

IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.08.2019
Pronounced On	19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A.No.1567 of 2015
&
W.P.No.16181 of 2015
and
M.P.Nos.1 & 1 of 2015

W.A.No.1567 of 2015

K.Jayakumar appellant

vs

- 1.The Secretary
Home-Department,
Secretariat, Chennai - 9.
- 2.The Director of Fire and Rescue Services,
Egmore, Chennai - 8.
- 3.The Director of Fire Rescue Services And
Director State Training centre
(Full Additional Charges),
State Training Centre,
Tamilnadu Fire & Rescue Services Department,
Tambaram, Chennai - 47.
- 4.Thiru.V.Mathurpandian,
The Deputy Director of Fire Rescue Service
And Director State Training Centre
(Full Additional Charges),
State Training Centre,
Tambaram, Chennai - 47.
- 5.Priya Ravichandiran
Divisional Fire Officer,
Deputy Director (Training),
TamilNadu Fire & Resue Services,
Tambaram, Chennai - 47.

6.Parthiban

Divisional Fire Officer & Teller Engineer,
Tamil Nadu Fire & Rescue Services Department,
Tambaram, Chennai - 47.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed by learned Judge in W.P.No.31472 of 2012 dated 09.02.2015 and direct the respondents to reinstate the appellant into service.

Prayer in WP No.31472/2012 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari mandamus Calling for the records on the file of the 3rd respondent in No.1277/B/07 dated 23.06.2007 which is confirmed by 1st respondent in Na.Ka.No.2168/B5/2011 dated 30.03.2011 and consequential order on the file of the 2nd respondent in Na.Ka.No.7810/B5/2011 dated 11.07.2011 and to quash the same and consequently direct the respondents to reinstate the petitioner.

For appellant : Mr.N.G.R.Prasad, Senior Counsel
for Mr.R.Karthikeyan

For R1 to R3 : Mr.S.R.Rajagopalan,
Additional Advocate General VI
Assisted by Mr.V.Shanmuga Sundar
Special Government Pleader.

For R4 to R6 : No appearance

W.P.No.16181 of 2015

K.Jayakumar

...Petitioner

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vs

1.The Secretary
Home-Department,
Secretariat, Chennai - 9.

2.The Director of Fire and Rescue Services,
TamilNadu Fire & Rescue Services Department,
Egmore, Chennai - 8.

3.The Deputy Director of Fire Rescue Services, Northern Region
Director (Training) State Training centre,
Tamilnadu Fire & Rescue Services Department,
Tambaram, Chennai - 47.

4.Divisional Fire Officer,
Deputy Director (Training),
TamilNadu Fire & Resue Services,
Tambaram, Chennai - 47

5.Divisional Fire Officer & Teller Engineer,
TamilNadu Fire & Resue Services Department,
Tambaram, Chennai - 47.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the file of 3rd respondent in Executive Order No.1277/Aaa/07 dated 23.06.2007 which was confirmed by the 2nd respondent in his proceedings R.C.No.22288/B4/07 dated 12.03.2008 and quash the same and also direct the respondents to reinstate the petitioner into service with all Consequential and Monetary benefits and back wages.

For Petitioner : Mr.N.G.R.Prasad, Senior Counsel
for Mr.R.Karthikeyan

For R1 to R3 : Mr.S.R.Rajagopalan,
Additional Advocate General VI
Assisted by Mr.V.Shanmuga Sundar
Special Government Pleader.

For R4 to R5 : No appearance

C O M M O N J U D G M E N T

C.SARAVANAN., J.

By this common Judgment both the Writ Appeal and the Writ Petition are being disposed.

2.The appellant is also the petitioner in W.P.No.16181 of 2015. The appellant is aggrieved by the impugned order dated 09.02.2015 passed by the Learned Single Judge in W.P.No.31472 of

2012.

