



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 04.12.2019

ORDER PRONOUNCED ON : 01.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.16294 of 2015

and

M.P(MD)No.1 of 2015

G.Kumar

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by its Principal Secretary to Govt.
Home (Transport II-A) Department,
Secretariat, Fort.St.Geroge,
Chennai-600 009.

2.The Transport Commissioner,
Ezilagam,
Chepauk,
Chennai-600 005.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the impugned punishment order passed in proceedings R.No.7462/V6/2004 dated 03.11.2006 and consequential rejection of appeal by the first respondent vide impugned Government Order issued in G.O.(D) No.561, Home (Tr.II-A) Department dated 28.07.2015 and quash the both as illegal and arbitrary and consequently direct the respondents to re-fix my seniority in the post of Assistant for the year 2005-2006 and thereby promote the petitioner accordingly with all service and monetary benefits.

For Petitioner : Mr.G.Thalaimutharasu
For R1 & R2 : Mr.S.Dhayalan
Govt.Advocate

ORDER

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent in connection with the impugned punishment order passed in proceedings R.No.7462/V6/2004 dated 03.11.2006 and consequential rejection of appeal by the first respondent vide impugned Government Order issued in G.O.(D) No.561, Home (Tr.II-A) Department dated 28.07.2015 and quash the both as illegal and arbitrary and consequently direct the respondents to re-fix my seniority in the post of Assistant for

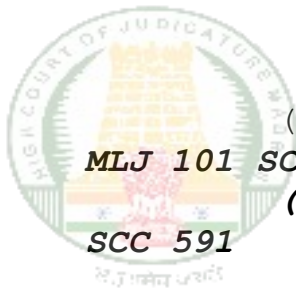


the year 2005-2006 and thereby promote the petitioner accordingly with all service and monetary benefits.

2. The petitioner would aver among other things that he joined as an Assistant on 08.09.2000 in the respondents office and by dint of hardwork, he rose to the post of the Superintendent on 01.12.2014. While so, when the petitioner was working as Junior Assistant in the RTO office at Karur, he was issued with 17(b) charge by the Deputy Transport Commissioner, Tiruchirappalli in Memo No.Confd1.3/DTC/Trichy/2004 dated 11.03.2004 framing single count of charge on account of the inspection done on 10.09.2003 that 57 goods vehicle check reports were kept pending without further action, permit register not maintained properly and personal registers not maintained properly. The petitioner gave explanation and an enquiry officer was appointed and he gave findings to the effect that the irregularities have not been committed with dishonest motive. But, without accepting the findings, the second respondent had imposed a punishment of stoppage of next increment for a period of two years without cumulative effect vide his impugned order dated 03.11.2006. The petitioner filed an appeal before the first respondent which resulted in filing the present Writ Petition.

3. The learned counsel for the petitioner would submit that along with the petitioner, six others were also issued with charge memo by the very same authority and enquired by the very same authority, however, the consequential punishment alone deferred which is nothing but disparity in punishment. In this regard, he also drew the attention of this court paragraph No.5 of the affidavit showing the punishment imposed by the respondents. Added further, one Mrs.M.Eswari filed an appeal against the punishment on 24.01.2007 to the first respondent who in turn remitted back the case on account of the fact that the report of the Enquiry Officer was held to be defective and subsequently the charges were dropped. The act of the respondents are not only violative of Articles 14 and 21 of the Constitution of India, but also it is colourable exercise of power with oblique motive against the petitioner alone. That apart, the first respondent failed to follow the procedure contemplated under Rule 23 of the Tamil Nadu Discipline and Appeal Rules while disposing of the appeal filed by the petitioner and that apart erroneously construed it as revision and sought opinion from the Tamil Nadu Public Service Commission which was not at all warranted, therefore, in view of the non-compliance of the procedure contemplated under Rule 23, the impugned order has to be quashed and he prays for allowing this Writ Petition.

3.1. In support of his contentions, he relied on the following judgments:-
<https://hcservices.courts.gov.in/hcservices/>



(i) **Rajendra Yadav vs State of M.P reported in 2013 (3)**

MLJ 101 SC.

(ii) **S.N.Narula vs Union of India reported in 2011 (4)**

SCC 591

4. *Per contra*, the learned Government Advocate appearing for the respondents would submit that the petitioner was working as Junior Assistant at Regional Transport Office, Karur, and a surprise check was conducted by the officials of the Directorate of Vigilance and Anti Corruption on 10.09.2003 and certain irregularities were found and accordingly, action was taken against all the erring employees including the petitioner in which no infirmity could be found by the petitioner. As far as disparity in punishment against one Eswari is concerned, since the Inquiry Officer, in the second round of fresh inquiry report, has concluded that the charges against her were not proved, action was dropped against her, which cannot be taken advantage of the petitioner. Be that as it may, the respondent has proposed to take up a *suo motu* revision of the disciplinary case against her under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the same is under progress.

