



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.12.2019**

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

W.P(MD)No.8139 of 2011

A.Perumal

.. Petitioner

Vs.

1.The Additional Chief Secretary,
Minor, Small and Medium Scale Industries Department,
Secretariat, Chennai - 600 009.

2.The Industries Commissioner and
Director of Industries and Commerce,
Chepauk, Chennai - 600 005.

3.The Principal,
Institute of Tool Engineering,
Dindigul - 624 003.

.. Respondents

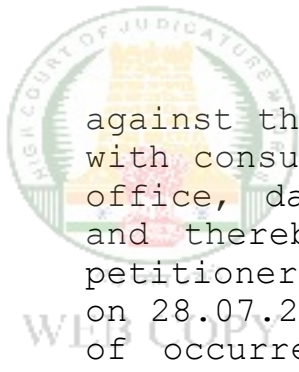
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in pursuant to the impugned order passed by the 2nd respondent in Na.Ka.No.1989/Pa I 3/2004 dated 23.09.2009 and the consequential appellate order passed by the 1st respondent in Government Order (2D) No.11 Minor, Small and Medium Scale Industries (Pani.2.2) Department, dated 02.05.2011 and quash the same and pass such further or other orders.

For Petitioner	: Mr.M.Saravanakumar
For Respondents	: Mr.S.Dhayalan, Government Advocate.

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records of the impugned order passed by the 2nd respondent in Na.Ka.No.1989/Pa I 3/2004 dated 23.09.2009 and the consequential appellate order passed by the 1st respondent in Government Order (2D) No.11 Minor, Small and Medium Scale Industries (Pani.2.2) Department, dated 02.05.2011 and quash the same.

2.The case of the petitioner is that he was working as Office Assistant under the control of the 3rd respondent. He was placed under suspension by the 2nd respondent, vide his proceedings, dated 18.01.2008. Thereafter, the 2nd respondent issued a charge memo on 01.07.2008 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and thereby framed two charges for the incidents took place on 08.01.2008. The charges levelled



against the petitioner is that on 08.01.2008, at about 09.45 p.m., with consumption of liquor, he and one Mr.A.Pandian, driver of the office, damaged the window glasses of the District Manager Room and thereby caused damages to the Government properties. The petitioner submitted his detailed explanation to the 2nd respondent on 28.07.2008 denying the charges and pointed out that on the date of occurrence, the petitioner has not consumed any liquor and further the damages were caused by the driver namely Mr.A.Pandian.

3. According to the petitioner, Mr.A.Pandian, driver, himself has admitted the above guilt before the Sub Inspector of Police, North Police Station, Dindigul, and gave a statement also. But, in contrary to the above factual aspects, the charges were levelled against the petitioner without any substantial material and evidence. An enquiry officer was appointed by the 2nd respondent, by his proceedings, dated 19.09.2009 and the enquiry officer conducted enquiry in a biased manner and the petitioner was not permitted to produce witnesses. The enquiry officer concluded the enquiry based on the apology letter submitted by the driver before the Police Station on 27.01.2009 and the 2nd respondent / disciplinary authority passed the impugned order on 23.09.2009, imposing punishment of stoppage of increment for three years with cumulative effect and also directed to recover the subsistence allowance, which was granted to the petitioner. Against which, the petitioner filed an appeal before the 1st respondent and since the same was not considered, he filed W.P(MD) No.3476 of 2010 seeking to quash the order passed by the 2nd respondent, dated 23.09.2009, in which, this Court, by order dated 18.03.2010, directed the the 1st respondent / appellate authority to dispose of the appeal within a period of six weeks. But the 1st respondent without answering the grounds raised by the petitioner in the appeal, partly allowed the appeal by modifying the order by rejecting the appeal in respect of punishment of stoppage of increment alone and by recovery of subsistence allowance, was dropped. Against which, the present writ petition has been filed.

4. The 1st respondent has filed a counter affidavit stating that the enquiry officer relying on the photos of the damaged windows and the apology rendered by the petitioner as well as Mr.A.Pandian, driver, before the Inspector of Police, Dindigul, held that the charges levelled against them are proved and they were imposed with the punishment of withholding of increment for three years with cumulative effect.

