



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.07.2020

DELIVERED ON : 12.08.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).Nos.13202 and 16035 of 2013

and

MP(MD).No.1 of 2013 in WP(MD).no.16035 of 2013

S. Balakrishnan : Petitioner in both W.Ps

Vs.

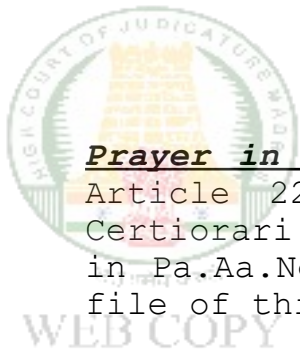
1. The Director,
Fire and Rescue Department,
Egmore,
Chennai - 600 008.

2.The Deputy Director,
Fire and Rescue Department,
South zone,
Near Periyar Bus Stand,
Madurai.

3.The Divisional Officer, Fire and Rescue Department,
Kanyakumari Division,
Trivandrum Road,
Near Collectorate,
Nagercoil,
Kanyakumari District. : Respondent 1 to 3 in both W.Ps.

4.Th. Selvaraja ... 4th respondent in W.P(MD).No.13202 of 2013

Prayer in W.P(MD).No.13202 of 2013: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.No.4873/A/2011 dated 24.04.2013 on the file of the third respondent and quash the same and consequently, direct the respondents to regularize the period from 13.08.2011 to 22.09.2011 and 23.09.2011 to 10.11.2011 and consider the petitioner for promotion to the post of Leading Fireman and also to award Pongal Bonus for the year 2011 to 2012 within the time stipulated by



Prayer in W.P(MD).No.16035 of 2013 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned order in Pa.Aa.No.247/2013 Na.Ka.No.4873 /A/2011, dated 09.10.2013 on the file of third respondent signed on 06.09.2013 and quash the same.

For petitioner in both W.Ps. : Mr. Karthick
for M/s. T. Lajapathi Roay

For Respondents : Mr.G. Gunaseelan Muthaiah
Additional Government Pleader

ORDER

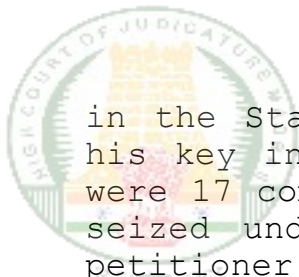
The very same petitioner has filed these two writ petitions and the prayer in both the Writ Petitions are as follows: _

"(a) The Writ Petition in W.P(MD).No.13202 of 2013 is filed to quash the the impugned order dated 24.04.2013 passed in Na.Ka.No.4873/A/2011 on the file of the third respondent and consequently, direct the respondents to regularize the period from 13.08.2011 to 22.09.2011 and 23.09.2011 and consider the petitioner for promotion to the post of Leading Fireman and also to award Pongal Bonus for the year 2011 to 2012 within the time limit to be stipulated by this Court.

(b) The Writ Petition in W.P(MD).No.16035 of 2013 is filed to quash the impugned order dated 06.09.2013 passed in Pa.Aa.No.247 /2013 Na.Ka.No.4873 /A/2011 on the file of the third respondent."

2. The necessary factual position for determination of the issue are as under:

3. The petitioner herein while working as a Fireman in Kanyakumari Fire and Rescue Service Station, based on the complaint dated 03.08.2011 received in the name of Staff addressed to third respondent received on 05.08.2011 through Tapal, it was alleged that one Balakrishnan, Fireman of the Kanyakumari Fire and Rescue Service Station is selling and renting out obscene CD to public and staff and thereby earning huge amounts. On receipt of the said complaint, the respondent made a surprise visit to the Kanyakumari Fire and Rescue Service Station on 05.08.2011. At that time all Staff members including the petitioner were present and regular inspection was made. To ascertain the truth of the allegation levelled in the petition, the lock of the personal trunk box of the petitioner kept



in the Station premises was opened by the petitioner himself with his key in the presence of other staff members. On search, there were 17 compact discs and other 9 documents found out and they were seized under proper Attatchi. The compact discs seized from the petitioner's box was sealed in a separate cover in the presence of the petitioner and other staff members under proper acknowledgment. On 08.08.2011, the sealed cover containing the seized CDs and documents were sent to the Assistant Divisional Officer, Kanyakumari Division to verify the content and other nature of seized CDs and other documents and to report compliance. On 10.08.2011, the Assistant Divisional Officer, Fire and Rescue Services, Kanyakumari Division received the said materials and verified the same in the presence of the Station staff members including the petitioner and sent a detailed report to the respondent on 10.08.2011. The Assistant Divisional Officer, Fire and Rescue Services, Kanniyakumari Division in his report, dated 10.08.2011 has confirmed that 12 CDs contain obscene and vulgar scenes and 4 CDs containing obscene Malayalam sexual films. One CD was found not operating.

