

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2019

CORAM :

THE HON'BLE MR. JUSTICE M.DURAISWAMY

W.P.Nos.37080, 37081 & 37082 of 2004 &  
W.M.P.Nos. 44515, 44516, 44517 of 2004 &  
W.M.P.Nos. 2111, 2066, 2112 of 2006

A. Rajaram ... Petitioner in all WPs  
vs.

1.The State of Tamil Nadu,  
Rep. By the Secretary to Government,  
Labour and Employment Department,  
Fort St. George,  
Chennai - 600 009

2. The Chief Inspector of Factories,  
Chepauk, Chennai - 600 005 ... Respondents in all WPs

W.P.No.37080/2004 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records relating to the order of the 2<sup>nd</sup> respondent in Proceeding No.E2/41960/03 dated 25.05.2004 and to quash the same.

W.P.No.37081/2004 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records relating to the order of the 2<sup>nd</sup> respondent in Proceeding No.E2/14259/2002 dated 23.05.2003 and to quash the same.

W.P.No.37082/2004 : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records relating to the order of the 2<sup>nd</sup> respondent in Proceeding No.E2/14260/2002 dated 23.05.2003, letter No.7102/E2/ 2004-4, dated 11.06.2004, issued by the 1<sup>st</sup> respondent and to quash the same.

For Petitioner : Mr.Karthik Rajan  
(in all WPs) for M/s.Karthik & Mukundan

For Respondents : Mr.S.N. Parthasarathy  
(in all WPs) Government Advocate

COMMON ORDER

The petitioners have filed the above Writ Petitions to issue Writs of Certiorari to call for the records relating to the order of the 2<sup>nd</sup> respondent dated

23.05.2003, 25.05.2004 and the letter dated 11.06.2004, issued by the 1<sup>st</sup> respondent and to quash the said orders.

2. Since the issue involved in all the Writ Petitions are identical, the Writ Petitions are disposed of by this common order.

3.1 It is the case of the petitioner that he was directly recruited as Assistant Inspector of Labour in the Labour Department in the year 1980. Subsequently, he has worked in various capacities in the Labour and Factories Department.

3.1 On 28.10.2002, the petitioner was issued with a memo by the 2<sup>nd</sup> respondent calling for his explanation for dispatching ratification order on 26.06.2001 to one Thiru K.Thirumuruga Balakrishnan, Inspector of Factories, Dindigul, for his purchase of vacant site for construction of a house.

3.2 Further, the petitioner was issued with memos dated 21.03.2002 by the 2<sup>nd</sup> respondent calling for his explanation as to why he had granted permission on 25.06.2001 to Mrs. S.L. Hemalatha, Inspector of Factories, Cuddalore and Mr.C.Chidambaranathan, Inspector of Factories, Cuddalore for the purchase/construction of a house from the Tamil Nadu Housing Board, without first obtaining the permission of the then Chief Inspector of Factories.

3.3 The petitioner sent his replies separately. However, disciplinary proceeding were initiated by the 2<sup>nd</sup> respondent against the petitioner under section 17-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for the alleged misconduct. The petitioner submitted his explanation for the above charge. However, the 2<sup>nd</sup> respondent passed the impugned orders and awarded the punishment of stoppage of increment for 3 months without cumulative effect.

3.4 Challenging the same, the petitioner preferred Appeals before the 1<sup>st</sup> respondent. In the said appeals, the petitioner took a plea that the 2<sup>nd</sup> respondent did not have jurisdiction to pass the impugned orders of punishment inasmuch as the petitioner was repatriated back to his parent department. However, the 1<sup>st</sup> respondent rejected the contention of the petitioner and dismissed the appeals.

4. Now the issue involved in the present Writ Petitions is with regard to jurisdiction of the 2<sup>nd</sup> respondent in passing the impugned orders.

5. The respondents filed their counter wherein they have stated that as per Rule 14(a)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, penalty of withholding increment can be imposed on a Government Servant belonging to the Subordinate Service by his immediate Superior Officer of

the State Services. Further, the respondents have stated that though the Commissioner of Labour is the Cadre Controlling Authority, the personnel under the General Subordinate Service and Labour Subordinate Service posted in the Factories Department is not on the basis of deputation as stated by the petitioner. Individuals are liable to be posted in any of the two departments and only combined seniority is followed for all the individuals.

