

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.No.12250 of 2010

C.Ramasubba Reddy

... Petitioner

Vs.

1. The Secretary of Information
and Tamil Development Department
Secretariat, Chennai-600 009
- 2 The Director of Information and Public
Relation Department and Ex-Officio
Additional Secretary to the Government
8th floor, Secretariat, Chennai-600 009 ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in proceedings No.G.O.(D) No.590 dated 29.09.2009 and quash the same and direct the respondents to regularise the suspension period of the petitioner from 13.07.2005 to 03.12.2007 with all monetary and service benefits.

For Petitioners : Mr.M.Vijayakumar

For Respondents : Ms.R.Jananki, AGP

ORDER

Petitioner was appointed as Assistant Lecturer in editing in M.G.R. Government Film and Television Institute, Chennai. While he was in service, the petitioner was placed under suspension by proceedings No.4715/Admin II/2005-I dated 13.07.2005 in contemplation of an enquiry into allegations of serious malpractices committed by him. Thereafter a charge memo containing nine charges were issued to which he submitted his explanation. The Enquiry Officer had conducted detailed enquiry in which the petitioner had participated and gave evidence. The enquiry officer held that the charges were not proved. However, the Disciplinary authority in his Letter No.4715/Admin-2/2005-12 dated 24.08.2007 has communicated that he is not agreeing the findings of the enquiry officer and gave an opportunity to the

petitioner to make further representation. Thereafter, for the reasons recorded he imposed the punishment that the period between 13.07.2005 and 03.12.2007 spent in suspension by the petitioner can be treated as punishment. Thereafter, the petitioner was reinstated in service and made an appeal to the 1st respondent. The Appellate authority after getting the opinion of the Tamil Nadu Public Service Commission confirmed the punishment. Aggrieved over the same, the petitioner is before this Court.

2. Learned counsel for the petitioner would contend that the principles of natural justice has been totally violated in the conduct of enquiry proceedings. The order of the Disciplinary authority who was inimically disposed against the petitioner, on account of the previous court proceedings has imposed the order of punishment with malafide intention. There were no materials produced by the prosecution to prove the charges. On the other hand, he has marked documents to disprove the charges. The basis of the allegation that he has not obtained permission was disproved by production of document dated 16.12.2002 by which he was granted permission to obtain the property. Therefore, the order passed by the Disciplinary authority is malafide and the order passed by the Appellate authority without recording reasons is liable to be set aside for violation of principles of natural justice and non application of mind.

3. Per contra, the respondents filed a detailed counter denying all the allegations made by the petitioner. The learned Additional Government Pleader would vehemently contend that the enquiry proceedings were conducted in accordance with principles of natural justice and as per Rule 9 of Tamil Nadu Government Servants Conduct Rules, 1973 (i.e) Insolvency and habitual indebtedness is a misconduct. It is well proved by way of execution proceedings and summons received from the Civil Court in this regard. Therefore, the punishment imposed on the petitioner is very much valid and legal and does not require any interference. She would seek dismissal of the writ petition.

4. I have considered the rival submissions.

5. Facts are not in dispute.

6. Even though nine charges were framed against the petitioner most of the charges were based on documentary evidence. One of the charges is that the petitioner is said to have produced forged salary certificate and Form 16 before the bank had secured loan from HUDCO without getting prior permission from the department. However, a perusal of the records would go to show that no documents were marked on the

side of the prosecution to prove the charge. When a specific allegation is made that the petitioner used the forged documents and secured the loan, it is the duty of the prosecution to mark those documents by getting it from the bank to which those documents were submitted. It is surprising to note that the so called forged salary certificate and Form 16 and none of the documentary evidence pertaining to loan processes of the bank were marked before the enquiry officer. It is even more surprising that no presenting officer was also appointed by the respondent for marking the documents no witnesses were examined to prove the charges. When department witnesses and other witness or the Branch Manager of the bank from whom the petitioner has secured loan by producing forged documents were not examined, it cannot be said that there is any legal evidence to hold the charges were proved. The enquiry officer has rightly held that none of the charges were proved. The Disciplinary authority for deviating from the views and finding of the enquiry officer, shall rely on the legal evidence available before him. He shall record reasons as to why he is not accepting the findings and shall substantiate through the available material evidence, his conclusion to deviate from the findings of the enquiry officer is founded on reasons. But in the instant case, without any material and legal evidence, base on his personal knowledge, the disciplinary authority held charges proved and imposed the punishment.