4. Besides the verification of other seized records revealed that the petitioner owns one Victor GX Motorcycle with gear bearing Registration No.TN74-J-7724 registered in his name. The verification revealed that the said motorcycle was purchased and registered on 16.09.2005 without proper intimation to the first respondent herein, who is the competent authority which is mandatory as per Tamil Nadu Government Servant's Conduct Rules. Hence, the possession of obscene CDs by the petitioner and purchase of motorcycle without intimation to the appropriate authority were found out. On 12.08.2011, based on the report of the Assistant Divisional Officer, the petitioner herein was placed under suspension under Rule 17(e) of the Tamil Nadu Civil Services (Discipline an Appeal) Rules and Regular charges under Rule 17(b) was also issued against him on 12.08.2011. The requested copies of the documents sought for by the petitioner were given to him on 27.08.2011 under proper acknowledgment and after receiving the records the defacto petitioner has submitted his reply on 05.09.2011 denying the two counts of charges levelled against him. The respondent as a disciplinary authority by invoking the provision of rule 17(d) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 and final orders were passed by the respondent by dismissing the petitioner from service in the interest of maintaining high standard of discipline.

5. Hence, the petitioner has filed W.P(MD).No.11148 of 2011 before this Court and this Court, by order dated 28.09.2011 granted interim stay in M.P(MD).No.1 of 2011 in W.P(MD).No.11148 of 2011. Based on the representation of the petitioner, he was reinstated into service. Subsequently, the Writ Petition was allowed and the impugned order issued in Pa.Aa.No.283/2011, Na.Ka.No.4873/A/2011, Ku.Pa.No.1/2011, dated 21.09.2011 on the file of the respondent was set aside.



6. As he was continuing in the service pending Writ Petition, subsequent to the above said order passed in W.P(MD).No. 11148 of 2011 also he was continuing in the service. However, the promotion was not given and notice was issued for conducting an enquiry under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and hence, he has preferred W.P(MD).No. 16035 of 2013 and the other writ petition in W.P(MD).No. 13202 of 2013 for the service benefits of promotion and pongal bonus.

7. The learned counsel appearing for the petitioner submitted that as against the order of punishment imposed by the disciplinary authority and appellate authority, the petitioner has filed W.P(MD).No.11148 of 2011 and the same was allowed and subsequently, he was reinstated in service. However, no promotion was given to the post of Fireman and also not awarded any benefits for the year 2011 and 2012 and hence, these Writ Petitions have been filed.

8. The learned Additional Government Pleader appearing for the respondents filed counter and contended that though the alleged punishment was set aside on the ground of violation of principles of natural justice, the second respondent has issued a fresh charge memo and also conducting the enquiry. Hence, the petitioner has filed the present writ petitions.

9. On perusal of the order passed by this Court in the above writ petition in W.P(MD).No.11148 of 2011, dated 29.01.2013, this Court finds that entire order of punishment was set aside and no liberty was given to the respondents to conduct fresh enquiry. The contention of the writ petitioner that when the punishment was set aside in the earlier writ petition, the same set of charge would not stand for reason. Therefore, this Court finds that the present impugned order suffers from non application of mind. In the absence of any liberty to hold fresh enquiry, the respondents could not conduct an enquiry nor direct the petitioner to stand on the enquiry. Since the order of dismissal was set aside by this Court in the earlier Writ Petition, the charge memo does not survive any more.

10. Hence, the impugned order passed by the third respondent in W.P(MD).No. 13202 of 2013, dated 24.04.2013 is set aside and the W.P(MD).No.13202 of 2013 is allowed. In view of the order passed in the said Writ Petition, the impugned order passed by the third respondent dated 09.10.2013 also set aside and the W.P(MD).No.16035 of 2013 is allowed.

11. In view of the above, the petitioner is entitled for regularization of the period mentioned in writ petition and the same to be treated as leave period subject to availability of leave



subject to the availability and on the point of promotion the respondents are directed to give notional promotion and if found to be otherwise eligible. No costs. Consequently, connected Miscellaneous Petition is closed.

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Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Director,
Fire and Rescue Department,
Egmore, Chennai - 600 008.

2.The Deputy Director,
Fire and Rescue Department,
South zone, Near Periyar Bus Stand, Madurai.

3.The Divisional Officer, Fire and Rescue Department,
Kanyakumari Division,
Trivandrum Road,
Near Collectorate,
Nagercoil,
Kanyakumari District.

+1cc to Mr.T.Lajapathy Roy, Advocate, SR.No.14030/2020.
+1cc to Special Govt.Pleader Sr.No.13945

ORDER MADE IN
WP(MD).Nos.13202 and 16035 of 2013 and
MP(MD).No.1 of 2013 in WP(MD).No.16035 of 2013
12.08.2020

trp
SDS (21.08.2020) 5P-6C