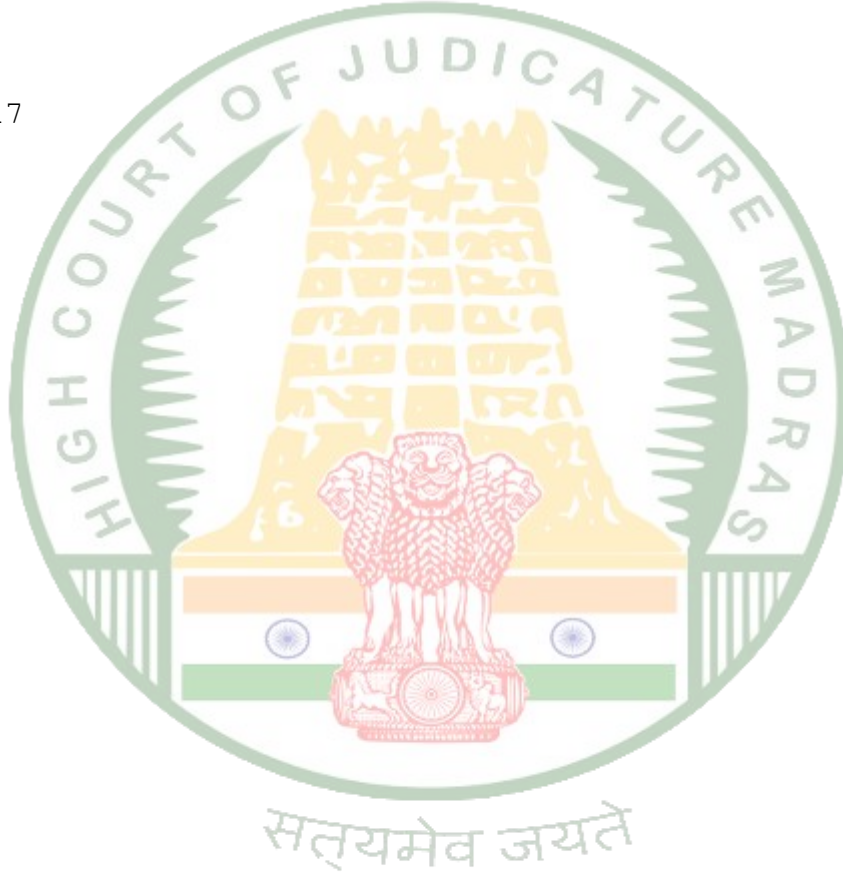
To

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

+ 1 cc to MR. Government Pleader Sr.49692

W.P.NO.18124 OF 2010

MN(CO)
Eu 30.08.17



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