7. In the considered opinion of this Court, such finding without any material evidence is by itself perverse, illegal and amount to arbitrary exercise of powers. As contended by the learned counsel for the petitioner it cannot be ruled out that the order of injunction restraining the respondent institute promoting anybody to the post of Principal in W.M.P.No.20874 of 2004 in W.P.No.17565 of 2004 dated 25.06.2004 may be the basis for the Disciplinary authority to hold the charges proved without any material legal evidence. In that event, the contention of the learned counsel for the petitioner that the punishment is borne out by malafides is not without substance. Be that as it may, on the face of the finding of the Disciplinary authority without material evidence is perverse and the confirmation of the same by Appellate authority without addressing the grounds of appeal raised by the petitioner is illegal and bad for non application of mind.

8. In such circumstances, I have no hesitation to set aside the impugned order passed by the 2nd respondent in Proc.No.4715/AdminII/2005-I dated 13.07.2005 confirmed by the Appellate authority by proceedings No.G.O.(D) No.590 dated 29.09.2009 and direct the respondents to disburse all the monetary and attendant benefits due to the petitioner within a period of eight weeks from the date of receipt of a copy of this order.

Writ petition is allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

To

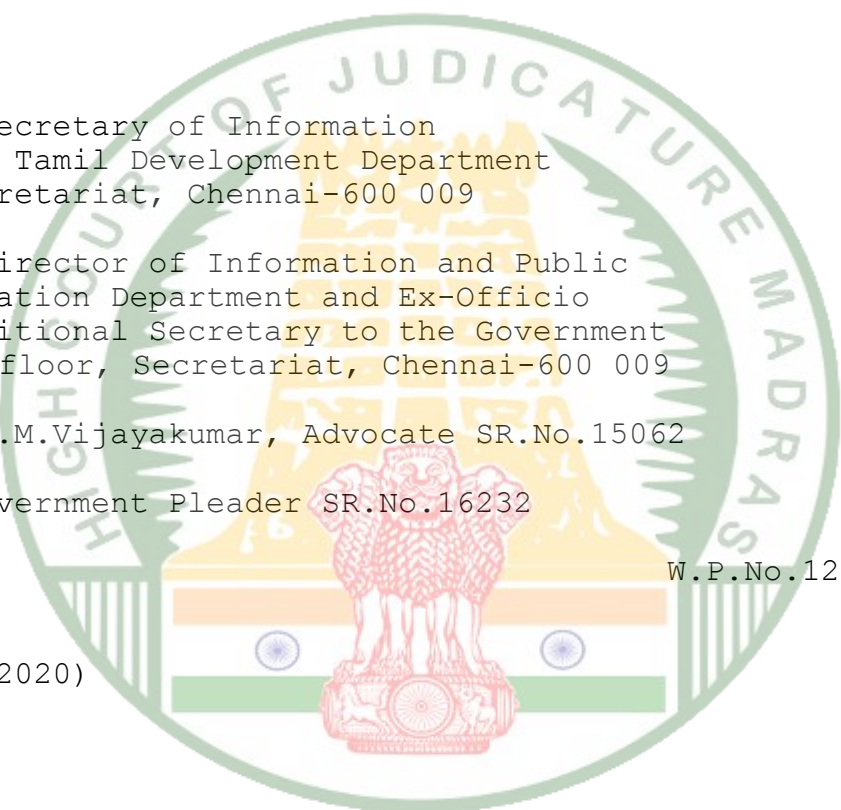
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+1cc to Mr.M.Vijayakumar, Advocate SR.No.15062

+1cc to Government Pleader SR.No.16232

W.P.No.12250 of 2010

NRL (CO)
GMY (10/09/2020)

The seal of the High Court of Madras is a circular emblem. It features a central image of the Lion Capital of Ashoka, which is a four-lion capital standing on a base. The capital is flanked by two smaller lions. The entire emblem is set against a background of a green and white striped field. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a circular border around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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