

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.900 of 2012

V.Subramanian

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. By its Secretary,
Transport Department (H.1),
Fort St. George, Chennai-9.
2. The Director,
Tamil Nadu Motor Vehicles
Maintenance Department,
Velachery Main Road,
Velachery, Chennai-32.
3. The Automobile Engineer (Ic),
Government Automobile Workshop,
Cuddalore-2.
4. The Enquiry Officer ad
Deputy Zonal Director,
Motor Vehicles Maintenance Department,
Madurai Zone,
Madurai-20.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorarified Manadamus calling for the records relating to the proceedings of the 1st respondent impugned order, Government Order (D).No.37, dated 12.05.2011 and quash the same and direct the respondents to reinstate the petitioner in the same service and also grant all consequential benefits.

For Petitioner .. Mr.KGovindarajan for
M/s.M.Kavi Veerappan

For Respondents .. Mr.T.M.Pappiah
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

"To issue a Certiorarified Manadamus calling for the records relating to the proceedings of the 1st respondent impugned order, Government Order (D). No.37, dated 12.05.2011 and quash the same and direct the respondents to reinstate the petitioner in the same service and also grant all consequential benefits."

2.The petitioner was working as a Typist in the respondent Department. He was issued with a charge memo under 17(b) of the Tamil Nadu Civil Services [D & A] Rules, alleging that he has forged the signature of Automobile Engineer on 26.03.2002 and obtained a loan from Valayamadevi Melpathi Primary Agricultural Co-operative Bank Ltd., to the tune of Rs.25,000/-. He was also placed under suspension pending finalisation of the disciplinary action. An enquiry was held and finally by an enquiry report dated 27.07.2004, the charges held proved. Thereafter, an enquiry report was furnished to the petitioner. In response, the petitioner submitted a detailed explanation reporting certain defects in conducting the enquiry. In response to the representation, the order was passed by the second respondent by cancelling the enquiry proceedings and ordering appointment of fresh enquiry officer and directed to proceed with the enquiry.

3.While the matters stood thus, the petitioner has challenged the suspension order in W.P.No.41969 of 2006 and this Court is pleased to dispose of the above writ petition with a direction to pass final orders on the charge memo within a period of four weeks. This order was passed by this Court on 03.11.2006. However, in spite of the direction of this Court, no steps were taken in this regard. Therefore, a legal notice was also issued on behalf of the petitioner.

4.The second respondent, however, without conducting the proceedings afresh, based on the enquiry conducted earlier on 03.11.2006, called for explanation from the petitioner on 09.02.2007 in regard to the earlier enquiry report and passed final order on 13.03.2009 dismissing the petitioner from service. Against which, the petitioner has preferred an appeal before the first respondent on 07.08.2008 and the first respondent vide proceedings dated 12.05.2011, rejected the appeal.

5. Learned counsel for the petitioner would submit that the impugned orders of respondents 1 and 2, dated 12.05.2011 and 13.03.2007 respectively, cannot be countenanced both in law or on facts for the simple reason that once earlier enquiry proceedings stood cancelled by the orders of the competent authority dated 04.12.2006 and a new enquiry officer came to be appointed, without proceeding with the enquiry afresh, the impugned orders came to be passed on the basis of the erstwhile enquiry proceedings. Such action on the part of the second respondent and the first respondent cannot be sustainable in law.

6. Upon notice, Mr. T. M. Pappaiah, the learned Special Government Pleader entered appearance for respondents and made his submissions.

7. The Special Government Pleader would submit in particular that the petitioner himself has admitted the misconduct in his representation and therefore, the administration has rightly taken action and imposed impugned penalty and the charge being very serious in nature viz., forgery, dismissal of the petitioner from service was a right penalty imposed on him and the same cannot be faulted with.

8. On over all consideration of the facts and circumstances of the case as stated above it has to be seen that the competent authority himself had cancelled the earlier enquiry proceedings and by order dated 04.12.2006, by directing new enquiry officer to proceed with the enquiry afresh. That being the case, the impugned action on the part of the second respondent and the first respondent in imposing the penalty on the basis of the cancelled earlier enquiry proceedings and the enquiry report, cannot be justified in law. The authorities have completely misdirected themselves and passed the impugned orders hurriedly in order to comply with the direction passed by this Court in W.P.No.41969 of 2006 dated 03.11.2006. Such action on the part of the second respondent and the first respondent would amount to non-application of mind and therefore, the same cannot stand the test of judicial review.

9. At the same time, it has to be noted that the charges against the petitioner is one of forgery and therefore, the same cannot be viewed very lightly by this Court. In the said circumstances, the impugned proceedings viz., the order of the second respondent in Se.Mu.Order No.A1/208/04, dated 04.12.2006 and the order of the first respondent, Government Order (D) No.37, dated 12.05.2011, are set aside and the respondents 1 and 2 are directed to proceed with the enquiry afresh, in pursuance of the charge memo, dated 29.01.2004 and afford a reasonable and

proper opportunity to the petitioner. The respondents are also directed to complete the disciplinary action as early as possible and in case, the charges are held to be proved, the respondents are directed to take a sympathetic view while imposing any penalty, in view of the passage of long time from the date of issuance of charge memo, dated 29.01.2004, as the petitioner has already suffered from non-employment for more than 13 years. It is also made clear that since the impugned orders being set aside, the petitioner may be directed to be placed under suspension from the date of receipt of copy of this order till the outcome of the disciplinary action. It is also clarified that the authorities while proceeding with the departmental action afresh, shall also take into consideration, the acquittal of the petitioner by the criminal Court for the same charge which invited departmental action.

10. With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

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State of Tamil Nadu
Transport Department (H.1),
Fort St. George, Chennai-9.

2. The Director,
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Maintenance Department,
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3. The Automobile Engineer (IC),
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Cuddalore-2.

4.The Enquiry Officer ad
Deputy Zonal Director,
Motor Vehicles Maintenance Department,
Madurai Zone,
Madurai-20.

+1cc to Mr.Kavi Veerappan, Advocate, S.R.No.7885

+1cc to the Government Pleader, S.R.No.9029

W.P.No.900 of 2012

RRK(13/02/2018)



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