



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

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THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No. 15508 of 2009

Lourdraj

..Petitioner

Vs

1. The Agriculture Production Commissioner
and Secretary to Government
Fort St.George, Chennai-9.

2.The Commissioner of Horticulture &
Plantation Crops,
Chepauk, Chennai-5.

..Respondents

Prayer: writ petition is filed under Article 226 of Constitution of India for Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned order passed in G.O (3D) No.309 Agriculture (VN7) Department dated 15.10.2007 and quash the same same and grant such other relief.

For Petitioner : Mr.Vignesh Raj
for M.s,Muthappan

For Respondents : Mr.J.C.Durairaj, AGP

O R D E R

The relief sought for in the writ petition is to call for the records of the 1st respondent in connection with the impugned order passed in G.O (3D) No.309 Agriculture (VN7) Department dated 15.10.2007 and quash the same same

2. According to the learned counsel for the petitioner the writ petitioner while working as Assistant Director, he was served with charge memo and framed eight charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules by the 2nd respondent vide proceedings dated 21.03.1997. The petitioner has submitted his explanation for the aforesaid charges and exonerated from the charges. The enquiry officer



after conducting enquiry has submitted report dated 13.12.1999 by holding charge no. 1,2,7 & 8 as proved. Based on the said report, the petitioner has submitted his explanation on 10.07.2001, but without considering the said representation, the disciplinary authority imposed punishment of stoppage of increment for a period of two years with cumulative effect by order in G.O. No. 46 Agril.AA7 Department, dated 23.04.2002. The petitioner has preferred appeal before the 1st respondent, based on the opinion obtained from the TNPSC, the punishment awarded on the petitioner was set aside and ordered fresh enquiry. The enquiry officer in his report held that all the charges against the petitioner have not been proved. But the 1st respondent has disagreed with the views of the enquiry officer's report and issued a dissenting minute dated 02.04.2007, holding that the 1st charge has been proved and directed the petitioner to submit his further representation.

3. Accordingly, the petitioner has submitted his further representation and the said representation was not duly considered by the 1st respondent and held that the charge no.1 has been proved and imposed punishment of cut in pension of Rs.100 per month for a period of one year under Rule 9 of the Pension Rules and directed to submit his explanation within 15 days. Again the petitioner has submitted a detailed explanation on 23.08.2007. The 1st respondent without properly considering the detailed explanation, has confirmed the said order of punishment. Aggrieved by the said order of punishment, the petitioner has preferred an appeal before the Government and said appeal came to be dismissed by the Government vide GO.(3D) No.309, Agriculture (VN7) Department, dated 15.10.2007 without issuing show cause notice to the petitioner. According to the learned counsel for the petitioner, the respondents have violated the principles of natural justice and hence the impugned order is liable to be set aside.

4. Per contra, the learned Additional Government Pleader has submitted that the petitioner was issued with a charge memo dated 21.03.1997 under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules for the un-authorised leave taken by him. The respondents after giving sufficient opportunities to the petitioner, held the charge no.1 proved and imposed punishment of cut in pension of Rs.100 per month for a period of one year under Rule 9 of the Pension Rules. Therefore, the impugned order of punishment passed by the respondent is valid and proper and does not require any interference by this Court.



5. Heard the submissions made by the both learned counsels and perused the documents available on records.

6. Admittedly, the petitioner while working as Horticulture Officer in Vichanthangal Government Horticulture Farm, Kanchipuram District had availed medical leave from 22.07.1988 to 18.09.1988 and casual leave from 20.09.1988 to 23.09.1988, which according to the respondent is unauthorised absence. For the alleged absence, the respondents have framed charges against the petitioner after a lapse of nine (9) years i.e on 21.03.1997 and after enquiry proceedings, the respondent imposed the impugned punishment on 15.10.2007. In the meantime, the petitioner was allowed to retire on superannuation on 31.07.2007 without prejudice to the pending disciplinary proceedings.

7. Further, it is clear that pursuant to the punishment order, the petitioner has preferred an appeal before the 1st respondent and based on the opinion obtained from the TNPSC, the punishment awarded on the petitioner was set aside and ordered fresh enquiry. After enquiry, the enquiry officer in his report held that all the charges against the petitioner have not been proved. But the 1st respondent has disagreed with the views of the enquiry officer's report and issued a dissenting minute dated 02.04.2007, holding that the 1st charge has been proved and issued show cause notice without stating any reason for disagreeing the enquiry officer's report and subsequently, final order came be passed imposing punishment of cut in pension of Rs.100 per month for a period of one year.

8. It is also clear from the records that the appeal preferred by the petitioner before the Government as against the said punishment order was also dismissed by the Government vide order in GO.(3D) No.309, Agriculture (VN7) Department, dated 15.10.2007 without issuing show cause notice to the petitioner, which is a clear violation of principles of natural justice.

9. From the above and since it is clearly reveals the fact that the impugned order has been passed by the 1st respondent without giving sufficient opportunities to the petitioner to put forth his contention, this Court has no hesitation to set aside the impugned order passed by the first respondent and accordingly, the following order is passed;

(i) The impugned order passed by the first respondent, dated 15.10.2007 is quashed.



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(ii) The first respondent is directed to serve notice to the petitioner within one week from the date of receipt of copy of the order. On receipt of such notice, the petitioner shall submit its explanation or objection to the first respondent within one week thereafter. On receipt of explanation or objection, the first respondent shall take final decision after giving opportunities to the petitioner and pass appropriate orders on its own merit as expeditiously as possible, preferably within a period of four weeks thereafter.

(iii). The writ petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Agriculture Production Commissioner
and Secretary to Government
Fort St.George, Chennai-9.

2.The Commissioner of Horticulture &
Plantation Crops,
Chepauk, Chennai-5.

+1 CC to Mr.M.Muthappan, Advocate sr 64747
+1 CC to The Government Pleader sr 65304.

W.P.No. 15508 of 2009

BP(CO)
SP(11/02/2022)