

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.21794 of 2016 and
WMP No.18638/2016

S.Kala

... Petitioner

Vs

1. The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Chennai.

2. The Director,
Forensic Sciences Department,
Chennai-4.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Order of the 1st respondent in G.O. (3D) No.14 dated 24.02.2016, Home (Police.XVIII) Department, quash the same.

For Petitioner : M/s.Ani V. Kataria
J.V. Sakthi Balakrishnan

For Respondents : Mrs.P.Rajalakshmi, Addl.G.P.

O R D E R

This Writ Petition has been filed challenging the impugned G.O. (3D) No.14, Home (Police.XVIII) Department, dated 24.02.2016, thereby imposing and modifying the punishment of stoppage of increment for three years without cumulative effect imposed on the petitioner into one of punishment of Censure.

2. Learned Counsel for the petitioner assailing the impugned order would submit that when the petitioner was serving as Assistant Director in the Forensic Sciences Department, Chennai, she suffered a departmental proceedings initiated under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 10.05.2014 for having committed the following lapses, namely,

i. that the petitioner has failed to attend the ''Scene of Crime'' duty on 08.04.2014 and 15.04.2014, showing scant respect for the Proceedings of the Director of Forensic Sciences Department dated 13.02.2014;

ii. that the petitioner has reported that due to Court duty on 08.04.2014 and 15.04.2014, she could not attend the ''Scene of Crime'' duty on the said dates. However, it is found that she has attended court duty only on 15.4.2014 and she has attended office on 08.04.2014 instead of attending ''Scene of Crime'' duty as per the Director's Proceedings. This shows that she has furnished false information;

iii. that the petitioner's action stated above shows her clear intention of avoiding specific work assigned by the office which amounts to dereliction of duty, disobedience, insubordination, giving false information to the higher officials and keeping higher officials in embarrassing position; and

iv. that therefore, she has failed to maintain absolute integrity and devotion to duty as per rule 20 of the Tamil Nadu Government Servant Conduct Rules, 1973 and thereby her conduct is unbecoming of a Government Servant.

3. The learned Counsel for the petitioner would further submit that on reply to the 4 count lapses levelled against her in the Charge Memo dated 16.05.2014, the petitioner has given a detailed explanation stating that on 08.04.2014, she had come to the office as usual and then started her daily routine. Around 10.00-10.05 a.m., she received a call through intercom from one Ilangovan, Assistant Director-in-Charge, Mobile Forensic Science Laboratory, stating that Tmt.M.Hemalatha, Scientific Officer, Mobile Forensic Science Laboratory, St.Thomas Mount had sent him a SMS text stating that she was entering on medical leave and he had also received a message from the Inspector of Avadi Police Station about a gruesome murder of a watchman of Muthoot Finance. Since the name of the petitioner is in the roster, she has to go to the scene of crime.

4. The learned Counsel for the petitioner would further submit that the petitioner also gave one another explanation that since the court Head Constable from the Sessions Court at Thiruvannamalai was heading towards Chennai to issue her the Court summons for her appearance on 15.4.2014, she was unable to visit the scene of crime. Moreover, on the previous day, she had also committed to the Inspector of Police, Vigilance and Anti Corruption, Ramanathapuram for recording her statement under Section 161 of Cr.P.C. about 08.04.2014 and that he had already arrived to Chennai from Ramanathapuram, therefore, she

was unable to visit the scene of crime. That apart, she has given one another explanation that her immediate superior Tmt.Kalarani had not yet come to the office, therefore, she had to hold post till she arrives. Yet another explanation is that she had lost her married daughter under unnatural circumstances due to dowry harassment and that due to the said circumstances, again functioning in the environment after a gruesome murder would be emotionally causing too much hardship to her to handle the other cases. The said explanation was rejected by the Disciplinary Authority and that an Enquiry Officer was appointed to go into the charges. Finally, on completion of the enquiry, the Enquiry Officer has also submitted a report holding her guilty of the charges.

