



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.415 of 2016

and

W.M.P. (MD) No.340 of 2016

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S.Indumathy

... Petitioner

-Vs-

1.The Principal Secretary to Government,
State of Tamil Nadu,
Labour and Employment (E1) Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Labour,
Chennai-600 006.

... Respondents

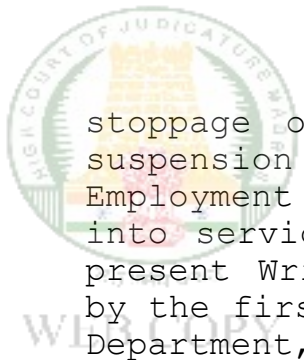
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(2D)No.31, Labour and Employment (E1) Department, dated 19.06.2015 passed by the first respondent herein and quash the same and consequently, direct the respondents herein to regularize the period of suspension of the petitioner with all consequential benefits.

For Petitioner : Mr.K.Hemakarthiskeyan
For Respondents : Mr.S.Dhayalan,
Government Advocate.

ORDER

The Government Order in G.O.(2D)No.31, Labour and Employment (E1) Department, dated 19.06.2015, passed by the first respondent is under challenge in the Writ Petition. Further direction is sought for to direct the respondents to regularize the period of suspension of the petitioner with all consequential benefits.

2.While the petitioner was working as Labour Officer, (Social Security Scheme), Trichy, she was suspended from service, by the order dated 12.07.2010. The charge memo, dated 15.10.2010 was issued containing 13 charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The petitioner has submitted her explanation and enquiry was conducted. The enquiry officer gave a report dated 04.12.2013, holding that the charges levelled against the petitioner were proved. The petitioner gave her representation dated 05.02.2014, offering her remarks on the report of the enquiry officer, dated 04.12.2013. The first respondent, by the impugned G.O.(2D)No.31, Labour and Employment (E1) Department, dated 19.06.2015, has imposed punishment of

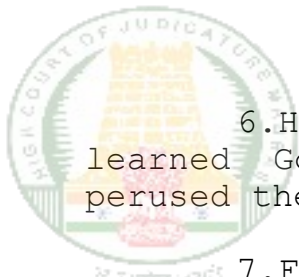


stoppage of increment for 5 years with cumulative effect. The suspension was revoked, by issuing G.O.(2D)No.30, Labour and Employment (E1), dated 19.06.2015 and the petitioner was reinstated into service on 03.08.2015. The petitioner has come out with the present Writ Petition, challenging the order of punishment imposed by the first respondent in G.O.(2D)No.31, Labour and Employment (E1) Department, dated 19.06.2015.

3.The learned counsel appearing for the petitioner contended that the first respondent, without considering the explanation submitted by the petitioner, except indulging in broad and sweeping generalizations, has passed the impugned order, without application of mind. The duties and responsibilities and other guidelines were issued only on 02.08.2010, whereas the petitioner was suspended from service on 12.07.2010. Key posts pertaining to implementation of the welfare schemes were not filled up and they were kept pending. The account books and other registers are to be maintained only by the Accounts Officer and it is the duty of the Data Entry Operators to maintain the relevant datas. The key posts were vacant and the petitioner as the Regional Head could not do the said work. The domestic enquiry was conducted in violation of the principles of natural justice and the petitioner was not given opportunity to examine the Board Secretary as witness. The petitioner has not committed any misconduct and the petitioner's defense was not considered in proper perspective and the enquiry officer's report is perverse. The petitioner was kept under suspension for three years and in such circumstances, the impugned order of punishment is, disproportionate and prayed for allowing the Writ Petition.

4.In support of her claim, the learned counsel appearing for the petitioner has relied upon the judgment reported in **2005 Writ L.R. 786 (State of Tamil Nadu represented by its Secretary to Government and others Vs. S.Mahalingam and others)**.

5.The respondents filed counter affidavit and denied the averments made in affidavit filed in support of the Writ Petition. The learned Government Advocate appearing for the respondents submitted that the petitioner did not discharge her duties and has failed to maintain necessary registers and supervise her subordinate in maintaining the required records. In view of the same, the Board has suffered heavy loss and welfare schemes were not implemented. The enquiry was conducted in a fair and proper manner. The petitioner did not seek examination of Board Secretary in the domestic enquiry. The first respondent, considering the enquiry report, explanation submitted by the petitioner, all the materials on record, has imposed punishment. The said punishment is proportionate to the proven charges and prayed for dismissal of the Writ Petition.



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

7. From the materials on record, it is seen that the charges levelled against the petitioner are mainly on the ground that the petitioner has not maintained mandatory records and registers, such as Cash Book, undisbursed pay register, acquittance register etc., for the period from 31.10.2008 till her suspension. The explanation submitted by the petitioner is that, key posts viz., Accounts Officer, Data Entry Operators were not filled up and therefore, the Board is responsible for not maintaining the registers and the same cannot be fastened on her. The respondents have not denied that the said posts were vacant. In view of lack of posts, the petitioner could not be expected to maintain registers, which is the duty of the Account Officer and Data Entry Operators. Further, the duties and responsibilities and other guidelines were issued only on 02.08.2010, whereas the petitioner was suspended from service on 12.07.2010 and the charges relate to earlier period.

8. From the enquiry report, it is seen that the respondents have not examined any witness to prove the charges levelled against the petitioner. On the other hand, they have marked only two letters issued by the Deputy Labour Commissioner, Dindigul, and letter of Deputy Labour Commissioner, Trichy, dated 20.07.2010, with enquiry report. On the other hand, the petitioner has produced 41 exhibits to substantiate her claim that she is innocent.

9. A reading of the impugned order shows that the first respondent has extracted the finding of the enquiry officer, holding that all the charges levelled against the petitioner are proved. From the said impugned order, it is seen that the respondents have not denied that the key posts of Account Officer, Data Entry Operators and Computer Operator were not filled up. The report of the enquiry officer is based on the assumption and surmises, which is perverse and rendered without there being any evidence. The first respondent has not properly appreciated the fact that the duties and responsibilities and guidelines were issued only on 02.08.2010 and charges levelled against the petitioner relate to earlier period and explanation submitted by the petitioner that key posts were not filled up, so as to enable the petitioner as Regional Head to implement the welfare schemes. The first respondent has also failed to consider the fact that the petitioner was kept under suspension. The reason given by the first respondent for imposing punishment of stoppage of increment for 5 years with cumulative effect, is perverse and the impugned order has been passed by mechanically accepting the report of the enquiry officer. The respondents have not proved the charges levelled against the petitioner and therefore, the impugned order of the first respondent in G.O.(2D)No.31, Labour and Employment (E1) Department, dated 19.06.2015, is set aside.



10. In the result, this Writ Petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

1. The Principal Secretary to Government,
Labour and Employment (E1) Department,
Fort St. George, Chennai-600 009.

2. The Commissioner of Labour,
Chennai-600 006.

+1 CC to SPL GP (SR-99972[F] dated 20/11/2019)

+1 CC to Mr.K. HEMAKARTHIKEYAN, Advocate (SR-100070[F] dated 21/11/2019)

W.P. (MD) No.415 of 2016
19.11.2019

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