



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.20760 of 2014

and

M.P(MD) .No.1 of 2014

WEB COPY

N.Velankanni

... Petitioner

-Vs-

1.The Dean

Government Medical College Hospital

Theni

Theni District

2.The Deputy Superintendent

Government Medical College Hospital

Theni, Theni District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.8320/E2/2013, dated 21.02.2014 in so far as punishment of stoppage of increment for a period of one year without cumulative effect issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is concerned and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar

For Ajmal Associates

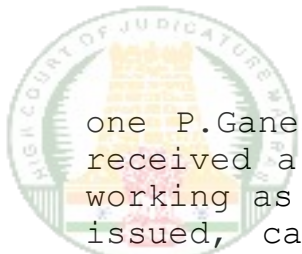
For Respondents : Mr.S.Dhayalan

Government Advocate

ORDER

The Writ petition has been filed to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.8320/E2/2013, dated 21.02.2014 in so far as punishment of stoppage of increment for a period of one year without cumulative effect issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is concerned and quash the same as illegal.

2. The learned counsel appearing for the petitioner would submit that the petitioner was appointed as Sweeper in the first respondent Hospital on 28.02.2006 through Employment Exchange on temporary basis and subsequently, her service was confirmed and probation was declared on 23.07.2010. Her service has been regularized with effect from 24.07.2009 by the second respondent in his proceedings dated 31.10.2011. While the matter stood thus, the petitioner was placed under suspension by the first respondent in his proceedings dated 04.12.2013 under Rule 17(e) of the Tamil Nadu Government Servant Conduct Rules, based on the complaint given by



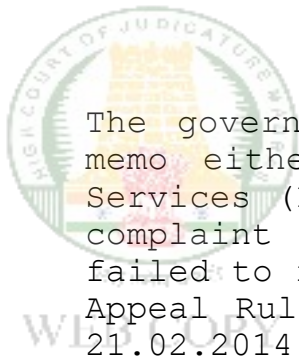
one P.Ganesan, alleging that one S.Tamilselvi, the Contract Worker received a sum of Rs.700/- as bribe for petitioner and others, who working as Record Clerk in the Hospital. Based on that, a notice was issued, calling upon the petitioner and other co-delinquents to appear for enquiry on 13.12.2013 before the Enquiry Officer. On receipt of such notice, the petitioner and other co-delinquents participated in the enquiry held on 13.12.2013. However, without conducting proper enquiry and without giving an opportunity to put forth her defence, the Enquiry Officer completed the enquiry. The first respondent by his impugned proceedings dated 21.02.2014 imposed a punishment of stoppage of annual increment for a period of one year without cumulative effect on 21.02.2014.

3.The learned counsel further submitted that without issuing any charge memo either under Rule 17(a) or under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and without issuing a complaint copy, imposed punishment against the petitioner and co-delinquents, is the violation of Article 14 of the Constitution of India. No Government Servant can be punished, without following the procedure as contemplated under Tamil Nadu Civil Services (Discipline and Appeal) Rules and the punishment of stoppage of annual increment for a period of one year without cumulative effect is contrary to law. Hence, he prays for allowing this Writ petition.

4.The learned Government Advocate filed a counter affidavit, stating that one Tamil Selvi has clearly confessed, corroborated and justified the misconduct committed by the petitioner and hence, the same was proved beyond reasonable doubt. The violation of principles of natural justice is not a straight jacket formula and it cannot be applied to all the facts of the case. He further contended that the suspension order itself clearly shows that she has been suspended only for the charge of demanding bribe and no charge memo would be needed and issuing charge memo would not make any difference. On seeing the plight of the petitioner, it was decided to give opportunity to the petitioner to mend her ways and hence, the punishment of one year increment without cumulative effect has been passed. Hence, he prays for dismissing this Writ petition.

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

6. It is an admitted fact that without following the due procedure as contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the punishment of stoppage of increment for one year without cumulative effect was imposed on the petitioner. The contention of the respondents that the violation of principles of natural justice is not a straight-jacket formula and it cannot be applied to all the cases, is against the settled law.



The government servant ought to have been issued with the charge memo either under rule 17(a) or 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, if there is any *prima facie* complaint is received. In the case on hand, since the respondents failed to follow the procedure contemplated under the Discipline and Appeal Rules, the impugned order passed by the 1st respondent dated 21.02.2014 is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

msa

To

1.The Dean
Government Medical College Hospital
Theni
Theni District

2.The Deputy Superintendent
Government Medical College Hospital
Theni, Theni District

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-103748[F] dated 06/12/2019)

+1 CC to M/s.SPL GP (SR-103842[F] dated 06/12/2019)

SMA/26/12/19/3P/5C

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