



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.11.2019

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD)No.6794 of 2013

WEB COPY

R.Chandra Prabhu

:Petitioner

vs.

1.The Deputy Chairman, Tuticorin Port Trust,
Thoothukudi-628 004.

2.The Traffic Manager, Tuticorin Port Trust,
Thoothukudi - 628 004.

:Respondents

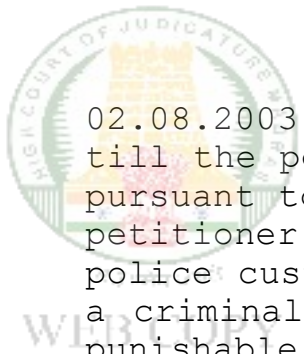
PRAYER: Writ Revision Petition filed under Article 226 of Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the Appeal No.T-12/2/2007 filed by the petitioner challenging the order of the second respondent, imposing the punishment of withholding of one annual increment with cumulative effect and treating the period of suspension between 02.08.2002 and 05.05.2004 as "non-duty" and that during the suspension period, he is not eligible for any other pay and allowances more than the subsistence allowance already received and to quash the order of the of the first respondent, dated 28.08.2012 dismissing the appeal, as well as, the order of the second respondent in T-12/2/2007-ED 483, dated 02.11.2010 imposing the punishment and to direct the respondents to allow annual increments that were withheld after January 2002 till retirement any pay all attendant benefits therein and retiral benefits, like, gratuity, pension, provident fund et. In terms thereof.

For Petitioner	:Mr.S.Seenivasagam for Mr.S.Karthikeyan
For R1	: No Appearance
For R2	:Mr.A.Rajini

ORDER

This Writ Petition is filed for issuing a Writ of Certiorarified Mandamus to quash the order passed by the first respondent relating to appeal No.T-12/2/2007 filed by the writ petitioner, challenging the order of second respondent imposing the punishment of withholding one annual increment with cumulative effect and treat the period of suspension between 02.08.2002 and 05.05.2004 as non-duty period.

<https://hcservices.courts.gov.in/hcservices/> It is in dispute that the petitioner was detained on



02.08.2003 in police custody and thereby, he could not report duty till the petitioner was granted bail. The petitioner was arrested pursuant to a criminal complaint. A charge memo was issued to the petitioner on 30.03.2010. The first charge is relating to his police custody for a period exceeding 48 hours in connection with a criminal case registered in Cr.No.705 of 2002 for the offences punishable under Sections 395, 365, 506(i) and 120(b) of IPC. The major allegation against the petitioner was that his conduct was unbecoming of an employee of the Board and failed to maintain absolute integrity and devotion to duty and thereby violated provisions contained in Regulation 3(1) of the Tuticorin Port Employees (Conduct) Regulations, 1979.

3.In the charge memo, the entire incident following the criminal case was narrated and it is stated that no permission was obtained by the individual for leaving the head quarters and going to Madurai and no intimation was submitted by the individual about his arrest and also imprisonment on a criminal charge. It was thereafter, the second respondent passed an order on 02.11.2010 imposing a punishment of withholding one annual increment with cumulative effect. In the order passed by the second respondent, there was no reference to the nature of charges and the conclusion reached by the Disciplinary Authority. The second respondent has imposed the punishment in the following lines:

"AND WHEREAS the undersigned in the capacity as Disciplinary Authority, has perused the records of the case, including the charge sheet, inquiry proceedings, statement of the Presenting Officer and the Report of the Inquiry Officer, taking into consideration of the facts and circumstances of the case and accepted the findings of the Inquiry Officer and hold that the charges against the said Shri.R.Chandra Prabhu are proved;

NOW THEREFORE, in exercising the powers conferred on him by Regulation 9 of the Tuticorin (Classification, Control and Appeal) Regulations 1979, the undersigned imposes the penalty of withholding of one annual increment with cumulative effect on Shri.R.Chandra Prabhu, Supervisor (Retired). The period of suspension from 2.8.2002 to 5.5.2004 is treated as "NON-DUTY" and during the suspension period, he is not eligible for any other pay & allowances more than the subsistence allowance already received by him."

4.Thereafter, the petitioner preferred an appeal before the first respondent, who has also dismissed the appeal in the following lines:-

"The Appeal, dated 27.05.2012 submitted by Shri.R.Chandraprabhu, Supervisor (Retd.) against the final orders issued by the Disciplinary Authority in the



Disciplinary Proceedings initiated against him, has been examined thoroughly and as per examination arrived at the conclusion that there is no merit in the appeal and therefore the same is rejected."

5. From the reading of the impugned orders passed by the respondents, this Court is of the view that the impugned orders are in a routine format, which could be fit in any situation. Of course, it is true that the charges against the petitioner is specific and there are materials and *prima facie* evidence against the petitioner for holding him answerable in terms of regulations. However, the contents of the orders would reveal that there was total non-application of mind, as to any of the submissions of the petitioner in his reply, dated 13.10.2010 which ought to have been considered before passing order of punishment. It is not disputed that the petitioner was acquitted in criminal case long before punishment. There is no independent witness or material relied upon to find the petitioner guilty of charges.

6. As a matter of fact, the punishment, which was imposed is a minor punishment compared to the gravity of misconduct alleged against the petitioner. After initiating proceeding, the respondents 1 and 2 have not followed the procedure in the manner known to law. Without an application of mind and without referring to any other material, based on the report of Enquiry Officer, the respondents have passed the impugned orders. The law is well settled that the order imposing punishment should be a speaking order. This Court had occasions to quash orders of disciplinary authorities for want of reasons or findings supported by materials. This Court, considering the serious allegations made against the petitioner, cannot simply set aside the orders impugned and leave it as such.

7. As a result, the writ petition is allowed and the impugned orders passed by the first respondent, dated 28.08.2012 confirming the order of second respondent, dated 02.11.2010 are quashed. However, liberty is given to the second respondent to proceed against the petitioner in accordance with law and pass speaking order after hearing the petitioner on merits within a period of two months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



+1 CC to M/s.A.RAJINI, Advocate (SR-96166[F] dated 05/11/2019)

+1 CC to M/s.S. KARTHIKEYAN, Advocate (SR-97662[F] dated 12/11/2019)

W.P.(MD)No.6794 of 2013
04.11.2019

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