3.In W.P.No.16181 of 2015 the appellant in W.A.No.1567 of 2015 has also challenged the impugned order of the 3rd respondent in Execution Order No.1277/Aaa/07 dated 23.06.2007.

4.These Writs are filed for the following reliefs:-

W.A.No.1567 of 2015	W.P.No.16181 of 2015
To set aside the impugned order dated 09.02.2015 passed by the Learned Single Judge in W.P.No.31472 of 2012 dated 09.02.2015. The said Writ Petition had challenged the impugned order dated 23.06.2007 bearing reference No.1277/Aaa/2007 passed by the 3 rd respondent as confirmed by the 1 st respondent vide order dated 30.03.2011 bearing reference Na.Ka.No.2168/B5/2011 and consequential order dated 11.07.2011 on the file of the 2 nd respondent bearing reference Na.Ka.No.7810/B5/2011 and to quash the same and to consequently direct reinstatement of the appellant	Against the impugned order of the 3 rd respondent in Executive Order No.1277/Aaa/07 dated 23.06.2007 which was confirmed by the 2 nd respondent in his proceeding R.C.No.22288/B4/07 dated 12.03.2008 and quash the same and also direct the respondent to reinstate the appellant (petitioner in W.P.No.16181 of 2015) into service with all Consequential and Monetary benefits and back wages.

5.Since the appellant in W.A.No.1567 of 2015 is the Writ petitioner in W.P.No.16181 of 2015 for the sake of uniformity and clarity he shall be referred to the petitioner.

6.The brief facts of the case is that the petitioner was appointed as a Station Fire Officer with the respondents on 01.06.2001. On 25.10.2002, the petitioner was issued with a charge memo bearing reference No.9/2002 under 17(b) on TNCS (D&A) Rules.

7.The aforesaid charge memo dated 25.10.2002 culminated in a punishment order dated 13.10.2003 bearing reference Ku.Pa.No.9/Sul/02 of the Deputy Director, Central Zone Fire &

Rescue Services Department (Additional Charge), Nagapattinam. Stoppage of increment with cumulative effect for one year was ordered as punishment.

8. Against the order dated 13.10.2003, the petitioner preferred an appeal before the 2nd respondent Appellate Authority on 12.11.2003. The said appeal was routed through the Divisional Officer, Fire & Rescue Services Department, North Chennai Division, Chennai -104.

9. During the pendency of the said appeal before the 2nd respondent-Appellate Authority, an order dated 15.12.2005 was passed by the Deputy Director of Fire & Rescue Services, Central-Zone, Trichirapalli. The said officer recalled order dated 13.10.2003 passed by the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam.

10. Thereafter, a memorandum dated 06.06.2007 bearing reference S.No.1277/Aaa/07 was issued by the 3rd respondent to the petitioner to show cause as to why the punishment should not be awarded under appropriate under Rules. In the fresh proceedings before the 3rd respondent, the petitioner also gave his explanation on 21.06.2007 and participated in the said proceeding.

11. Under these circumstances, the 3rd respondent in his proceedings dated 23.06.2007 bearing reference No.1277/Aaa/2007 passed an order and dismissed the petitioner from service.

12. Aggrieved by the same, the petitioner filed W.P.No.23291 of 2007. Later, the petitioner also filed an appeal before the 2nd respondent on 10.07.2007 and a petition on 14.12.2007.

13. The said appeal was dismissed vide order dated 12.03.2008 bearing reference RC.No.22288/B4/07 by the 2nd respondent during the pendency of the W.P.No.23291 of 2007. The said order reads as under:-

I have carefully gone through the appeal and connected records and I find that not only the appellant had been given adequate and reasonable opportunities during the oral enquiry but also enquiry has been conducted as per the established rules. Though the appellant has

mentioned that the enquiry officer had motive against him in his appeal he has neither elaborated nor given any points or substantiated it which shows that he has no merit whatsoever. All the four proved charges are very serious in nature and the order passing has after evaluating the overwhelming evidences in record, given the order of dismissal. Therefore, I find no extenuating circumstances to interfere in the order which is just and fair as it commensurates with the nature of the serious delinquencies.