4.1. The respondent also denied the appeal preferred by the petitioner as he has neither sent the original appeal petition dated 25.01.2007 directly to the first respondent nor a copy of the appeal petition through the second respondent to the first respondent. However, the first respondent had proposed to entertain the copy of the appeal petition dated 25.01.2007, submitted by the petitioner at a later date and after careful examination, in consultation with the Tamil Nadu Public Service Commission, his appeal was rejected as it was devoid of merits. The time taken to dispose of the appeal was only due to complying with the administrative procedures and no *mala fide* attitude can be attributed against the respondents by the petitioner. Further, the petitioner name was not included in the panel for promotion in the year 2005-2006 due to reason that the petitioner was issued with charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, the act of the second respondent is valid and in accordance with law. The petitioner has not narrated about the history on which date he received the check reports and he has not explained about his failure to take immediate action on the check reports. The officials of the Directorate of Vigilance and Anti Corruption have clearly mentioned that 57 check reports were pending without further action. The lapses on the part of the petitioner indicates that he was the habitual offender in not performing his duties diligently and he was not in devotion to duty and acted in a manner, which is in violation of Rule 20 (1 and 2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973.



4.2. As far as the allegation that the respondents should not consult the TNPSC is concerned, the Government is exercising the powers of the Appellate Authority under the Rule 23(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the Government is bound to consult and obtain the views of the Tamil Nadu Public Service Commissioner under Regulation 18(1)(a) of the Tamil Nadu Public Service Commission Regulations, 1954, as part of the process of "consideration" contemplated under Rule 23(1). Therefore, the respondent prays for the dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner and learned Government advocate for the respondents and perused the materials available on record.

6. Though the petitioner has raised many grounds and the respondents have countered the same, I am inclined to interfere with the impugned orders for the simple reason that the charges were levelled against the petitioner and six others and there is no specific charge against each person. The charges are generalised. An enquiry officer was appointed and the enquiry officer gave a finding to the effect that the delinquents have not committed irregularities with dishonest motive and therefore, when the charges are general in nature and when the enquiry officer has given his findings commonly, there cannot be different punishment for different persons. All the more, the petitioner had been on medical leave for a month and on the date of his joining, an inspection has been conducted and therefore, the petitioner cannot be attributed against the charges which had been levelled against all the delinquents. One of the delinquents namely, Tmt.M.Eswari has filed an appeal and in the appeal, the matter has been remanded stating that there is a specific finding by the enquiry officer that the irregularities committed were not with dishonest motive and the charges were dropped against Tmt.M.Eswari stating that the case of Tmt.M.Eswari has been remitted back to the Transport Commissioner for rectifying the defects since the enquiry officer did not state specifically whether the charges framed against the appellant therein, is proved or not and moreover, according to paragraph 10 of the Hand Book of the disciplinary procedures, the enquiry officer should submit his report with a conclusion as to whether the charges are proved or not. In the light of the above guidelines, the enquiry report has to be treated as defective and therefore in pursuance to the Government Orders, the enquiry officer Tr.G.Ramasamy, Regional Transport Officer, Karur, has again been appointed to conduct the enquiry and at paragraph 6, it is stated as follows:-



''6.The charged official has offered her further explanation as follows:-

The Charged Official stated that she took over the charge B2 seat on 13.06.2003 and shortly after taking over charge, Government Employees went on strike during the period between 02-07-2003 and 24-07-2003 in which she did not participate but attend on all days during strike period and performed the duties of all other members of staff who went on strike. In this meantime, her marriage was performed on 10-07-2003 but she availed casual leave for one day only. During August 2003, due to her pregnancy she had to go on leave frequently. She had gone on earned leave for 5 days from 01.09.2003 to 05.09.2003. And also from 08.09.2003 to 12.09.2003 for her illness. The surprise check was conducted on 10.09.2003 when she was on leave. She also deposed that nobody was looked after her seat. After joined the duty on 23.10.2003 she went to Bhavanisagar for training. She again joined the duty only on 26.12.2003 after completion of her training. She attended the pending cases and completed the collection work without causing any loss to the Government. She concluded that as there was no loss of revenue to the Government and she may be exonerated from the charges.''

7. Based on the above report, the charges were dropped. It is clear that the earlier enquiry officer's report was defective and therefore, the appellate authority ought to have remitted the matter of the petitioner also, but instead, had treated the case of the petitioner as that of the revision and consulted the TNPSC and without any independent application of mind, has ordered the punishment. While ordering the punishment, even the petitioner's leave for a month has not been taken into consideration which shows that the impugned orders have been passed in total non application of mind and the inordinate delay in disposing of the appeal has also not been explained. For the same set of facts, there cannot be different punishment and therefore, I am inclined to interfere with the impugned orders.

8. Accordingly, the impugned punishment order passed in proceedings R.No.7462/V6/2004 dated 03.11.2006 and consequential rejection of appeal by the first respondent vide impugned Government Order issued in G.O.(D)No.561, Home (Tr.II-A) Department, dated 28.07.2015 are quashed and the respondents are directed to re-fix the seniority of the petitioner in the post of Assistant for the year 2005-2006 and promote the petitioner notionally with all service and monetary benefits. Such exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.



With the above direction, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar (CS)

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To

1.The Principal Secretary to Government,
Home (Transport II-A) Department,
Secretariat, Fort.St.Geroge,
Chennai-600 009.

2.The Transport Commissioner,
Ezilagam,
Chepauk,
Chennai-600 005.

+1 CC to Mr.G. THALAIMUTHARASU, Advocate (SR-23568[F] dated
02/12/2020)

order made in
W.P (MD) No.16294 of 2015
01.12.2020

SJ(CO)

KM (11.12.2020) 6P 4C