5. The Director in charge, Forensic Sciences Department, Chennai, in his Proceedings dated 09.10.2014 has taken a stand that the petitioner has admitted the first count of the lapses that she had not reported to anyone at time that as she had court duty on 08.04.2014 and 15.04.2014, she could not attend the crime scene and also analysing the connected records along with the explanation of the petitioner, came to the conclusion that the lapses have been well established through documentary evidence because the delinquent herself accepted that she had not attended the crime scene duly assigned to her on 08.04.2014 and she had not given any relevant points for her defence, as a result, the Assistant Director has held that the lapses pointed out against her were held proved and for the proven charges, the Disciplinary Authority awarded the punishment of stoppage of increment for three years without cumulative effect, from the date of order. The said order also specifically mentions that the said punishment will not affect her pension. As against that, the petitioner preferred an appeal to the Government on 08.12.2014. The Government, being an Appellate Authority, after obtaining opinion from the Tamil Nadu Public Service Commission that the punishment of stoppage of increment for three years without cumulative effect is excessive and taking into account the advise of the TNPSC to modify the punishment to that of stoppage of increment for one year without cumulative effect, decided to reduce the quantum of punishment as 'Censure'.

6. Now the grievance of the petitioner is that since the order of punishment of stoppage of increment for three years without cumulative effect imposed by the Disciplinary Authority has been modified by the Government into one of Censure in G.O. (3D) No.14 dated 24.02.2016, Home (Police.XVIII) Department, the promotion given to her juniors on 29.12.2015 should be extended to the petitioner since as on the date of promotion given to her juniors on 29.12.2015, it cannot be construed as a punishment at all, it is pleaded.

7. A detailed Counter Affidavit has been filed by the 1st respondent.

8. Learned Additional Government Pleader appearing for the respondents submitted that the writ petition filed against the impugned order, modifying the punishment of stoppage of increment for 3 years without cumulative effect by the Director-in-Charge of Forensic Sciences Department, Mylapore, Chennai, dated 09.10.2014, does not call for any interference for the following reasons, namely, firstly, when the petitioner was issued with a Charge Memo under 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules dated 10.05.2014 containing four charges, she gave her explanation on 16.05.2014. One of the explanations says that she was not willing to visit the scene of crime as that would increase her mental imbalance since her married daughter also died due to dowry harassment. This was taken note of by the Disciplinary Authority. Moreover, one another explanation offered by the petitioner is that she accepted to receive the Court Summon for the Sessions Court at Thiruvannamalai for the hearing on 15.04.2014 and that the Court Head Constable was heading towards Chennai to issue her the court summons. Therefore, she was making herself readily available to assist the Inspector of Police, Vigilance and Anti Corruption, Ramanathapuram for recording her statement. Since the Enquiry Officer had found her guilty of all the charges and the Disciplinary Authority, on receipt of the report submitted by the Enquiry Officer holding that all the charges levelled against the petitioner were proved, accepting the same, imposed the punishment of stoppage of increment for 3 years without cumulative effect by order dated 09.10.2014. Aggrieved over the same, the petitioner preferred an appeal before the 1st respondent.

9. The learned Additional Government Pleader would further submit that secondly, in the meanwhile, opinion was also sought for from the Tamil Nadu Public Service Commission, who also on considering the nature of the allegation made against the petitioner, opined that the punishment of stoppage of increment for 3 years without cumulative effect is excessive and accordingly, advised to modify the same to that of stoppage of increment for one year without cumulative effect. But as against the advise of the Tamil Nadu Public Service Commission to modify the punishment of stoppage of increment from 3 years into one year, the Government has modified the punishment as Censure. Thirdly, while the petitioner was facing the punishment of stoppage of increment for 3 years without cumulative effect, promotions were given to the post of Deputy Director to the other colleagues in her office on 29.12.2015. Since during that time, the petitioner was facing the punishment of stoppage of increment for 3 years without cumulative effect,

she was not considered for promotion and after she was imposed with the punishment of Censure on 24.02.2016, she was considered for promotion to the post of Deputy Director of Forensic Sciences Department. Hence, she cannot ask for any retrospective treatment on par with other colleagues, who were given promotion on 29.12.2015.