14.However, neither the petitioner nor the respondents brought it to the notice of the court regarding dismissal of the above appeal vide order dated 12.03.2008.

15.Under these circumstances, order dated 23.06.2007 bearing reference No1277/Aaa/2007 passed by the 3rd respondent dismissing the petitioner from service was set aside by the Learned Single Judge in W.P.No.23291 of 2007. Operative portion of the said order reads as under:-

On a reference made, the relevant file is produced by the learned Special Government Pleader, which shows that the appellate authority based on the appeal filed by the petitioner dated 12.11.2003, wanted the first respondent to furnish certain particulars. Instead of furnishing the particulars as required by the appellate authority, the first respondent has straight-away passed the impugned order of punishment of dismissal of the petitioner from service. Therefore, on the ground of want of jurisdiction, the impugned order of the first respondent stands set aside with liberty to the Director of Fire and Rescue Services Department before whom the appeal dated 12.11.2003 filed by the petitioner against the original order of the first respondent dated 13.10.2003, is pending, to decide the same on merits and in accordance with law. In any event, the appellate authority shall dispose of the appeal within a period of twelve weeks from the date of receipt of the copy of this order.

16.No attempt was made by the respondents either to review

the above order dated 22.01.2011 in W.P.No.23291 of 2007 or any clarification was obtained from the Court. The respondents also did not file any appeal against the said order. Thus, the said order passed on 22.01.2011 in W.P.No.23291 of 2007 attained finality.

17. Thus, dismissal from service vide order dated 23.06.2007 bearing reference No.1277/Aa/2007 has been quashed. While setting aside the order dated 23.06.2007 of the 3rd respondent, the Learned Single Judge also gave liberty to the 2nd respondent to dispose appeal dated 12.11.2003 filed by the petitioner against order dated 13.10.2003 of the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam awarding punishment of stoppage of increment for one year with cumulative effect in accordance with law.

18. Thereafter, the 2nd respondent by an order dated 30.03.2011 bearing reference Na.Ka.No.2168/Aaa5/2011, dismissed the petitioner's appeal dated 12.11.2003 against the order dated 13.10.2003 passed by the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam as infructuous in view of the subsequent order recalling the said order and subsequent order dated 23.06.2007 of the 3rd respondent which was quashed by the Learned Single Judge vide order dated 22.01.2011 in W.P.No.23291 of 2007.

19. Meanwhile, the petitioner had sent a request for reinstatement. By an order dated 11.07.2011 bearing reference Na.Ka.No.7810/aaa5/2011, the request was rejected. The petitioner therefore filed Contempt Petition No.231 of 2012.

20. By an order dated 22.06.2012, the aforesaid Contempt Petition was dismissed by the Learned Single Judge. It was observed that the 3rd respondent had passed an order dismissing the petitioner from service on 23.06.2007 after a memorandum was issued on 06.06.2007. It was further observed that the petitioner had also filed an appeal before the 2nd respondent which was dismissed vide order dated 12.03.2008 bearing reference RC.No.22288/B4/07 and thereby confirmed the dismissal of the petitioner. The Learned Single Judge also observed that since the aforesaid order had remained unchallenged, the Contempt Petition was liable to be dismissed.

21. It is in this background, the petitioner filed W.P.No.31472 of 2012 to quash order dated 23.06.2007 of the 3rd respondent and the consequential orders flowing from it. The learned Single Judge has dismissed the said writ petition taking note of the appellate order dated 12.03.2008 bearing reference RC.No.22288/B4/07 passed by the 2nd respondent upholding dismissal of the petitioner holding that the petitioner cannot take advantage of the order passed in W.P.No.23291/2007. It is this order dated 09.02.2015 passed in W.P.No.31472 of 2012 which is under challenged before us in this Writ Appeal. By way of abundant caution W.P.No.16181 of 2015 has been filed.

