

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2498 of 2018
C.M.P.No.20247 of 2018

- 1.The Principal Secretary to Government,
State of Tamil Nadu,
Home (Transport-II) Department,
Fort St. George, Chennai 600 009.
- 2.The Principal Secretary and
Transport Commissioner,
Office of the Transport Commissioner,
Chepauk, Chennai 600 005. ..Appellants/Respondents

vs.

S.Saravanan ..Respondent/Petitioner

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order made in W.P.No.34512 of 2012, dated 14.07.2017.

Prayer in WP.34512/2012

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 entire records of the proceedings of the first respondent pertaining to the issuance of G.O.(2D) No.310, Home (Transport-II), dated 17.6.2010 and quash the same as same is illegal and unconstitutional and consequently, direct the respondents to consider the petitioner for further promotion of superintendent and grant other attendant benefits.

For Appellants : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR, J)

Challenge in the instant writ appeal is to the order of the writ court dated 14.07.2017 made in W.P.No.34512 of 2012, by which, the writ court, while quashing the impugned order in G.O. (2D)No.310, Home (Tr.II) Department, dated 17.06.2010, allowed the writ petition filed by the respondent and issued directions to the appellants to grant consequential and attendant benefits to the respondent, including promotion as Motor Vehicle Inspector (Non-Technical), from due date.

2. Short facts leading to the filing of the writ appeals are that the respondent was appointed as Typist in the year 2001 and promoted as Assistant in the year 2005. While working as Office Superintendent, he was issued with a charge memorandum, under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1953, alleging that on 25.10.2005, when the appropriate authority conducted a surprise check, he found that some private individual has been handling the official records and doing office work with obvious corrupt motive, against the relevant code of conduct, in the Office of the Regional Transport Officer, Madurai (North). The said act of misconduct was in violation of instructions issued by the Transport Commissioner, vide Circular No.45/91 and 22/02 and thus, the respondent allowed unhealthy practices in the Office. While denying the said allegations, the respondent before the authority, has contended that in identical situation, another officer was proceeded against under Rule 17(a), which is a minor penalty proceedings and whereas, the respondent was charged under Rule 17(b), for imposing a major penalty.

3. On conclusion of the departmental enquiry, a report was submitted on 28.05.2009, holding the charges as proved. In response to the enquiry report, an explanation was submitted by the respondent on 19.2.2010. Vide order, dated 17.6.2010, penalty was imposed on the respondent with stoppage of increment for a period of two years with cumulative effect. Against which, the respondent has filed W.P.No.34512 of 2012, challenging the proceedings of the Principal Secretary to Government, State of Tamil Nadu, Home (Transport-II) Department, Chennai, first respondent herein, pertaining to the issuance of G.O.(2D) No.310, Home (Transport II), dated 17.6.2010 and consequently, to direct the appellants to consider the respondent for further promotion of Superintendent and grant other attendant benefits.

4. After hearing both the parties, on 14.07.2017, the writ court passed an order in W.P.No.34512 of 2012, as follows:

"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.310, Home (Tr.11) 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."

5. Though several grounds have been raised by the appellants in the instant writ appeal, we are not inclined to interfere with the order of the writ court for the reasons that the charge sheet, dated 31.01.2008, has been served upon the respondent, after the preliminary enquiry was held. The final enquiry report, dated 28.05.2009, is based upon the findings of the preliminary enquiry. No independent finding has been recorded on the charges in the regular enquiry. The statement of witnesses, who were examined in the preliminary enquiry, has been relied upon by the Enquiry Officer, while submitting the final enquiry report, without examining them independently in the regular enquiry.

6. In Union of India v. Mohd. Ibrahim reported in 2004 (10) SCC 87, the Hon'ble Supreme Court held as follows:

"The order of dismissal was vitiated, as the findings have been based on consideration of statement of the persons, examined during the preliminary enquiry and for the said fact, the Tribunal set aside the order of dismissal which was upheld by the High Court and there is no error in the said order setting aside the dismissal order."

7. In G.Ramakrishnan v. Superintendent of Police reported in 2008 (6) MLJ 266, one of us (Hon'ble Mr. Justice S.Manikumar), held as follows:

"28. It is well settled legal position, that preliminary enquiry is for the issuance of the charge memo and it cannot be the basis for arriving at the guilty of the person, against whom the charges are levelled. The statements obtained in the preliminary enquiry have to be furnished to the delinquent or he should be permitted to peruse the same so as to enable him to put forth his defence and cross examine the witness who have given such statements. If the disciplinary authority can simply rely on the statements made in the preliminary enquiry report, notwithstanding the denial of giving such statements or failure to give evidence to support their version made in the preliminary enquiry, then the purpose of conduction a regular departmental enquiry, allowing the

petitioner to cross examine the witnesses would be meaningless. It is true that strict proof of evidence as contemplated in criminal case is not required, but there should be some evidence, the findings rendered by the disciplinary authority are solely based on the statements recorded during the preliminary enquiry and it was not on the basis of testimony recorded in the regular enquiry. If the witnesses contradict their statements in the regular departmental enquiry, such statements cannot be the basis for conclusion, in the absence of some evidence. Though adequacy of evidence cannot be permitted to be canvassed, but at the same time, this Court is of the view that conclusion on the basis of just a solitary statement would result in injustice to a delinquent and that would not be fair and reasonable approach in deciding guilt of a delinquent in the departmental enquiry. That would make the regular departmental enquiry of examining the other witnesses to support the charge would be a empty formality."

8. Thus, it is the settled legal position that the statements made during the preliminary enquiry alone cannot be taken as the basis for arriving at the conclusion of delinquencies. Further presumption drawn by the Enquiry Officer regarding involvement of the respondent is based on no evidence. The enquiry thus, has been found to be vitiated against the principles of natural justice. Writ Court has recorded that there is no iota of evidence available on record, in support of the charge.

9. There is no oral evidence adduced to prove charges against the respondent and that the charges cannot be said to be proved on presumptions and assumptions, but can be proved only after evaluation of evidence. For the aforesaid reasons, while setting aside the punishment order, writ Court directed the appellants to grant consequential and attendant benefits to the respondent, including promotion as Motor Vehicle Inspector (non-technical) from due date, within a period of two months from the date of receipt of a copy of this order. There is no manifest error in the order impugned before this Court, warranting interference.

10. In view of the above, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home (Transport-II),
Department Fort St.George,
Chennai -9.

2.The Principal Secretary and Transport
Commissioner,
Office of the Transport Commissioner,
Chepauk, Chennai -600 005.

Writ Appeal No.2498 of 2018

MR(CO)

rrs 06/02/2019