

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.13019 of 2019

G. Hudson Das

.. Petitioner

Vs

1. The Registrar General,
High Court Madras, Chennai - 104

2. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the First Respondent to consider and dispose of the Statutory Appeal filed under Rule 19 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 on 06.04.2018.

For Petitioner : Mr.Ebenezer Paul P.

For Respondents : Mr.D. Kanagasundaram
for Mr.Kaithamalaikumaran

ORDER

(Order of the Court was made by M. VENUGOPAL, J.,)

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents No.1 and 2.

2. The Petitioner has filed the present Writ Petition praying for passing of an Order by this Court in directing the First Respondent/Registrar General, High Court, Chennai to consider and dispose of his Statutory Appeal dated 06.04.2018

(filed under Rule 19 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955),

3. As against the Petitioner, a Departmental Enquiry was conducted by the learned Metropolitan Magistrate, Fast Track Court (IV), George Town, Chennai and it is represented that out of three charges framed against him, Charge No.1 alone was established and the Charge Nos.2 and 3 were not gone into by the Enquiry Officer.

4. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the allegations contained in Charge No.1 was already admitted by the Petitioner, who assured to replace the window glass pane.

5. The Second Respondent/The Chief Metropolitan Magistrate, Egmore, Chennai had called for Remarks about the Enquiry Officer's Report, which was submitted on 09.01.2018 stating that he was paid only 50% of the Salary as Subsistence Allowance for the entire period of suspension and further that he expressed his willingness to replace the broken glass. In fact, the Petitioner had prayed to recall the Suspension Order and reinstate him with all benefits.

6. The grievance of the Petitioner is that the Second Respondent/Chief Metropolitan Magistrate, Chennai, contrary to the Principle of Doctrine of Proportionality of imposing Punishment passed in Officer's Report stating that Charges No.2 and 3 were not proved. Furthermore, the Petitioner was not paid with an increase of Subsistence Allowance to 75% and 100% after six months and one year respectively although he co-operated in regard to the conduct of enquiry.

7. In this connection, it is to be pointed out that the Second Respondent in the dismissal order had stated that First Information Report was filed against the Petitioner in Cr.No.73 of 2017 on the file of Inspector of Police, G-2 Police Station, Periamedu, Chennai - 600003 under Section 3 of the Tamil Nadu Public Property (Prevention and Damage) of loss Act 1992.

8. The Learned Counsel for the Petitioner strenuously submits that the Petitioner was imposed with an extreme punishment of dismissal in an arbitrarily and unreasonably by the Second Respondent. The Petitioner had Statutory Appeal before the First Respondent on 06.04.2018 under Rule 19 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 to set aside the dismissal order and reinstate him with all attendant benefits. The said Statutory Appeal is pending before the First Respondent/High Court, Madras represented by Registrar General till date without any substantial progress.

9. The Learned Counsel for the Petitioner proceeds to point out that the Petitioner filed Crl.O.P.No.29011 of 2018 before this Court and prayed for quashing the First Information Report registered in Cr.No.73 of 2017 dated 10.01.2017 and this Court by Order dated 12.12.2018 quashed the First Information Report.

10. In this regard, it is useful for this Court to make a pertinent mention of the Order passed in the aforesaid Crl.O.P, wherein in at Paragraph Nos.6 to 9, it is observed as follows:

" 6. There is no dispute with regard to the incident that had taken place on 03.12.2016. The admitted case of the Petitioner is that he was suffering from depression and mental agony due to family problems and he also got a message that his mother was suffering from sudden illness and in the spur of the moment, the petitioner had inadvertently broken the window panel. The petitioner had also given an undertaking that he will fix the broken window panel on 04.12.2016.

7. This Court is not able to see any criminal intent on the part of the petitioner. The culpable state of mind is absent in this case. In order to constitute an offence under Section 3 of the Tamil Nadu Property Prevention of Damage and Loss Act, 1992, the ingredients of mischief as defined under Section 425 of IPC must be satisfied. In order to constitute an offence of mischief, there must be an intention to cause or a knowledge that he is likely to cause a wrong full loss or damage to public property or to the owner of any property Explanation 1 of Section 425 of IPC, makes this position very clear.

8. In view of the above, no offence has been made out against the Petitioner under Section 3 of the Tamil Nadu Property Prevention of Damage and Loss Act, 1992, since the culpable state of mind is completely missing in the entire complaint given against the petitioner.

9. No useful purpose will be served by keeping the FIR pending and in fact, it will unnecessarily affect the future of this petitioner. More particularly, due to the fact that no offence has been made out as against the petitioner; and resultantly, FIR came to be quashed.

11. The categorical stand of the Petitioner is that when once no offence was made out against the Petitioner under Section 3 of the Tamil Nadu Property Prevention of Damage and Loss Act, 1992, the Statutory Appeal, preferred by the Petitioner, which is pending before the First Respondent, is to be allowed to prevent aberration of justice and to promote substantial cause of justice and in furtherance of substantial cause of justice.

12. The Learned Counsel for the Petitioner draws the attention of this Court the fact that the Appeal, filed by the Petitioner before the First Respondent, is pending for more than one year and till date, necessary Orders have not been passed by this Court.

13. The Petitioner comes out with a plea that the Second Respondent issued a Notice to him on 29.03.2019 requiring him to submit an Application for final settlement of Contributory Pension Scheme for taking further action. Since the Appeal, preferred by him, is pending before the First Respondent, the Petitioner had stated that he is not prepared to submit an application for 'Final Settlement of Benefits'.

14. Considering the fact that the Petitioner's Statutory Appeal dated 06.04.2018 is pending before the First Respondent/High Court, Madras represented by Registrar General, and taking note of yet another fact that the Statutory Appeal is pending for more than one year, at this stage, without expressing any opinion on the merits of the pending Appeal, simpliciter directs the First Respondent/Registrar General, High Court, Madras to take up the appeal of the Petitioner dated 06.04.2018 within a period of seven weeks from the date of receipt of a copy of this Order and to dispose of the same by passing a reasonable speaking Order on merits, of course, after affording adequate opportunity of hearing to the Petitioner.

15. The First Respondent, while passing final Orders in the Appeal of the Petitioner, is necessarily to advert to the factual and legal points raised by the Petitioner and also to avail opportunity of presenting his case before the First Respondent in the best possible manner. Soon after passing of the Order by the First Respondent in the Appeal, the First

Respondent is directed to communicate the same to the Petitioner, without any loss of time.

16. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar
sr

1. The Registrar General,
High Court Madras, Chennai - 104
2. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008

Copy To
The Section Officer, Legal Cell, High Court, Madras

+1cc to Mr.P.Ebenezer Paul, Advocate SR.No.41693

+1cc to Mr.S.Kaithamalaikumaran, Advocate SR.No.42208

W.P.No.13019 of 2019

KJI (CO)
GMY (31/05/2019)

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