



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2020

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.1200 of 2013

and

M.P(MD)No.1 of 2013

WEB COPY

Aron K.Thiraviaraj

.. Petitioner

Vs.

The Manager (TP-BPN),
50, Building,
BHEL,
Trichy - 14.

.. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned order of penalty advice (No. BP:P2:2205238), dated 17.12.2012 passed by the respondent and quash the same and pass such further or other orders.

For Petitioner : Mr.T.Antony Arul Raj

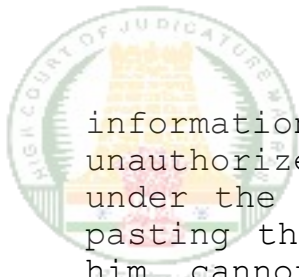
For Respondent : Mr.Raguvaran Gopalan
for Mr.K.Prabhkar

ORDER

This writ petition has been filed for issuance of a Writ of Certiorari to call for the records relating to the impugned order of penalty advice (No.BP:P2:2205238), dated 17.12.2012 passed by the respondent and quash the same.

2.The case of the petitioner is that the petitioner is working as a Crane Operator Grade II in the respondent unit. He was issued with a show cause notice dated 01.12.2011 alleging misconduct by communicating official details obtained through RTI Act in his wife's name, for which, he has given a reply on 15.12.2011. Being not satisfied with the same, a charge memo was issued on 23.01.2012 alleging that he has committed misconduct under Rule 51 and Clauses 16 and 27 of Rule 60 of the Standing Orders of the respondent company. Thereafter, an enquiry officer was appointed and he submitted a report stating that the charges levelled against him are proved, based on which, the impugned order of punishment (penalty advice), dated 17.12.2012, was passed. Against which, the present writ petition has been filed.

3.The learned counsel for the petitioner submitted that the



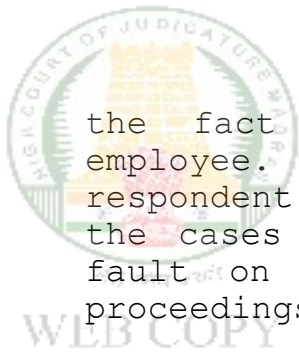
information obtained under the RTI Act cannot be construed as unauthorized information. The petitioner obtained the information under the RTI Act and even assuming that the same was disclosed by pasting the details at Canteen No.58, the charges levelled against him cannot be construed as misconduct. Therefore, the very foundation of the issuance of charge memo and departmental proceedings are baseless. The respondent is not the appointing authority and hence, he has no power or authority to impose any punishment. Thus, he prayed to quash the impugned punishment order.

4.The learned counsel appearing for the respondent submitted that even if the details are obtained under the RTI Act, the petitioner being an employee of the organization, has to ensure that the interest of the company is protected in dealing with such details. He has obtained information in the name of his spouse and pasted it and for the said misconduct, a charge memo was issued on 23.01.2012 and he submitted his explanation on 08.02.2012. Being dissatisfied with the same, enquiry has been conducted and based on the enquiry report, the impugned punishment order was passed. As per the provisions of the Standing Orders, Delegation of Powers to exercise disciplinary action shall be as per the guidelines of the company. The Conduct, Discipline and Appeal Rules have clearly provided that Executives in E1 cadre and above, shall be the competent authority to impose penalty irrespective of the fact whether he is the appointing authority of a delinquent employee. He further submitted that one official, who was charged for misconduct by refusing to receive an official communication, was imposed with the punishment, which was challenged in W.P(MD)No.9868 of 2012 and this Court has modified the punishment only. Thus, he prayed to dismiss the writ petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6.The petitioner was issued with a charge memo alleging misconduct by communicating official details obtained through RTI Act in his wife's name. After enquiry, he was imposed with the punishment of pay reduction by two stages for a period of one year with cumulative effect. The petitioner has challenged the same on the grounds that the respondent is not the appointing authority and he has no power or authority to impose any punishment. Further, the information given under the RTI Act cannot be construed as unauthorized communication of information.

7.Regarding competency, in Standing Order 65 of the respondent company, it is stated that the authorities competent to inflict punishment can be notified by the Management separately. In the counter affidavit, it is stated that the Executives in E1 cadre and above shall be competent authority to impose penalty irrespective of



the fact whether he is the appointing authority of a delinquent employee. Therefore, as per the Standing Orders of the company, the respondent Manager was vested with the power to impose punishment in the cases of disciplinary proceedings and therefore, there is no fault on the part of the respondent to initiate disciplinary proceedings.

8.The second limb of argument advanced on the side of the petitioner is that the information given under the RTI Act cannot be construed as unauthorized communication of information. The allegation against the petitioner is that he committed misconduct of communicating the official details obtained through RTI Act in the name of his wife, which he is not authorised to publish and the said act will amount to violation of Rule 51 and Clauses 16 and 27 of Rule 60 of the Standing Orders of the respondent company. Rule 51 and Clauses 16 and 27 of Rule 60 of the Standing Orders of the respondent company, read as follows:

"51) Unauthorised communication of information:

No employee shall, except in accordance with any general or special order of the Managing Director/Resident Director/General Manager or in the performance in good faith of the duties assigned to him communicate directly or indirectly, any official document or information to any employee or any other person to whom he is not authorized to communicate such document or information.

... ..

60) Acts and omissions constituting misconduct:

... ..

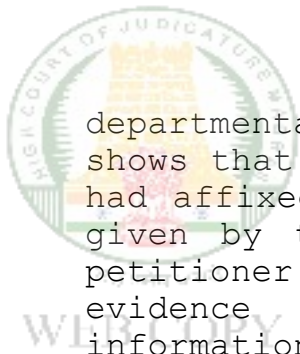
(16) Unauthorised communication of official documents or information and disclosure to any unauthorized person of information relating to the company's operations and business.

... ..

(27)Any Breach of these standing orders".

9.The very purpose of RTI Act is to facilitate the general public to obtain information so as to promote transparency in the particular organization. Therefore, the disclosure of information received through RTI Act cannot be construed as unauthorized information. The order relied on by the learned counsel for the respondent in W.P(MD)No.9868 of 2012, dated 24.09.2019, is with regard to the charge that the delinquent had committed misconduct by refusing to receive an official communication issued by the Executive and therefore, the said charge is a different one from that of the charge levelled against the present petitioner.

10.The charge memo itself is based on the unauthorized communication of the information and in my considered opinion, the very foundation of the issuance of the charge memo and the



departmental proceedings, are baseless. Even a perusal of records shows that there is no evidence as to whether the petitioner himself had affixed the information in the canteen. A perusal of evidence given by the witness during enquiry, does not indicate that the petitioner affixed the information. Even assuming that there is evidence that the petitioner affixed the information, the information received under the RTI Act, cannot be construed as unauthorized communication and therefore, the respondent ought not to have imposed such a grave punishment of pay reduction by two stages for a period of one year with cumulative effect. Therefore, on this ground alone, this Court is inclined to interfere with the impugned order and accordingly, the impugned order of penalty advice, dated 17.12.2012, passed by the respondent, is quashed. The writ petition is allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

smn

To

The Manager (TP-BPN),
50, Building,
BHEL,
Trichy - 14.

+1 CC to M/s.K.PRABHAKAR, Advocate (SR-8527[F] dated 26/02/2020)

+1 CC to M/s.T.ANTONY ARULRAJ, Advocate (SR-8514[F] dated 26/02/2020)

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