

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 26.06.2019

Orders Pronounced on : 08.07.2019

ORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.23792 of 2010 and 57 of 2011

&

M.P.No.1 of 2010 in W.P.No.23792 of 2010

and

M.P.No.1 of 2011 in W.P.No.57 of 2011

M.Sulochana,
Head Clerk,
Judicial Magistrate Court No.II,
Thiruvallur and Thiruvallur District
(under suspension) .. Petitioner in
both the Writ Petitions

Vs.

1. The Principal District and Sessions Judge,
Thiruvallur District, Thiruvallur.
2. The Registrar General,
High Court, Madras, Chennai-600 104.
3. Government of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home (Courts) Department,
Fort St.George,
Secretariat, Chennai-600 009.
4. The Accountant General (A & E),
DMS Complex,
Teynampet, Chennai-600 018.

(Respondents 2 to 4 impleaded as per
Court order dated 29.08.2018 in
W.M.P.Nos.24730 to 24732 of 2018
in W.P.No.23792 of 2010)

.. Respondents in W.P.No.23792 of 2010

1. The Principal District and Sessions Judge,
Thiruvallur District, Thiruvallur.
2. The Enquiry Officer/Additional District Judge,
Fast Track Court No.1,
Poonamallee, Chennai-600 056.
3. Smt.K.S.Jayamangalam,
The Principal District Munsif,
Sarangapuram, Kallakurichi,
Vizhupuram District.
(formerly The Judicial Magistrate,
The Judicial Magistrate Court No.II,
Thiruvallur, Thiruvallur District).
4. The Registrar General,
High Court, Madras, Chennai-600 104.
5. Government of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home (Courts) Department,
Fort St.George,
Secretariat, Chennai-600 009.
6. The Accountant General (A & E),
DMS Complex,
Teynampet, Chennai-600 018.

(Respondents 4 to 6 impleaded as per
Court order dated 29.08.2018 in
W.M.P.Nos.24733 to 24735 of 2018
in W.P.No.57 of 2011)

.. Respondents in W.P.No.57 of 2011

Writ Petition No.23792 of 2019 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondent(s) to re-consider the representations of the petitioner, dated 01.06.2010, 11.06.2010 and 25.06.2010 respectively, as well as his order made in D.No.2355/A/2010, dated 16.06.2010 and to pass fresh orders on the same in accordance with Rule 54-B (4) of the Fundamental Rules of the Tamil Nadu Government.

Writ Petition No.57 of 2011 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the first respondent to consider the objections/representation of the petitioner, dated

10.08.2010 and to pass orders on merits and in accordance with law.

For petitioner: Mr.K.S.Govindaprasad for M/s.B.Dayalan
in both the Writ Petitions

For respondents : Mr.R.Sunil Kumar for RR-1 and 2 in
W.P.No.23792 of 2010
and for RR-1, 2 and 4
in W.P.No.57 of 2011
Mr.V.Shanmuga Sundar,
Spl.G.P. for R-3 in
W.P.No.23792 of 2010 and for R-5
in W.P.No.57 of 2011
Ms.D.Nagasaila for R-3
in W.P.No.57 of 2011

COMMON ORDER

R.SUBBIAH, J

Since the petitioner in both the Writ Petitions is one and the same and since the issue involved in both the Writ Petitions are inter-related to each other, they are being disposed of by this Common Order.

2. Writ Petition No.23792 of 2010 is filed praying for issuance of a Writ of Mandamus to direct the respondent (s) to re-consider the representations of the petitioner, dated 01.06.2010, 11.06.2010 and 25.06.2010 respectively, as well as his order made in D.No.2355/A/2010, dated 16.06.2010 and to pass fresh orders on the same in accordance with Rule 54-B(4) of the Fundamental Rules of the Tamil Nadu Government.

3. Writ Petition No.57 of 2011 is filed praying for issuance of a Writ of Mandamus to direct the first respondent to consider the objections/representation of the petitioner, dated 10.08.2010 and to pass orders on merits and in accordance with law.

4. The petitioner herein joined as Head Clerk on 02.05.2008 in the Judicial Magistrate Court No.II, Thiruvallur. She secured Earned Leave for the period 13.03.2009 to 27.03.2009 on medical grounds. But she was asked to join duty even on 19.03.2009 AN through Phone message from the District Court, Thiruvallur. In obedience to the same, she joined duty on the same day. After she joined duty, the Judicial Magistrate-II, Thiruvallur served on her an order of suspension, dated 19.03.2009 passed by the Principal District Judge, Thiruvallur, the first respondent herein, under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the ground that

an enquiry is contemplated for missing of non-valuable case properties and that a complaint had also been lodged against the petitioner with the Police in respect of some missing case properties, which is under investigation. The said Police complaint dated 16.03.2009, was lodged against her and two others in Crime No.210 of 2009, dated 16.03.2009 on the file of the Inspector of Police, Town Police Station, Thiruvallur, by the third respondent-Judicial Magistrate and the investigation is already over on the said complaint.