5. The learned counsel for the petitioner submitted that the enquiry officer submitted his report based on the statement made before the police authority and such statement does not have any evidentiary value and the 1st respondent appellate authority has simply confirmed the order of the disciplinary authority. He



would also rely upon the Judgment of this Court in **K.Palani v. State of Tamil Nadu rep. by the Secretary to Government, Home Department, Fort St. George, Madras - 9 and Others** reported in 2007 Writ L.R. 655 and W.P.No.38183 of 2006 [**A.Arjunan v. The Director General of Police, Chennai - 600 004**].

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6.The learned Government Advocate appearing for the respondents submitted that the petitioner and Mr.A.Pandian, driver, had rendered apology for their misbehaviours before the Inspector of Police, Dindigul, upon which, the enquiry officer held that the charges were proved and they were imposed with the punishment and the 1st respondent has also rightly confirmed the same, which require no interference.

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

8.It is pertinent to note that the enquiry officer has submitted his report based on the statement made before the Inspector of Police, Dindigul and such a statement made before the police authority, does not have any evidentiary value, as it has been recorded by the police officer and not under oath. In **K.Palani v. State of Tamil Nadu rep. by the Secretary to Government, Home Department, Fort St. George, Madras - 9 and Others** reported in 2007 Writ L.R. 655, this Court has held as follows:

"8.Whether the statements made during the preliminary enquiry not corroborated by cross examination can be validly relied on by the Disciplinary authority was considered by the Supreme Court in the decision reported in (2004) 10 SCC 87 (*Union of India v. Mohammed Ibrahim*). The Honourable Supreme Court held that the order of dismissal was vitiated as the findings have been based on consideration of statement of the persons examined during the preliminary enquiry and for the said fact the Tribunal set aside the order of dismissal, which was upheld by the High court and there is no error in the order setting aside the dismissal order.

... ..

13.In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry officer's finding of guilt of the petitioner solely relying upon the statement given before the Revenue Divisional Officer during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against



Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed based on the erroneous findings given by the Enquiry Officer in his report. The consequential orders passed by the appellate authority, revisional authority and the Government in the mercy petition are also set aside".

9.This Court has also considered a similar case in **A.Arjunan v. The Director General of Police, Chennai - 600 004** in W.P.No.38183 of 2006, wherein, the learned Single Judge, has referred to and followed the said decision of this Court.

10.In this case, the petitioner stands in a better position than the other person namely, A.Pandian, driver, who has given apology letter before the police and there is no recording of any such letter being given by the petitioner and therefore, the report of the enquiry officer, in my considered opinion, is perverse and the 1st respondent appellate authority has not applied his mind while dismissing the appeal stating that no new points have been urged. It is the duty of the appellate authority to consider the appeal independently, but he has not done so, which is also fatal to the order passed by the 1st respondent.

11.In view of the above and also the decisions of this Court referred to supra, this Court is inclined to quash the impugned orders. Accordingly, the impugned order passed by the 2nd respondent in Na.ka.No.1989/Pa I 3/2004 dated 23.09.2009 and the consequential appellate order passed by the 1st respondent in Government Order (2D) No.11 Minor, Small and Medium Scale Industries (Pani.2.2) Department, dated 02.05.2011, are quashed.

12.At this juncture, the learned counsel for the petitioner would submit that the petitioner is retired from service and pray to direct the respondents to pay the terminal benefits. Taking into consideration the fact that the petitioner is retired from service, the respondents are directed to pay the retirement and other benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar (W)

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/ /2020

Sub Assistant Registrar (CS)



To **सर्वोच्च न्यायालय**

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1.The Additional Chief Secretary,
Minor, Small and Medium Scale Industries Department,
Secretariat, Chennai - 600 009.

2.The Industries Commissioner and
Director of Industries and Commerce,
Chepauk, Chennai - 600 005.

3.The Principal,
Institute of Tool Engineering,
Dindigul - 624 003.

+1 CC to MR.M.SARAVANAKUMAR, Advocate (SR-106077[F] dated
19/12/2019)

+1 CC to SPL.GP (SR-106160[F] dated 20/12/2019)

**ORDER MADE IN
W.P (MD) No.8139 of 2011
19.12.2019**

KM/(24.01.2020) 5P 6C