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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :12.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP (MD) No.17096 of 2018
and

WMP (MD) No.15049 of 2018

K.Saleem

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family Welfare Department,
Secretariat, Fort St George,
Chennai - 600 009.

2.The Commissioner / Director of Indian Medicine
and Homeopathy,
Arumbakkam, Chennai Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 1st respondent in GO(D)No.388, Health and Family Welfare (D1) Department dated 23.04.2014 and the consequential order in GO(MD)No.1959, Health and Family Welfare (D1) Department dated 17.10.2017, quash the same and direct the respondents to confer all the consequential benefits to the petitioner.

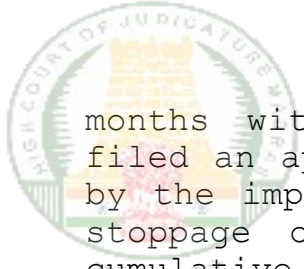
For Petitioner	: Mr.V.Panneer Selvam
For Respondents	: Mr.V.Anand, Government Advocate

ORDER

This writ petition has been filed seeking to quash the order passed by the 1st respondent in GO(D)No.388, Health and Family Welfare (D1) Department dated 23.04.2014 and the consequential order in GO(MD)No.1959, Health and Family Welfare (D1) Department dated 17.10.2017, and direct the respondents to confer all the consequential benefits to the petitioner.

2.The case of the petitioner is that the petitioner requested for transfer by way of submitting an application dated 26.11.2008, through proper channel. Pending the same, he was served with a charge memo dated 27.07.2009, on the ground that the petitioner brought external pressure to the authorities concerned to consider his claim for transfer. He submitted his explanation

to the said charge memo. However, without considering the same in a proper perspective, the 2nd respondent passed an order dated 27.01.2010 imposing punishment of stoppage of increment for six



months without cumulative effect, against which, the petitioner filed an appeal and the same was disposed of by the 1st respondent by the impugned order dated 23.04.2014 modifying the punishment of stoppage of increment from six months to three months without cumulative effect. Aggrieved against the order dated 23.04.2014, the petitioner filed a review petition before the 1st by respondent, relying on the order dated 03.08.2010 passed in a case of a similarly placed person, for consideration. Thereafter, by order dated 17.10.2017, the review application was dismissed, while doing so, the first respondent has not at all discussed the grounds raised by the writ petitioner as well as the order dated 03.08.2010 passed with regard to other similarly placed person. Hence, the petitioner is before this Court.

3.The learned Counsel for the petitioner submitted that similar charge in respect of various other persons had been closed only with a warning, whereas the petitioner alone was isolated with the punishment of increment cut. He also submitted that there was no violation of Rule 181 of the Tamil Nadu Government Servants Conduct Rules 1973, and the writ petitioner cannot be found faulted with on those lines.

4.The learned Counsel for the petitioner further relied on the judgment of the Hon'ble Supreme Court in the case of State of Uttar Pradesh and others Vs. Raj Pal Singh, reported in (2010) 5 Supreme Court Cases 783 and the relevant portions whereof read as follows:

"5.Though, on principle, the ratio in aforesaid cases would ordinarily apply, but in the case in hand, the High Court appears to have considered the nature of charges leveled against the 5 employees who stood charged on account of the incident that happened on the same day and then the High Court came to the conclusion that since the gravity of charges was the same, it was not open for the disciplinary authority to impose different punishments for different delinquents. The reasonings given by the High Court cannot be faulted with since the State is not able to indicate as to any difference in the delinquency of these employees.

6.It is undoubtedly open for the disciplinary authority to deal with the delinquency and once charges are established, to award appropriate punishment. But when the charges are same and identical in relation to one and the same incident, then to deal with the delinquents differently in the award of punishment, would be discriminatory. In this view of the matter, we see no infirmity with the impugned order requiring our interference under Article 136 of the Constitution."

hence, the learned Counsel prayed for a similar order in this writ petition also, which is not objected to by the learned Government



Advocate appearing for the respondents. Further, there is no counter forthcoming.

5. I have considered the submissions made by the respective learned Counsel on record and perused the documents filed in the form of typed set of papers.

6. It is apparent from the impugned order dated 17.10.2017 passed by the first respondent that the grounds raised in the review application had not been discussed. Further, the order dated 03.08.2010 passed in respect of the similarly placed persons was also not considered. In such circumstances, considering the facts and circumstances of the case and having regard to the submissions made by the learned Counsel on either side and also applying the observations of the Supreme Court in the decision cited on the side of the petitioner, this Court is inclined to set aside the orders impugned herein.

7. In such view of the matter, the impugned orders are set aside and the matter is remitted back to the 1st respondent, who, in turn, is directed to consider the case of the petitioner afresh, in the light of the order passed on 03.08.2010 with regard to the similarly placed person and pass appropriate orders, on merits and as per law, within a period of four weeks from the date of receipt of a copy of this order.

8. The writ petition is disposed of accordingly. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar/-

To

1. The Principal Secretary,
Health and Family Welfare Department,
Secretariat, Fort St George,
Chennai - 600 009.

2. The Commissioner / Director of Indian Medicine
and Homeopathy,
Arumbakkam, Chennai .



+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-53357[F] dated 12/03/2019)

+1 CC to M/s.SPL GP (SR-54144[F] dated 14/03/2019)
DS : 25/04/2019 : 4P/5C

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