22. Heard Mr. NGR Prasad, the learned counsel for the appellant/petitioner and Mr.S.R.Rajagopalan, learned Additional Advocate General-VI for Mr.V.Shanmugam Sundaram, learned Special Government Pleader for 1st to 3rd respondents.

23. It is submitted that the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam after having passed order dated 13.10.2003, had become functus officio. Therefore, the Deputy Director of Fire & Rescue Services, Central-Zone, Trichirapalli did not have an authority to recall the said order on 15.12.2005.

24. Memorandum dated 06.06.2007 issued by the 3rd respondent during the pendency of appeal before the 2nd respondent against the order of the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam dated 13.10.2003 imposing punishment of stoppage of increment with cumulative effect for a period of one year was bad and without authority of law.

25. It was therefore submitted that awarding of punishment by way of dismissal from service vide order dated 23.06.2007 bearing reference 1277/B/07 by the 3rd respondent was without authority of law. It was submitted that the petitioner had filed an appeal only by way of an abundant caution against the order dated 23.06.2007 of the 3rd respondent before the 2nd respondent while at same time challenged the same in W.P.No.23291 of 2007.

26. Learned counsel for the petitioner further submits that the order dated 12.03.2008 bearing reference RC.No.22288/B4/07 passed by the 2nd respondent in appeal against the order dated 23.06.2007 bearing reference No.1277/Aa/07 of the the 3rd

respondent has been impugned in W.P.No.16181 of 2015 by way of abundant caution.

27.It was also submitted that once the order dated 23.06.2007 bearing reference No.1277/Aaa/07 passed by the 3rd respondent had been set aside by the learned Single Judge in the said Writ Petition, dismissal of appeal by the 2nd respondent vide order dated 12.03.2008 bearing reference RC.No. 22288/B4/07 during the pendency of the writ petition was no significance.

28.Per contra, the learned Additional Advocate General VI appearing on behalf of the respondents Nos.1 to 3 submitted that the original order dated 13.10.2003 bearing reference Ku.Pa.No.9/Sul/02 passed by the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam imposing stoppage of increment with cumulative effects for one year was recalled on 15.12.2005 and a memorandum notice dated 06.06.2007 was issued to the petitioner.

29.It was further submitted that the petitioner had also filed a reply to pursuant to memorandum dated 06.06.2007 and participated in the said proceeding. Thus, the petitioner had acquiesced in the fresh disciplinary proceedings by giving his explanation. Thereafter, order dated 23.06.2007 bearing reference Proceeding Order No.1277/B/07 was passed by the 3rd respondent dismissing the petitioner from service.

30.It was further submitted that the petitioner not only filed W.P.No.23291 of 2007 but also filed an appeal before the 2nd respondent. The said appeal was also dismissed by the 2nd respondent by an order dated 12.03.2008 which fact was suppressed before the Learned Single Judge in W.P.No.23291 of 2007 when order was passed on 22.01.2011. Thereafter, the 2nd respondent also passed an order dated 30.03.2011 and dismissed appeal against order dated 13.10.2003 of the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam as infructuous. Noting the suppression of facts the Contempt Petition was also dismissed by an order dated 22.06.2012.

31.We have given an anxious consideration to the issue. The Appellant was initially imposed with a lesser punishment of stoppage of increment with cumulative effect for one year by the Deputy Director, Central Zone Fire & Rescue Services Department (Additional Charge), Nagapattinam vide order dated 13.10.2003.

