



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.09.2020
DELIVERED ON : 03.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.5544 of 2014

V. Rathinam : Petitioner
Vs.

1.The Government of Tamil Nadu,
rep. by the Secretary to the Government,
Public Works (F2) Department,
Secretariat, For St. George, Chennai.

2.The Engineer in Chief WRO &
The Chief Engineer (General) PWD,
Chepauk, Chennai - 5.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned G.O.(D).No.43, Public Works (F2) Department, dated 30.01.2014 passed by the first respondent wherein punishment was imposed on the petitioner and quash the same.

For petitioner : Mr. M. Saravanan
For Respondents : Mr. M. Muniasamy
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent in G.O.(D).No.43, Public Works (F2) Department, dated 30.01.2014.

2. Challenging the order of punishment of stoppage of increment for one year with cumulative effect, the petitioner has filed this Writ Petition.

3. The facts that are necessary for the case of the Writ Petitioner are as follows:

(i) An appropriate investigation authority held the following allegation as substantiated against the petitioner herein and recommended for initiation of departmental disciplinary action



"Thiru V. Rathinam, Draughting Officer, office of the Executive Engineer, Ramanathapuram, has demanded Rs.100/- as bribe on 18.04.2005 at about 8.00 p.m., at his office from the complainant Thiru. R.Boominathan for submitting the pending quotation bill to the Executive Engineer."

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(ii) Accepting the recommendation of the appropriate investigation authority, remittal orders were issued to the second respondent herein in G.O(D).No.129, Public Works Department, dated 26.03.2008 to initiate departmental disciplinary proceedings against the petitioner herein. Accordingly, the second respondent herein initiated disciplinary action against him under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in proceedings No.CII(3)/6967/2007-4, dated 19.05.2008. The case was finalized with the imposition of the punishment of withholding of increment for one year with cumulative effect in G.O(D).No.603, Public Works Department, dated 16.12.2010. Aggrieved by the said order, he preferred a Review Petition before the first respondent. It was rejected by the first respondent in G.O(D).No.43, Public Works Department, dated 30.01.2014. Challenging the said order, the petitioner has filed the present Writ Petition before this Court.

4. The learned counsel for the petitioner submitted that when the Enquiry Officer held that the charges were not proved, without indicating any reasons, the disciplinary authority had issued show cause notice in deviating the findings of the Enquiry Officer and without discussing about the grounds raised by the petitioner, the Disciplinary authority has mechanically passed an order. The petitioner has filed review petition and the same was dismissed. Both the orders of the disciplinary authority and the revisional authority are non speaking order and in view of the punishment inflicted upon the petitioner after retirement, his pension amount was reduced considerably and hence, he prayed for allowing of this writ petition.

5. Mr.M.Muniyasamy, the learned Additional Government Pleader appearing for the respondents submitted that in the show cause notice, the disciplinary authority has indicated the reason for deviating from the finding of the Enquiry Officer and the order passed by the Disciplinary Authority is a speaking order. In view of the evidence of P.Ws.1,2,3, 4 and 6, the findings of the Enquiry Officer are proved and the charges were also proved and the punishment is also in consonance with the charges.

6. After hearing the learned counsel on either side and after perusing the charges and other materials, this Court finds that the following charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were framed against the petitioner by the second respondent in charge Memo No.CII(3)/6967/2007-4, dated 19.05.2008.



Charge I :

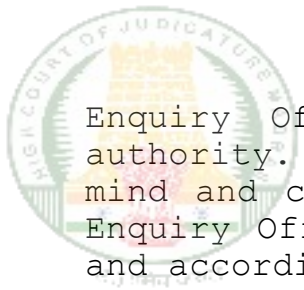
That Thiru V. Rathinam, Draughting Officer, in his former capacity as Junior Draughting Officer, Public Works Department, Buildings (Construction and Maintenance) Division, Ramanathapuram, actuated by corrupt motive and in abuse of his official position and authority, had committed official misconduct and misdemeanor on 20.04.2005 and 21.04.2005, demanded an illegal gratification of Rs.100/- from Thiru. R. Boominathan, Contractor, for submitting the pending bills to the Executive Engineer, Public Works Department, Buildings (Construction and Maintenance) Division, Ramanthapuram.

