IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.32118 of 2004

1.V.Robert (Deceased)
2.R.Sagayamary
3.R.Santhosh .. Petitioner

(P2 & P3 are substituted as
Lrs of the deceased P1 vide order dated
03.07.2019 made in W.M.P.No.13914 of 2019
in W.P.No.32118 of 2004)

Vs.

1.The Commissioner of Treasuries and Accounts,
Panagal Buildings,
Saidapet, Chennai 15.

2.The Treasury Officer,
District Treasury,
Trichy.

3.The Sub-Treasury Officer,
Perambalur. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent herein in RC 30292/89-1/B1 dated 03.05.2000 in awarding the punishment of stoppage of annual increment for 3 years with cumulative effect and the consequential order of regularization of suspension period from 03-08-1989 to 04-05-2000 as leave on loss of pay in RC 20821/2000/B3 dated 28-07-2000 issued by the 2nd respondent herein and quash the same and consequently, direct the respondents herein to regularize the suspension period as duty for all the purposes.

For Petitioner : Mr.Anand
for M/s.Anand and Suryas

For Respondents : Mr.R.S.Selvam,
Government Advocate

O R D E R

The petitioner filed present Writ Petition, challenging the order of the 2nd respondent herein in RC 30292/89-1/B1 dated 03.05.2000 and for a direction to the respondents herein to regularize the suspension period as duty for all purposes.

2.The learned counsel appearing for the petitioner contended that the petitioner was arrested by the Police on 03.08.1989 for the alleged offences under Sections 406, 466, 420 & 471 of I.P.C. Subsequently, the petitioner was released on bail. The 2nd respondent suspended the petitioner from service when the petitioner was arrested by Police. The petitioner was acquitted by the Criminal Court by the Judicial Magistrate III, Tiruchirappalli vide judgment dated 15.04.1998, holding that the charges leveled against the petitioner were not proved beyond reasonable doubt. After acquittal of the petitioner, the 2nd respondent issued charge memo dated 31.05.1999 under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules containing two charges. The petitioner submitted his explanation. The Enquiry Officer held that the charges are not proved. The 2nd respondent disagreeing with the report of the Enquiry Officer, issued a memo dated 04.04.2000 to the petitioner and expressed his opinion and sought for explanation of the petitioner. The petitioner submitted explanation on 17.04.2000 to the said memo. The 2nd respondent did not accept the explanation submitted by the petitioner and imposed punishment of stoppage of increment for 3 years with cumulative effect by the proceedings dated 03.05.2000 and treated the period of suspension of the petitioner as leave on loss of pay. The petitioner filed appeal to the 1st respondent through 2nd respondent. The 2nd respondent did not forward the appeal to the 1st respondent. The petitioner therefore directly sent the appeal to the 1st respondent. No order was passed on the appeal filed by the 1st respondent, hence the petitioner has filed the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that no one was examined in the Domestic Enquiry before the Enquiry Officer. The Enquiry Officer considering the materials, held that the charges are not proved. When the Disciplinary Authority disagreed with the finding of the Enquiry Officer, the Disciplinary Authority must have given dissenting note as to why he is disagreeing with the Enquiry Officer and reasons for the same. The 2nd respondent failed to do so. The 2nd respondent also failed to consider that no one was examined in the Domestic Enquiry and there is no evidence to prove the charges and support the views of the Disciplinary Authority. In the Domestic Enquiry they did not examine the persons from whom the petitioner received money, to prove the charges leveled against the petitioner. In the absence of any evidence to prove the charges and on acquittal by the Criminal Court, the 2nd respondent ought to have revoked the order of suspension and considered the period of suspension as duty period and prayed for allowing the Writ Petition.

4.The respondents filed counter affidavit and denied all the averments in the affidavit filed in support of the above Writ Petition and also filed typed set of papers. Mr.R.S.Selvam, learned Government Advocate appearing for the respondents contended that the Enquiry Officer failed to see that petitioner admitted his guilt in his explanation dated 07.07.1988 and erroneously held that the charges leveled against the petitioner was not proved. The learned Government Advocate further contended that the charges leveled against the petitioner is not covered under the criminal proceedings initiated against the petitioner. The petitioner was acquitted on benefit of doubt. The 2nd respondent has given reasons for disagreeing with report of the Enquiry Officer and the explanation submitted by the petitioner was not satisfactory and punishment imposed on the petitioner is proper and valid. The 2nd respondent has taken lenient view in imposing punishment and imposed lesser punishment. The 2nd respondent did not forward the appeal filed by the petitioner to the 1st respondent as decision taken by the 2nd respondent was correct and hence, returned the appeal to the petitioner. There is no proof to show that the petitioner has sent the appeal directly to the 1st respondent and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and perused the materials available on record.