32. Aggrieved by the same, the petitioner preferred an appeal before the 2nd respondent Appellate Authority as early as 12.11.2003. The said appeal was routed through the office of the 2nd respondent. However, during the pendency of the above appeal, order dated 13.10.2003 imposing punishment by way of stoppage of increment with cumulative effect for one year was recalled on 15.12.2005 by the Deputy Director of Fire & Rescue Services, Central-Zone, Trichirapalli and a Memorandum was issued on 06.06.2007. These were an irregular exercise of power by the Deputy Director of Fire & Rescue Services, Central-Zone, Trichirapalli and 3rd respondent.

33. The petitioner participated in the said proceedings and filed his reply dated 21.06.2007. There he appears to have made certain allegations against his superiors. This proceeding culminated in order dated 23.06.2007 wherein the petitioner was awarded punishment by way of dismissal from service.

34. Having filed W.P.No.23291 of 2007 against the order dated 23.06.2007, the petitioner also preferred a departmental appeal before the 2nd respondent against the said dismissal order dated 23.06.2007.

35. The departmental appeal preferred by the petitioner was dismissed vide order dated 12.03.2008 bearing reference RC.No 22288/B4/07 by the 2nd respondent. The said order is not speaking order. The petitioner has later challenged the same by way of present W.P.No.16181 of 2015 which is before us.

36. We are of the view that the officers of the respondents ought not to have recalled order dated 13.10.2003 to impose higher punishment of dismissal of service vide order dated 23.06.2007 during pendency of the appeal against order dated 13.10.2003.

37. Once an order dated 13.10.2007 was passed, same cannot be suo motu recalled unless the relevant rules for such recalling of order particularly in the light of the pendency of appeal of the petitioner. No rules have been shown to us which gave powers to recall such an order.

38. We therefore have difficulty in accepting the contention of the Learned Additional Advocate General-VI on behalf of the contesting respondents that there was acquiescence by the petitioner in the fresh proceeding pursuant to memo dated

06.06.2007 and notice dated 15.12.2005.

39. Even if the petitioner acquiesced in the fresh proceeding was irregular which culminated in order dated 23.06.2007 dismissing the petitioner from service, it was set aside by this Court in its order dated 22.11.2011 in W.P.No 23921 of 2007.

40. Dismissal of the departmental appeal filed by the petitioner, by the 2nd respondent vide order dated 12.03.2008 is of no consequence and significance as we are quashing the same as unsustainable for non application of mind and for having passed with a pre-set disposition of mind. Accordingly, W.P No.16181 of 2015 is liable to be allowed.

41. That apart, both petitioner and the respondents are equally guilty of not informing the status of the said appeal to the Learned Single Judge when order was passed in W.P.No.23921 of 2007 on 22.11.2011.

42. Since order dated 22.11.2011 passed in W.P.No.23921 of 2007 has neither been reviewed nor set aside in a manner known to law, we are of the view that it makes no difference even if the petitioner's appeal had been earlier dismissed on 12.03.2008. The petitioner has been wronged and was victimized.

43. It is evident, the respondents have not found the petitioner fits and worthy of service and had started proceedings against him and vacillated and prolonged the agony for the appellant by driving him to resort to legal remedy. Almost 12 year have lapsed since the petitioner was dismissed from service.

44. Had the petitioner been allowed to work and was not dismissed from service, he would have gained requisite experience and skill set. However, he has missed the experience for no fault of his. Therefore, the impugned order upholding dismissal from service deserves to be interfered by ordering reinstatement of the petitioner.

45. At the same time, we are also of the view that the petitioner cannot be awarded arrears of salary for the entire period during the period after dismissal from service in 2007.

46. Therefore, to meet the ends of justice, we are of the view that the petitioner should be considered as having been notionally in service all through since his dismissal.

47. The respondents shall issue a formal letter suitably posting the petitioner within two weeks from the date of receipt of a copy of this order. The petitioner shall be entitled to rejoin the service of the respondent on 01.10.2019.