Charge 2:

That Thiru. V. Rathinam, Draughting Officer, by indulging in the aforesaid activities, had exhibited his disintegrity and failure in the discharge of his duties as a faithful Government Servant. Thus, he had conducted himself in a manner unbecoming of a Government Servant as warranted in Rule 20 of the Tamil Nadu Government Servant's Conduct Rules, 1973.

7. The petitioner herein has submitted his explanation. An inquiry officer appointed to inquire into the matter, held the charges framed against the petitioner herein as not proved. The first respondent herein, the disciplinary authority, after examining the report of the inquiry officer observed that the charges could have been held proved on the basis of the preponderance of probability, if the depositions of witnesses PW.1,3,6 and 9 were taken into consideration by the Enquiry Officer. Therefore, he chose to differ from the findings of the inquiry officer and held both the charges against the petitioner herein as proved. A copy of the report of the Enquiry Officer with reasons for deviation from his findings was communicated to the petitioner herein and his further representation was called for. The petitioner herein submitted his further representation in letter dated 14.09.2010. After examining his further representation, the charges were held as proved against him and the punishment of withholding of increment for a period of one year with cumulative effect was imposed on the petitioner on 16.12.2010. Aggrieved by the same, the petitioner herein preferred a Review Petition, dated 24.01.2011 before the first respondent herein. His review petition was entertained and the views of the Tamil Nadu Public Service Commission under Regulation 18(1)(a) of the Tamil Nadu Public Service Commission Regulations 1954 were called for. The Tamil Nadu Public Service Commission advised the Government to dismiss the review petition submitted by the petitioner herein as devoid of merits. Accordingly, his review petition was rejected on 30.01.2014.

8. From the records it is seen that a detailed order was passed and the recovery was made as per Rules. Taking deviation, from the finding of the Enquiry Officer by the disciplinary authority has clearly indicated to the petitioner in the communication calling for his representation. It remains to be stated that the



Enquiry Officer's report is not binding upon the disciplinary authority. The disciplinary authority had independently applied his mind and come to the conclusion that the findings rendered by the Enquiry Officer on the statement of witnesses are not satisfactory and accordingly, assigned the reasons.

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9. Furthermore, the disciplinary authority has got the reasons to believe that Enquiry Officer had failed to appreciate wherein the evidence adduced by the departmental evidence during the enquiry and hence, the disciplinary authority within his domain has properly applied his mind for not accepting the report of the Enquiry Officer and hence, I find that there is no procedural violation as such the disciplinary authority has entitled to take deviation from the finding of the Enquiry Officer.

10. However, it appears that based upon the statement of witnesses PWs.1, 3 and 6, the disciplinary authority has come to the conclusion that the charges framed against the petitioner was proved and passed order. After perusing the evidence of PW.1 - Boominathan, this Court finds that there is nothing in support of the charge on the point of demand of Rs.100/- and hence, this Court has valid reason to interfere with the order passed by the disciplinary authority as confirmed by the appellate authority.

11. During cross-examination, P.W.1 has replied that he had given a complaint against the petitioner, since the due amount to him for the work done in the Court Complex building was delayed for the past one year and furnished his report. It seems that P.W.1, who is the contractor of the said work and the person given the complaint to the Vigilant Department, had revenged and motivation to Thiru.V.Rathinam, Accused Officer, since Thiru.V.Rathinam returned the pending quotation to him without taking action in favour of him and hence, he had not committed any irregularities violating the Government Servant Conduct Rules.

12. In this view of the matter, this Writ Petition is allowed and the impugned G.O.(D).No.43, Public Works (F2) Department, dated 30.01.2014 passed by the first respondent is quashed. No costs.

Sd/-

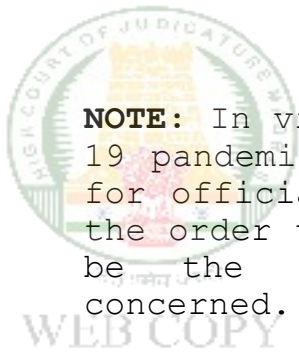
Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

trp



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 Secretary to the Government,
Public Works (F2) Department,
Secretariat, For St. George,
Chennai.
2. The Engineer in Chief WRO &
The Chief Engineer (General) PWD,
Chepauk, Chennai - 5.

+1 CC to the SPL GP SR-21090.

+1 CC to Mr.N.C.ASHOK KUMAR, Advocate SR-20950.

ORDER MADE IN
WP(MD).No.5544 of 2014
03.11.2020

SJ(CO)
CS(23.11.2020) 5P 5C