



BEFORE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2018

WEB COPY

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.16654 of 2016
and W.M.P. (MD) No.12104 of 2016

N.Saradha .. Petitioner
Vs.

1.The Principal District Judge,
Thanjavur

2. The Judicial Magistrate,
Kumbakonam.

3.N.Mohammed Amin .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari calling for the records of the first respondent pertaining to his order in A.No.204/2015/A1 dated 21.06.2016 and quash the same.

For Petitioner : Mr.R.Viduthalai
Senior Counsel
for M/S.S.C.Herold singh

For R1 & R2 : Mr.Pala.Ramasamy

For R3 : No appearance

O R D E R

This Writ Petition has been directed against the impugned order dated 21.06.2016 passed by the first respondent in A.No.204/2015/A1 imposing punishment under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules withholding one increment without cumulative effect.

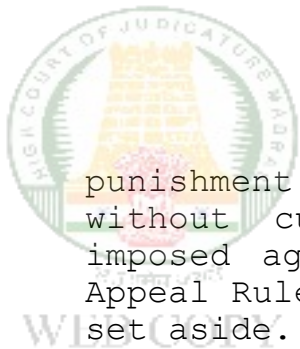


2. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the first and second respondents. There is no representation for the third respondent.

3. Mr. Viduthalai, learned Senior Counsel appearing for the petitioner assailing the impugned order pleaded that the petitioner joined the judicial services as Copyist in Thiruvaiyaru Judicial Magistrate Court on 07.06.1998 and worked as a Grade-III Bench Clerk from 20.03.2014 to 17.12.2014 and she was discharging his duties so diligently with all devotion without giving any room for any complaint from all quarters.

4. However, a complaint was given against the petitioner on 17.12.2014 by one Mr. Mohamed Amin, Advocate practising at Kumbakonam before the Judicial Magistrate, Kumbakonam with regard to uncalled case bundle in S.T.C.No.1134 of 2013. On receipt of the complaint, a Show Cause Notice was issued to the petitioner calling upon detailed explanation to the Show Cause Notice. On receipt of the same, the petitioner gave her explanation on 19.12.2015 making it clear that she was working as Grade-III Bench Clerk in the Judicial Magistrate Court, at Kumbakonam from 20.03.2014 to 17.12.2014. When the above said S.T.C.No.1134 of 2013 was to be listed on 19.05.2014, it was not called and it was not known to any one what had happened to the case bundle from 17.03.2014 to 19.05.2014.

5. The allegations made by the complainant that the petitioner had deliberately failed to list the case and consequently committed dereliction of duty not to call out the case on 19.05.2014 are without any merits. Although the petitioner who was in-charge of the court work as Grade-III Bench Clerk in the Judicial Magistrate at Kumbakonam, the said bundle was not entrusted to her custody. However, she was also transferred to another court on 18.12.2014. Instead of conducting full pledged enquiry and issued Show Cause Notice to the petitioner's predecessors, they hurriedly proceeded against the petitioner and finally rejected the explanation offered on 19.02.2015 and wrongly imposed the punishment of stoppage of increment without cumulative effect. As a result, the petitioner's promotional avenues are completely snatched away from the petitioner and for the act not done by the petitioner she has been wrongly punished. Not only the avenues of promotion to the promotional post are snatched away, but, her seniority has also been stopped. The petitioner was transferred on the date of receiving complaint namely 17.12.2014. In addition thereto he has been penalized wrongly with imposing



punishment of stoppage of increment for a period of one year without cumulative effect, therefore, the impugned punishment imposed against the petitioner under Section 8 of the Tamil Nadu Appeal Rule is only unjustified and hence, the same is liable to be set aside.

6. The first respondent-the Principal District Judge, Kumbakonam and the second respondent-the Judicial Magistrate, Kumbakonam, have filed separate counter affidavits.

7. The counter affidavit filed by the first respondent shows that the petitioner was working as Grade-III Bench Clerk in the Judicial Magistrate Court at Kumbakonam for the period from 20.03.2014 to 17.12.2014. She was also on duty on 19.05.2014, when the matter was posted on the said date. Though the entry of posting of the case in S.T.C No.1134 of 2013 was found on 19.05.2014 in the hearing book, no re-posting was made. When the case was not called out in the open court, it is for the petitioner to bring the above fact to the notice of the immediate superior officer on the same day or atleast on the subsequent days, which is not done in the present case. It was brought to the notice of the Judicial Magistrate on 17.12.2014 by the third respondent, the Advocate, who died long time ago. Only after the complaint was given on 17.12.2014 by the third respondent, departmental proceedings has been initiated against the petitioner by issuing Show Cause Notice calling upon her to give her explanation and on receipt of the Show Cause Notice, the petitioner has also submitted her explanation. Finding no reasonable cause to give up the Show Cause Notice and taking note of the fact that the petitioner miserably failed to bring to the notice of the superior officer about missing of the bundle, departmental enquiry has been initiated against the petitioner and the petitioner was found guilty and the petitioner's negligence in discharging her official duty clearly shows in the final report. On the basis of the final report, the petitioner was also given liberty to submit further representation and after receiving the further representation and on careful consideration of the evidence and records and on perusing the finding in the final report, minor punishment was imposed under Rule 8 of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