6.From the materials on record, it is seen that a complaint was lodged with the police against the petitioner alleging that the petitioner has received money from vehicle owners, but did not deposit the same in the Sub-Treasury and misappropriated the same. The petitioner was acquitted in criminal proceedings. After acquittal, the 2nd respondent issued charge memo dated 31.05.1999, alleging that the petitioner has received amounts from four persons as mentioned in the charge memo and did not deposit the same in the Sub-Treasury and by using false seal and forging the signature, returned the RC book to the owners of the vehicle. In the counter affidavit, the 2nd respondent has stated that four persons from whom the petitioner received money was not covered in the criminal proceedings. The 2nd respondent has not explained as to why the alleged misconduct mentioned in the charge memo was not included in the criminal proceedings. That apart, before the Enquiry Officer, no witness was examined or no document was filed and marked by the 2nd respondent. The Enquiry

Officer considered the explanation submitted by the petitioner before him and held that charges leveled against the petitioner were not proved. The 2nd respondent disagreed with the said report of the Enquiry Officer on the ground that the Enquiry Officer failed to consider the admission made by the petitioner in his letter dated 07.07.1988. The said explanation of the petitioner was filed in the typed set of papers filed by the 2nd respondent. In the said explanation, the petitioner has stated that he has returned the money received to all the persons from whom he has received money. Earlier, the petitioner has given an explanation dated 16.06.1988 stating that after receiving RC book and money from 4 persons mentioned in the charge memo, he fell sick and went on leave. Due to his ill-health he could not deposit the amount in the Sub-Treasury and after recovering from illness he returned the RC book as well as money to the 4 persons mentioned in the charge memo. When the petitioner has taken a stand that he has returned the RC book as well as money to the 4 persons mentioned in the charge memo, the 2nd respondent ought to have examined the said persons in Domestic Enquiry to prove the charges that the petitioner did not return the money to them.

6(a). Further, the 2nd respondent's contention is that the petitioner used false seal and forged signature in the RC book. The petitioner has not admitted the charges either in his explanation dated 16.06.1988 or 07.07.1988. The petitioner in his explanation has stated that in charge memo it has not been mentioned which seal of the respondent was falsely created and whose signature he forged. To substantiate this charge, the 2nd respondent ought to have produced RC book of 4 persons from whom the petitioner has received the money. The reasons given by the 2nd respondent for disagreeing the report of the Enquiry Officer is that the petitioner has admitted both the charges in his explanation dated 07.07.1988. A reading of the said explanation reveals that the petitioner has not admitted the charges but he has only stated that he has returned the RC book and money after recovering from his illness. Curiously, the 2nd respondent has not forwarded the appeal filed by the petitioner through him to the 1st respondent on the ground that the order passed by the 2nd respondent is correct. The 2nd respondent has become a Judge of his own order. The reason given by the 2nd respondent in the impugned order to impose the punishment of stoppage of increment for a period of 3 years without cumulative effect and treating the period of suspension as leave on loss of pay are erroneous.

7.For the reasons stated above, the order of the 2nd respondent in RC 30292/89-1/B1 dated 03.05.2000, awarding the punishment of stoppage of annual increment for 3 years with cumulative effect and the consequential order of regularization of suspension period from 03.08.1989 to 04.05.2000 as leave on loss of pay in RC.20821/2000/B3 dated 28.07.2000 issued by the 2nd respondent are set aside and the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Commissioner of Treasuries and Accounts,
Panagal Buildings,
Saidapet, Chennai 15.

2.The Treasury Officer,
District Treasury,
Trichy.

3.The Sub-Treasury Officer,
Perambalur.

+1cc to M/s.Anand and Suryas, Advocate sr.66696
+1cc to Government Pleader sr.67126

W.P.No.32118 of 2004

pp(co)
nr 25/09/2019