10. I fully agree with the said submission made by the learned Additional Government Pleader for the respondents. The reason being that the impugned order of punishment also shows that admittedly, the petitioner has been imposed with the punishment of stoppage of increment for 3 years without cumulative effect for the proven charges which are given as under:

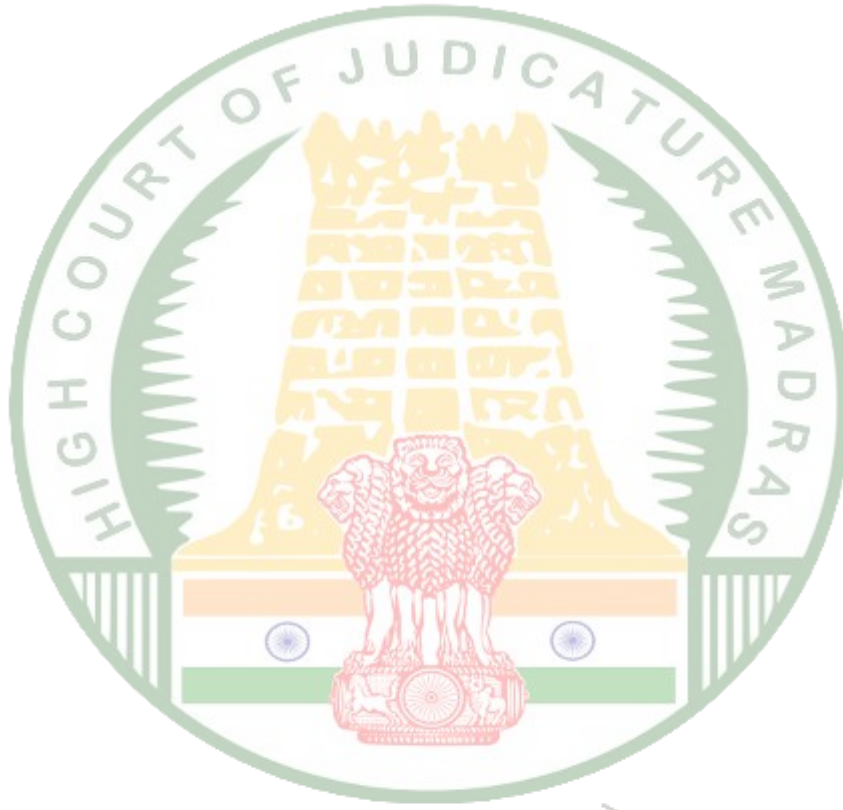
i. that the petitioner has failed to attend the ''Scene of Crime'' duty on 08.04.2014 and 15.04.2014, showing scant respect for the Proceedings of the Director of Forensic Sciences Department dated 13.02.2014;

ii. that the petitioner has reported that due to Court duty on 08.04.2014 and 15.04.2014, she could not attend the ''Scene of Crime'' duty on the said dates. However, it is found that she has attended court duty only on 15.4.2014 and she has attended office on 08.04.2014 instead of attending ''Scene of Crime'' duty as per the Director's Proceedings. This shows that she has furnished false information;

iii. that the petitioner's action stated above shows her clear intention of avoiding specific work assigned by the office which amounts to dereliction of duty, disobedience, insubordination, giving false information to the higher officials and keeping higher officials in embarrassing position; and

iv. that therefore, she has failed to maintain absolute integrity and devotion to duty as per rule 20 of the Tamil Nadu Government Servant Conduct Rules, 1973 and thereby her conduct is unbecoming of a Government Servant.

While so, the Tamil Nadu Public Service Commission has opined that the punishment of stoppage of increment for three years without cumulative effect is excessive and accordingly, advised the Government to modify it to that of stoppage of increment for one year without cumulative effect. When the TNPSC itself has given a opinion for modification of the punishment for 3 years without cumulative effect into one of stoppage of increment for one year without cumulative effect, it is not known how the 1st respondent without adhering to the advise given by the TNPSC has completely modified the punishment into one of Censure.



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11. Therefore, this Court, taking into account the two vital facts that the petitioner had committed serious lapses that were found proved by the Enquiry Officer which is also squarely accepted by the Disciplinary Authority for which a punishment of stoppage of increment for 3 years without cumulative effect was imposed and then, on the basis of the opinion given by the TNPSC to modify the same into one of stoppage of increment for one year without cumulative effect, contrary thereto, giving punishment of censure is also against the opinion of the TNPSC. Therefore, this Court finds no merit in the Writ Petition.

12. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Chennai.

2. The Director,
Forensic Sciences Department,
Chennai-4.

+1 cc to M/s.Ani V.Kattaria, Advocate Sr.No.4170

W.P.No.21794 of 2016

SSV(CO)
CSL/21.02.2019

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