8. The counter affidavit filed by the second respondent also shows that when the petitioner worked in Judicial Magistrate, Kumbakonam for the period from 20.03.2014 to 17.12.2014 the case in S.T.C.No.134 of 2013 was listed on 19.05.2014. On that date, the petitioner was on duty. Though entry was found for the posting of S.T.C. NO.1134 of 2013 on 19.05.2014 in the hearing book, no re-posting was made. Moreover, the case was not called out in the open



court. After the complaint was given on 17.12.2014, a department enquiry was conducted following all the proper procedures and Rules as contemplated under Tamil Nadu Civil Services (Discipline and Appeal) Rules she was then responsible for missing of the case records and therefore, minor punishment was awarded. Therefore, the impugned order imposing punishment of stoppage of increment for one year without cumulative effect deserved no interference by this Court.

9. We have given anxious consideration to the submissions made on either side and perused the materials available on record.

10. The petitioner was working as Grade-III Bench Clerk, in Judicial Magistrate at Kumbakonam from 20.03.2014 to 17.12.2014. When the case namely S.T.C.NO.1134 of 2013 involving the case under Section 138 of Negotiable Instruments Act was scheduled to be listed for hearing on 19.05.2014 which is not found while the petitioner is service as Grade-III Bench Clerk in Judicial Magistrate, Kumbakonam the petitioner had not taken enough care to list the matter for hearing on 19.05.2014.

11. On the basis of the complaint dated 06.02.2015 filed before the Chief Judicial Magistrate, Thanjavur @ Kumbakonam, alleging that since Tmt.N.Saradha and the accused in the above case are neighbours, the complainant suspected the attitude of Tmt.N.Saradha in omitting to call the above case to favour the accused, a show cause notice dated 11.02.2015 was issued. The petitioner also submitted her explanation on 19.02.2015. Since the Judicial Magistrate, Kumbakonam, was not satisfied with her explanation, charges were framed against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary & Appeal) Rules. Not being satisfied with the explanation of the petitioner, an Enquiry Officer was appointed and after conducting enquiry, he submitted his inquiry report dated 21.04.2016 to the Principal District Judge/Disciplinary Authority, Thanjavur, stating that the charges framed against the petitioner have been proved. The petitioner was again given opportunity to submit her further representation and accordingly, she filed her further representation dated 09.05.2016 and after considering the same, final order was passed on 21.06.2016 in A.No.204/2015/A1, awarding a minor punishment of withholding one increment without cumulative effect. When the petitioner joined the duty on 07.06.1998 and worked as Bench Clerk Gr.III in the Judicial Magistrate Court, Kumbakonam from 20.03.2014 to 17.12.2014, she has not listed the matter in S.T.C.No.1134 of 2013 for hearing in the Open Court on 19.05.2014. When the case was on hearing, but not listed, the petitioner should have taken enough care to list the matter.



Admittedly, she has not brought to the notice of immediate superior officer either on the same date or at least on subsequent dates and this act shows that the petitioner has committed dereliction of duty for not listing the matter for long time.

WEB COPY

12. Even if the case bundle is missing, she should have brought to the notice of the superior officer which she has not done so. As a matter of fact, when a Memo was given by Mr.N.Mohamed Amin, Advocate, in the Open Court of the Judicial Magistrate, Kumbakonam, stating that S.T.C.No.1134 of 2013 has not been called out for hearing with a request to trace out the case bundle, ironically no efforts were made. This has been found against the petitioner by the Enquiry Officer. Consequently, she was imposed with a minor punishment of withholding one increment without cumulative effect. Therefore, this Court is not able to find any merit in this writ petition. Accordingly, this writ petition fails.

13. In the result, this Writ Petition stands dismissed. No costs. Consequently connected W.M.P.(MD) No.12104 of 2018 is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-I)

To,

1.The Principal District Judge,Thanjavur

2. The Judicial Magistrate,Kumbakonam.

+1 CC To MR.PALA RAMASAMY, Advocate SR. NO.79178

+1 CC To MR.S.C.CHEROLD SINGH, Advocate SR. NO. 79120

W.P(MD)No.16654 of 2016
and W.M.P. (MD) No.12104 of 2016
16.08.2018

CM

TR/RP/SAR-I(10.10.2018)5P 5C