5. It is the further case of the petitioner that she has been working in the Judicial Magistrate Court No.II till she was relieved by the said order of suspension, dated 19.03.2009. In the said order of suspension itself, it is mentioned by the first respondent with regard to the headquarters during her suspension period, which would be at Thiruvallur. The petitioner preferred anticipatory bail application before this Court in Crl.O.P.No.4407 of 2009, which was dismissed on 27.03.2009, with a direction to the petitioner to surrender before the Court. Subsequently, she had also filed two anticipatory bail applications in Crl.O.P.No.9168 of 2009 and Crl.O.P.No.14395 of 2009, which were dismissed as withdrawn on 16.06.2010 and 20.07.2009 respectively.

6. It is also stated by the petitioner that a Writ Petition in W.P.SR.No.73479 of 2009 was filed before this Court for issuance of a Writ of Certiorari to call for the records pertaining to the First Information Report (FIR) in Crime No.210 of 2009, dated 16.03.2009 as against the petitioner on the file of the Inspector of Police, Town Police Station, Thiruvallur and to quash the same, and the said Writ Petition was pending for disposal. Along with the said Writ Petition, the petitioner has filed interim application in W.M.P., praying for grant of stay of all further proceedings pertaining to the said FIR, pending disposal of the main Writ Petition. By order dated 30.11.2009, this Court granted two weeks time for the petitioner to surrender as advised by this Court in Crl.O.P.No.4407 of 2009, making a detailed reference to the said order. In compliance with the said order, the petitioner had surrendered before the learned Judicial Magistrate No.I, Thiruvallur on 15.02.2010 and she was remanded to judicial custody for 15 days and lodged in Central Prison at Puzhal. The bail application filed before the Court below was dismissed and finally, this Court granted bail to the petitioner on 13.04.2010 and she complied with the conditions imposed in the bail order.

7. In the meantime, the petitioner sent a representation, dated 01.06.2010 to the first respondent-PDJ, Thiruvallur with regard to the change of headquarters

during the suspension period as imposed in the suspension order dated 19.03.2009 and requested the first respondent to permit the petitioner to stay at her mother's house situated at No.68, 2nd Main Road, Venkataraman Nagar, Hasthinapuram, Chennai-600 064, to take care of her children, who are residing with her aged mother (widow) and also studying in Chennai. As there was no response from the first respondent, the petitioner sent a reminder, dated 11.06.2010 and gave an undertaking that she would forego her travelling and other allowances admissible for a Government servant for change of headquarters during the period of suspension. The first respondent passed orders on 16.06.2010 without considering the said undertaking of the petitioner and contrary to F.R.54-B(4) of the Fundamental Rules of the Government of Tamil Nadu. While so, the petitioner submitted another representation, dated 25.06.2010 by RPAD on 14.07.2010 with regard to re-consideration of the representation submitted by her and the order dated 16.06.2010 passed, by considering the said FR.54-B(4). But the first respondent did not re-consider the said representation and also the said order dated 16.06.2010. Hence, the petitioner has preferred W.P.No.23792 of 2010 for the relief stated supra.

8. In the meanwhile, disciplinary proceedings were initiated by the Principal District Judge, Thiruvallur, as is evident in the proceedings in D.No.2639/A/2010, dated 07.07.2010 issued by the Chief Administrative Officer, Principal District Court, Thiruvallur, along with the copy of the findings/report of the Enquiry Officer/second respondent in W.P.No.57 of 2011, made in D.E.No.1/2009 initiated against the petitioner and one Velusamy, formerly Office Assistant, Judicial Magistrate Court No.II, Thiruvallur, both of whom were placed under suspension. Ultimately, the following charges were framed against the petitioner by the Department:

"Charge No.1: That the said Tmt.M.Sulochana, formerly Head Clerk, Judicial Magistrate Court No.2, Thiruvallur, now under suspension while functioning as Head Clerk of Judicial Magistrate Court No.2, Thiruvallur was unauthorised absent from her legitimate official duty from the date of the theft of the non-valuable items of properties from Judicial Magistrate Court No.2, Thiruvallur.

