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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.8.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.A.No.1775 of 2018
and
C.M.P.No.14242 of 2018

1. The Principal Secretary to
Government,
Home (Transport-2) Department,
Fort St. George, Chennai-9.

2. The Transport Commissioner,
Chepauk, Chennai-5.

Appellants/Respondents

Versus

M.Saraswathi

Respondent/Petitioner

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 2.3.2015 passed in W.P.No.17931 of 2014 on the file of this court.

W.P.No.17931 of 2014:

Writ Petition filed under Article 226 pf the Constitution of India Praying for a Writ of Certiorified Mandamus Calling for the records of the respondents in connection with the charge memo issued in Memo R.No. 40610/VA2/2008 dated 23.10.08 and quash the same and direct the respondents to consider the claim of the petitioner for promotion as Motor Vehicle Inspector (NT) for the year 2008-09 and grant her all consequential service and monetary benefits.

For appellants : Mr.L.P.Shanmugasundaram,
Special Government Pleader
For respondent : Mr.M.Muthappan

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned Special Government Pleader appearing for the appellants and Mr.M.Muthappan, learned counsel, who takes notice on behalf of the respondent.



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2. The writ appeal has been filed by the State as against the order passed by the learned Single Judge in allowing the writ petition and thereby directing the appellants to consider the claim of the respondent herein for promotion to the post of Motor Vehicles Inspector, taking into account the promotion given to her immediate juniors.

3. It appears that the respondent herein joined the service as Typist in Transport Department and promoted to the level of Superintendent and was serving in Regional Transport Office, Madurai (North). While so, she was held responsible and proceeded departmentally, among other employees, for a sum of Rs.7,59,413/- being stolen from the almirah where it was kept. Subsequently, finding no substantial progress, she had filed W.P.No.7377 of 2009 for quashing the charge memo, wherein, an outer limit was fixed for conclusion of the enquiry proceedings. Finding no response for such direction, she had once again filed a writ petition in W.P.No.9547 of 2013 and in that writ petition also, outer time limit was fixed once again. Having found that she had been still frozen out, she had come up with the third writ petition viz., the present one.

4. The learned Single Judge, on appreciating the factual aspects, had observed in para 34 of the order as under:-

"The factual matrix clearly shows that the first respondent has no regard to the direction issued by this court with respect to completion of disciplinary proceedings. The proceedings continued even after the expiry of time limit prescribed by this court. The conduct of disciplinary proceedings in the subject case even after dismissal of the application for extension is nothing but illegal. The continuation of proceedings by the first respondent in spite of fixing outer time limit by this court should be considered in the light of the judgment in the case of co-delinquent, compliance of the said order by the first respondent and the consequential order giving promotion to the said employee. The petitioner being similarly situated is perfectly correct in her contention that she should also be treated similarly. I am therefore of the view that the petitioner must succeed."

5. The above observation of the learned Single Judge itself is self-explanatory. However, on perusal of the materials available on record, we also find that the disciplinary proceedings was initiated during the year 2008 for the alleged misconduct of money being stolen from the almirah for which the respondent herein was not directly responsible, as contended by the respondent and it is not yet concluded even after the directions of this court to do so by fixing time limit on two



occasions. Further, it is seen that the disciplinary proceedings initiated against the co-delinquent was concluded and the employee therein was promoted. Considering the totality of the circumstances alone, the learned Single Judge is shown to have quashed the charge memo. Even such order is challenged by the Department only after a long delay. Therefore, the appellants have to fail on the ground of delay and laches also.

6. In such view of the matter, the writ appeal is dismissed. The appellants are directed to comply with the order passed by the learned Single Judge within a period of two months from the date of receipt of a copy of this judgment. No costs. The connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS viii)

//True Copy//

Sub Assistant Registrar

ssk.

To:

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

W.A.No.1775 of 2018

ASK(18/09/2018)