6.1 The learned counsel appearing for the petitioner submitted that the Inspectorate of Factories was carved out as a separate and independent Department to that of the Labour Department by G.O.Ms.No.1749, Labour Department, dated 12.08.1987 and the Inspectorate of Factories is headed by the Commissioner of Labour. Further, the learned counsel submitted that even after the issuance of the said Government Order, employees belonging to the Labour subordinate Service and General Subordinate Service were routinely transferred and posted to the Factories Department.

6.2 Further, the learned counsel for the petitioner submitted that the petitioner had challenged the transfer from the Labour Department to the Factories Department by way of Original Application in O.A.No.1211 of 1992 before the Tamil Nadu Administrative Tribunal and the Tribunal, by order dated 21.08.2003, held that as per G.O.Ms.No.1749, Labour Department Dated 12.08.1987, the Factories and the Labour Wings are distinct and different and therefore, an employee, belonging to the Labour Department, cannot be transferred to the Factories Department, more so, when the petitioner has not given his consent to be posted in the Factories Department. Accordingly, the transfer order was set aside by the Tamil Nadu Administrative Tribunal.

6.3 The learned counsel for the petitioner also submitted that the order passed by the Tribunal has become final and no appeal has been preferred by the respondents. The learned counsel also produced the copy of the order passed by the Tribunal in O.A.No.1211 of 1992 .

7. In view of the order passed by the Tribunal, I am of the view that the stay of the petitioner in the Factories Department should be considered only as deputation. Consequently, any disciplinary action has to be in accordance with Rule 16 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

8. In the instant case, the petitioner was repatriated back to the Labour Department much before the imposition of the impugned order of punishment. In view of Rule 16, the borrowing authority, viz., the 2<sup>nd</sup> respondent did not have any jurisdiction to impose an order of punishment on an employee belonging to the Labour Department.

9. In the Judgment reported in 1978 MLJ 184 [K. Kanagasabapathy v. City Supply Officer, Civil Supplies Department, Madras and others], this Court held as follows:-

".. 2. The sole ground put forward in support of the petition is that after the petitioner had left the borrowing department and gone back to the parent department, the officers of the borrowing department had no jurisdiction to take any disciplinary proceedings against him. That an order directing recovery of any amounts on account of shortages etc., is one imposing a minor punishment on the concerned employee is admitted on all hands and it is the case of the borrowing department, which is represented before me by four of its officers, that Rule 16 of the Madras Civil Services (Classification, Control and Appeal) Rules justifies disciplinary action against the petitioner by the borrowing department in so far as minor punishments such as recovery for shortages are concerned. The relevant part of that rule states:

16. Where a person to be punished has been lent to the punishing authority: (i) the power to impose the penalty of compulsory retirement or removal or dismissal shall not lie with any authority other than the lending authority; the borrowing authority shall in a case where it considers that the punishment of compulsory retirement, removal or dismissal should be imposed, complete the inquiry and revert the person concerned to the lending authority for such action as that authority may consider necessary.

The rule no doubt gives the power of inflicting minor punishments to a borrowing department. But then that power is made available to a borrowing department only so long as the concerned officer is serving in it and not after he has gone back to the parent department. This is made clear by the direction contained in the rule that after completion of an enquiry in a case where the borrowing department considers that the punishment of compulsory retirement, removal or dismissal should be imposed, it shall revert the person concerned to the lending authority. The question of reversion, can only crop up if the concerned employee is still with the borrowing department. The rule, therefore, is of no help to a borrowing department after the reversion of the employee has already taken place, in

which case the lending authority alone would be competent to inflict, a punishment, whether it is of a major or a minor character, on such employee. In this view of the matter my finding is that the borrowing department had no jurisdiction to inflict the punishment of recovery of moneys on account of loss caused to it by the negligence or misconduct of the petitioner while he was working under the borrowing department."

10. The ratio laid down in the above referred squarely applies to the present case.

11. For the reasons stated above, I am of the view that the 2<sup>nd</sup> respondent has no jurisdiction to pass the impugned orders of punishment. Since the 2<sup>nd</sup> respondent had passed the impugned orders without jurisdiction, the same are liable to be set aside. Accordingly, the impugned orders are set aside. The Writ Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Secretary to Government,  
Labour and Employment Department,  
Fort St. George, Chennai - 600 009

2. The Chief Inspector of Factories,  
Chepauk, Chennai - 600 005

+3cc to Mr. Karthik Mukundan, Advocate, S.R.No. 86678  
+1cc to the Government Pleader, S.R.No. 87350

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EV(CO)  
GN(11/12/2019)