Charge No.2: That the said Tmt.M.Sulochana, formerly Head Clerk, Judicial Magistrate Court No.II, Thiruvallur, now under suspension, while functioning in the office of the Judicial Magistrate Court No.II, joined together along

with one Tr.T.Velusamy, Office Assistant of Judicial Magistrate No.II, Thiruvallaur and three others from Ponneri made a theft of non-valuable items of properties from Judicial Magistrate Court No.II, Thiruvallur.

Charge No.3: That the said Tmt.M.Sulochana, formerly Head Clerk of Judicial Magistrate Court No.II, Thiruvallur, now under suspension has made dereliction of duty in protecting the Court properties.

Charge No.4: That the said Tmt.M.Sulochana, formerly Head Clerk, Judicial Magistrate Court No.II, Thiruvallur, now under suspension, was absent unauthorisedly from the Headquarters."

9. It is further stated that the petitioner immediately made a representation, dated 29.07.2010 to the first respondent, requesting him to furnish the depositions of the Departmental Witnesses, in response to which, the first respondent had furnished the copy of the same by proceedings in D.No.3144/A/2010, dated 05.08.2010. Thereafter, it is stated by the petitioner that she sent her objections in the representation, dated 16.08.2010 to the first respondent by RPAD with regard to the following:

(i) The Enquiry Officer/second respondent (in W.P.No.57 of 2011) had submitted enquiry report against the petitioner as an ex-parte report, and the petitioner was not given an opportunity to defend her case and the reasons given by him for not serving the summons on the petitioner, are baseless and they were on his own assumptions and presumptions;

(ii) The charges framed against the petitioner by the Department are also false and baseless and the same are with an ulterior motive for wreaking vengeance against the petitioner by the then learned Judicial Magistrate, the third respondent in W.P.No.57 of 2011.

10. It is the further case of the petitioner that she has requested the first respondent to direct the Enquiry Officer/second respondent to re-open the case/departmental enquiry as to substantiate her case by filing elaborate and detailed written explanation, if necessary to the said charges; to adduce oral evidence on her side; to file documents on her side as Exhibits to prove her case; to cross-examine the Departmental witnesses and to disprove the Exhibits/Documents filed in the Departmental Proceedings against the petitioner and further to stay all further proceedings in pursuance of the Enquiry Report,

dated 18.06.2010 filed against the petitioner by the second respondent/Enquiry Officer, till the disposal of the departmental enquiry proceedings against the petitioner, after giving an opportunity to defend herself as requested in the said objections, dated 10.08.2010. This representation was acknowledged by the first respondent on 16.08.2010. It is the grievance of the petitioner that the first respondent has so far not considered the objections/representation, dated 10.08.2010. Hence, she has preferred W.P.No.57 of 2011 for the relief stated supra.

11. When the Writ Petitions are taken up for consideration, the learned counsel for the petitioner mainly focussed his submission that in the Departmental Enquiry conducted against the petitioner, she was not given an opportunity to defend her case and no notice of enquiry was served on her. Without any notice being served or without hearing the petitioner, the petitioner was set ex-parte in the departmental proceedings. Under such circumstances, the objections made in the representation of the petitioner, dated 10.08.2010, had to be considered and consequently, the departmental proceedings have to be reopened and fresh enquiry has to be conducted. The learned counsel for the petitioner further submitted that by considering the petitioner's various representation(s), the ex-parte order passed against her may be set aside and the Enquiry Officer may be directed to reopen the case for departmental enquiry to enable the petitioner to substantiate her case by filing elaborate and detailed written explanation/submissions to the charges framed against her and also to adduce oral evidence on her side, apart from documentary evidence, if any on her side, to prove her innocence and also to cross-examine the departmental witnesses in order to disprove the documents filed in the departmental proceedings already initiated against her. In support of his submissions, the learned counsel for the petitioner also relied upon a judgment of the Supreme Court reported in 2015 (7) SCC 291 (Ajay Kumar Choudhary Vs. Union of India).

12. Countering the above submissions, by filing respective counter affidavits of the respondents, the learned Special Government Pleader appearing for the third and fifth respondents in the respective Writ Petitions and the learned counsel for the other respondents, made the following submissions:

The petitioner and the other Office Assistant Velusamy jointly engaged a Swaraj Mazda van bearing Registration No.TN-20-V-8931 along with one Advocate Clerk and three others from Ponneri, allowed the third person to enter into the property room of the Court and take away the non-valuable case properties which belonged to the Court,

particularly, Aluminium Ingot, Cycles, Aluminium Wire and Iron articles on 11.01.2009 without any order/permission from the Judicial Magistrate No.II, Tiruvallur and hence the Judicial Magistrate-II, Tiruvallur had lodged a Police complaint against the petitioner, the said Office Assistant and others on 16.03.2009 and the same was registered in Crime No.210 of 2009 on the file of the Inspector of Police, Town Police Station, Thiruvallaur for the theft of the case properties from the property room of the Judicial Magistrate Court No.II, Tiruvallur. It is further submitted that the petitioner was placed under suspension on 19.03.2009. Disciplinary enquiry proceedings were initiated against her and others and the enquiry notice was also given.

