

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.3930 of 2008

R.Selvaraj

... Petitioner

Vs.

- 1.The State of TamilNadu
Rep.by its Secretary to Government,
Labour and Employment Department,
Fort St.George,
Chennai - 9.
- 2.The Special Commissioner and Commissioner,
Commissionarate of Employment and Training,
Guindy, Chennai - 32. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus calling for the records in connection with the impugned order passed by the first respondent in G.O. (D).No.848 Labour and Employment Department dated 10.12.2007 and quash the same and consequently direct the respondents to confer Promotion and other benefits with effect from the date of promotion given to his juniors, without reference to the orders of punishments dated 24.06.2004 and 10.12.2007 and charge memo dated 23.08.2006.

For Petitioner : Mr.V.Ravikumar

For Respondents: Mr.P.Chinnadurai
Additional Government Pleader

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O R D E R

The petitioner while serving as District Employment Officer, Kancheepuram, a charge memo dated 23.08.2006 was issued to him by the 2nd respondent. The petitioner submitted his explanation to the charge memo. An Enquiry Officer was appointed to enquire into the charges. After a full fledged enquiry, the Enquiry Officer has held that the charges were not proved. However, the 1st respondent refused to accept the findings of the Enquiry Officer and issued a letter dated 04.04.2007 to the petitioner calling for explanation as to why he cannot deviate from the findings of the Enquiry Officer on the following grounds.

(i) There is gross violation of the rules and procedures to be followed for sponsoring the candidates for employment from the AO's Office, which was admitted in a light manner as if this act does not require any departmental action. Because of this act of AO genuine candidates were denied of their opportunity for employment.

(ii) When the seniority of the candidates are very much available to be sent to the employer, the AO had deliberately showed favour to Thiru.A.K.Anandan by relying on the advertisement made in the newspaper. It is found that there was deliberate delay in sending the available persons.

(iii) It is found that the rules and instructions contained in the National Employment Service Manual have been grossly violated by the AO in this case.

2. Since the petitioner did not submit his explanation within the stipulated period of 15 days, the first respondent by way of G.O.No.B2/848 Labour and Employment Department dated 10.12.2007 has held that the charges proved and imposed the punishment of withholding increment for three years with cumulative effect. Aggrieved over the same, the petitioner is before this Court.

3. According to the petitioner, the reason stated in the letter given by the Disciplinary Authority is not acceptable. The findings of the Enquiry Officer is very abrupt and adequate opportunity was not given to him to explain his case. Further, the order passed by the Disciplinary Authority is very cryptic without discussing the defence raised by him and without recording such findings.

4. The learned counsel would rely on the judgment of this Court reported in 2018 (2) WritLR 117 [R.Bagavathi Chandran Vs. The Inspector General of Registration and another], wherein this Court relying on various judgments of the Hon'ble Supreme Court has held that the Disciplinary Authority must record reasons for coming to conclusion to inflict punishment on delinquent and if reasons were not recorded, the decision stands vitiated for non disclosure of reasons.

5. The learned Government Advocate appearing for the respondent would contend that opportunity was given to the delinquent to explain his case and that the Disciplinary Authority has taken a decision not accepting the finding of the Enquiry Officer. He further contended that after affording opportunity to the delinquent, it can impose punishment.

6. In the instant case, the Disciplinary Authority has given three reasons for deviating from the decision taken by the Enquiry Officer. The petitioner has failed to send his

explanation and therefore, now he cannot come and complain that no reasons were recorded. The order passed by the Disciplinary Authority is with reasons stated therein and therefore, the punishment need not be interfered with.

7. Heard the rival submissions. From a reading of the punishment order, it is seen that the Disciplinary Authority has given three grounds for deviating from the findings of the Enquiry Officer. The reading of the three grounds reveal that the disciplinary authority had not taken any legal evidence to differ with the findings of the Enquiry Officer. Without giving specific details as to the perverse finding, on vague statements explanation was called for. Even when the order passed there is no specific finding as to who were the persons affected and what were the rules / regulations and instructions were violated. It is held that the changes stood proved, since the delinquent has not filed his explanation. It is well settled that the disciplinary authority is entitled to differ or disagree with the findings of the Enquiry Officer. But for that the basic materials with tentative reasons shall be disclosed. If no reasons are disclosed it is violative principles of natural justice. In the instant case, the show cause notice as well as the impugned order of punishment do not disclose any reason for disagreeing with the findings of the Enquiry Officer. As held by the Division Bench of this Court in the case of P.Govindan Vs. State of Tamil Nadu [2006 (1) MLJ 624], wherein it is held as follows:-

"... we find that except for mere differing from the findings arrived at by the Enquiry Officer, no material whatsoever had been relied on to take a different view in this matter"

8. As held by the Hon'ble Division Bench the disciplinary authority had not disclosed the materials and tentative reasons to disagree with the findings of the Enquiry Officer. The points mentioned in the show cause notice is more in the nature of charges and rather than that of reasons for disagreeing.

9. Further, as stated supra, the punishment order also does not disclose reasons for disagreeing and imposing the punishment.

10. I concur with the findings of this Court in judgment reported in 2018 (2) CWC P 580 [R.Bagavathi Chandran Vs. The Inspector General of Registration and another], wherein it is held that the impugned order is liable to be quashed if it does not disclose the reasons. The present impugned order is one example of passing cryptic orders without disclosing reasons. Hence it is liable to be quashed as one passed in violation of principles of natural justice.

11. Therefore, the impugned order passed in G.O.(D). No. 648 Labour and Employment Department dated 10.12.2007

stands set aside. The respondents are directed to workout the admitted monetary benefits and other attendant benefits and if the petitioner is due for any promotion, it can be considered on notional basis. The said exercise shall be considered within a period of twelve weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
State of TamilNadu,
Labour and Employment Department,
Fort St. George, Chennai - 9.

2. The Special Commissioner and Commissioner,
Commissionerate of Employment and Training,
Guindy, Chennai - 32.

+1 cc to Mr. V. Ravikumar, Advocate, sr. 9605

+1 cc to Government Pleader, sr. 10428.

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