

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.03.2021
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.3268 of 2021
and
W.M.P.Nos.3715, 3716 and 3718 of 2021

1.K.S.Ranjith Kumar
2.V.Murugan
3.V.Johnson Kenady
4.Isravel @ Sathiyathan ... Petitioners

Vs.

1.The Chief Engineer
Highways Department,
HRS Campus,
76, Sardar Patel Road,
Little Mount, Guindy,
Chennai- 600 025.

2.The Superintendent Engineer,
Highways Department C & M,
Trichy Road,
Coimbatore - 18.

3.The Divisional Engineer,
Highways Department C & M,
Udhagamandalam,
Nilgiris. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records pertaining to the impugned order passed by the second respondent confirming the punishment of three year stoppage of increment without cumulative effect as enhanced to five years by order dated 11.12.2019 in his proceedings letter No.3776/2019/A1/ as being illegal and contrary to the rule 37 of Tamil Nadu Services (Discipline and Appeal) Rules and to quash the same and consequently direct the first respondent to dispose the review petition filed by the petitioners on 19.11.2019 in those terms and issue consequential order for granting all service benefits to the petitioners.

For Petitioners : Mr.N.G.R.Prasad for
M/s.Row and Reddy

For Respondents : Mr.M.Loganathan

O R D E R

The petitioners have filed this writ petition seeking to quash the order passed by the second respondent dated 11.12.2019 and to direct the first respondent to dispose the review petition filed by them on 19.11.2019 and for consequential benefits.

2.The case of the petitioners is that they were appointed as Gang Mazdoors in the Highways Department in terms of G.O.Ms.No.371, Highways Department, dated 19.08.1997 and their services were regularized. The next avenue of promotion is Road Inspector. According to the petitioners, they are eligible to be promoted as Road Inspectors, however, promotion was not granted to them. On 07.01.2009, they were issued with charge memo under Rule 17-B of the Civil Services (Discipline and Appeal) Rules. Thereafter, the punishment of stoppage of increment of three years without cumulative effect was imposed on them and challenging the same, they preferred appeal, in which they failed.

3.It is the further case of the petitioners that they filed review petition before the first respondent on 19.11.2019, however, no orders have been communicated to them so far. In the meantime, they were informed about the order passed by the second respondent dated 11.12.2019, enhancing the punishment imposed on them, however, the said order was not served on them and no notice was issued to them before enhancing the punishment. Aggrieved by the same, the petitioners have filed this writ petition.

4.Upon notice, the third respondent filed a counter affidavit stating that the petitioners accepted the punishment imposed on them. It is further stated that after coming to know about the enhancement of punishment, the petitioners did not make any objection and that, the department has given ample opportunity to the petitioners to prove their innocence, but they did not avail the same and they in fact, admitted the charges framed against them.

5.Heard both sides and perused the materials placed before this Court.

6.The challenge made in this writ petition is to the order passed by the second respondent enhancing the punishment imposed on the petitioners. The main contention of the learned counsel for the petitioners is that no notice was issued before enhancing the punishment and the said order was not even communicated to the petitioners, which is arbitrary, illegal and violative of the principles of natural justice. Whereas the learned counsel for the respondents made his submissions reiterating the averments made in the counter affidavit. Though the respondents stated that the petitioners have been provided sufficient opportunities before passing the order of enhancement, the learned counsel for the respondents is unable to produce any material to substantiate the same. Thus, it is vivid that before passing the order impugned herein, no opportunity was granted to the petitioners and the order was not even served on them and hence, the same is arbitrary, illegal and in violation of the principles of natural justice.

7.Be it noted, the principle of natural justice has twin ingredients; firstly, the person who is likely to be adversely affected by the action of the authorities should be given notice to show cause thereof and granted an opportunity of hearing and secondly, the orders so passed by the authorities should give reason for arriving at any conclusion showing proper application of mind. Violation of either of them could in the given facts and circumstances of the case, vitiate the order itself.

8.In such view of the matter, this Court is inclined to set aside the impugned order. Accordingly, the order passed by the second respondent dated 11.12.2019 is set aside and the matter is remanded back to the respondent authorities for fresh consideration. It is stated that the petitioners already filed review petition dated 19.11.2019 to the first respondent. Hence, the respondent authorities shall pass orders, on merits and in accordance with law, after granting sufficient opportunity of hearing to the petitioners. Such an exercise shall be completed within a period four weeks from the date of receipt of a copy of this order.

9.This writ petition stands allowed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Engineer
Highways Department,
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76, Sardar Patel Road,
Little Mount, Guindy,
Chennai - 600 025.

2.The Superintendent Engineer,
Highways Department C & M,
Trichy Road,
Coimbatore - 18.

3.The Divisional Engineer,
Highways Department C & M,
Udhagamandalam,
Nilgiris.

+1cc to Mr.Thirumoorthy, Advocate SR.No. 16824

+1 cc to Government Pleader Sr.No. 17135

W.P.No.3268 of 2021

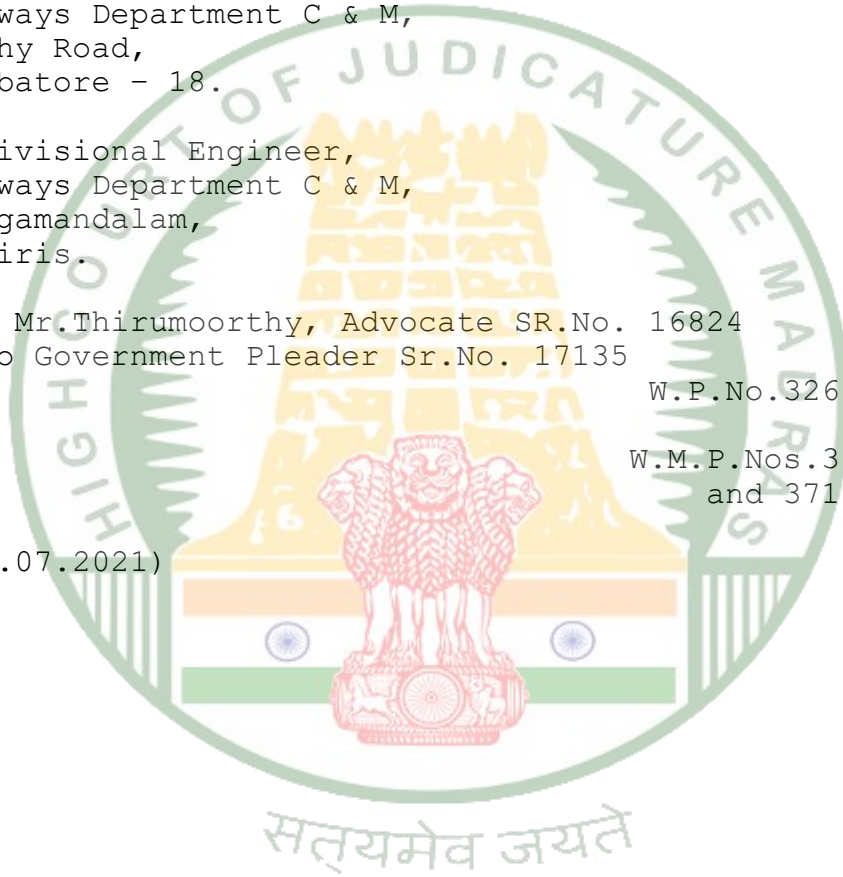
And

W.M.P.Nos.3715, 3716

and 3718 of 2021

MG (CO)

A.SK(08.07.2021)



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