13. By producing the files, it is submitted by the learned counsel for the respondents 1 and 2 and respondents 1, 2 and 4 in the respective Writ Petitions, that on 04.08.2009, the enquiry notice was sent to the petitioner by fixing the date of enquiry as 11.08.2009 at 2.30 p.m. But the said notice returned with postal endorsement as "Door locked". Thereafter, second notice was sent on 11.08.2009 again fixing the date of enquiry as 21.08.2009 at 2.30 p.m. Here-again, the notice returned as the door was locked. Since the door was locked, finally, they have taken the assistance of the Village Administrative Officer (VAO) and notice was affixed on the door of the house of the petitioner. That apart, notice was also sent by Courier and also by RPAD to the petitioner's residential address. Thereafter, the newspaper publication was also effected, informing the date of enquiry as 14.09.2009, which is clear from the newspaper advertisement (Thina Malar) bill, dated 01.09.2009. Thus, sufficient efforts were taken to serve the notice of enquiry on the petitioner. But she purposely evaded the notice, and therefore, on 14.09.2009, pursuant to newspaper publication, she was set ex-parte and witnesses were examined and the Enquiry Officer has also submitted his report finding the petitioner guilty of the charges.

14. In fact, the petitioner surrendered before Court only after completion of the enquiry, which shows that after receiving the enquiry report, she has submitted her representation, and therefore, the representation was rightly rejected by the first respondent, as she has sent explanation to the enquiry report. In fact, after her suspension, though an order was passed against her to stay at the headquarters, she was staying along with her mother only, which is evident from her representation given by her, in which she had mentioned the address as Porur (Chennai). Hence, according to the learned counsel for the

respondents, absolutely there is no merit even in both the Writ Petitions.

15. The learned counsel for the respondents further submitted that now charge sheet has also been laid in the criminal case and the trial is in progress and hence, the learned counsel for dismissal of the Writ Petitions.

16. Keeping in mind the submission made on either side, we have carefully perused the entire materials available on record.

17. The sum and substance of the submissions made by the learned counsel for the petitioner is that the enquiry was conducted without observing the principles of natural justice, as no notice of enquiry was served on her. But from the submissions made by the learned counsel for the respondents based on the files/records, and on a perusal of the files/records, we find that efforts were taken to serve the enquiry notice on her, that too lastly by way of newspaper publication. In fact, notice was also sent to the petitioner fixing the date of hearing as 14.09.2009 and since the door was locked, the notice could not be served and again notice was sent and thereafter, notice was sent by courier and notice was also affixed on the door of the house and thereafter, newspaper publication was also effected, as stated in the foregoing paragraph. Only thereafter, the petitioner was set ex-parte and witnesses were examined and ex-parte enquiry report was submitted. Therefore, we do not find any violation of principles of natural justice. On the other hand, it appears that the petitioner has purposely evaded the notice(s) and thereafter, she has now come forward with the present Writ Petitions only to protract the proceedings. Further, the criminal case has also started and trial is under progress. Further, at present, absolutely, there is no substance in W.P.No.57 of 2011, when the fact remains that as on date, the petitioner is not staying at Thiruvallur and hence, the question of directing the respondent(s) to consider the representation of the petitioner, dated 10.08.2019, does not arise.

18. Thus, at this juncture, we do not find any valid ground to entertain these Writ Petitions, which are accordingly dismissed. No costs. Consequently, the miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Principal District and Sessions Judge,
Thiruvallur District, Thiruvallur.
 2. The Registrar General,
High Court, Madras, Chennai-600 104.
 3. The Principal Secretary to Government,
Government of Tamil Nadu,
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 5. The Enquiry Officer/Additional District Judge,
Fast Track Court No.1,
Poonamallee, Chennai-600 056.
- +1cc to Mr.B.Dayalan , Advocate SR.No. 57185
+1cc to Ms.D.Nagasaila , Advocate SR.No. 56983
W.P.Nos.23792 of 2010 and
57 of 2011
- A.SK(07/08/2019)

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