48. Consequently, we set aside the impugned order passed by the Learned Single Judge dismissing W.P.No.31427 of 2012 upholding the order of the 2nd respondent dated 11.07.2011 and the order of the 3rd respondent dated 23.06.2007 and partly allow the present Writ Appeal and also allow the W.P.No.16181 of 2015. The petitioner shall be deemed to have been in service all through the period and attendant seniority shall be maintained in his service.

49. In fine,

- i. W.A.No.1567 of 2015 stands partly allowed with the above observation. No cost.
- ii. W.P.No.16181 of 2015 stands allowed. No cost.
- iii. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Secretary
Home-Department,
Secretariat, Chennai - 9.
2. The Director of Fire and Rescue Services,
Egmore, Chennai - 8.

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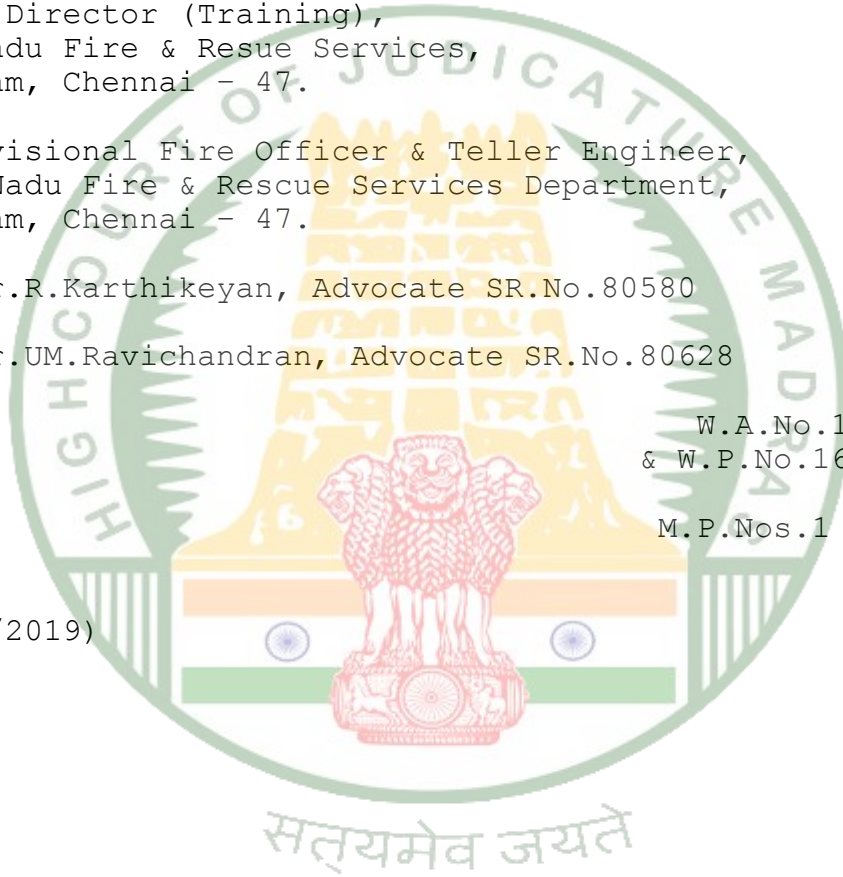
- 3.The Director of Fire Rescue Services And
Director State Training centre (Full Additional Charges),
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- 4.The Deputy Director of Fire Rescue Service
And Director State Training Centre (Full Additional Charges),
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- 5.The Divisional Fire Officer,
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Tambaram, Chennai - 47.
6. The Divisional Fire Officer & Teller Engineer,
Tamil Nadu Fire & Rescue Services Department,
Tambaram, Chennai - 47.

+2cc to Mr.R.Karthikeyan, Advocate SR.No.80580

+1cc to Mr.UM.Ravichandran, Advocate SR.No.80628

W.A.No.1567 of 2015
& W.P.No.16181 of 2015
and
M.P.Nos.1 & 1 of 2015

BP (CO)
GMY (23/09/2019)



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