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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

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The Honourable Mrs.Justice PUSHPA SATHYANARAYANA
and
The Honourable Mr.Justice KRISHNAN RAMASAMY

W.A.No.1439 of 2021

A.Sirajudeen ... Appellant

vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Labour and Employment Department,
Fort St.George, Chennai - 600 009.

2.The Commissioner of Labour,
Teynampet, D.M.S. Compound,
Chennai 600 006.

3.The Tamil Nadu Public Service Commission,
Rep. by its Secretary,
Government Estate, Chennai 600 002.

4.The Enquiry Officer and
Joint Commissioner of Labour,
Coimbatore.

...Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters Patent Act against the final order dated 03.11.2020, made in W.P. No.17948 of 2007 (T).

Prayer in W.P. No.17948 of 2007(T): Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorari to call for the records on the file of the respondents in connection with the impugned orders passed by the first respondent in G.O(D).No.111 Labour and Employment dated 11.02.2000 and G.O.(D).No.359 Labour and Employment dated 19.03.2003 and quash the same with all consequential service and monetary benefits.



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For Appellant : Ms.Susanna Prabhu
For Respondents : Mr.C.Jayaprakash
Government Advocate

JUDGMENT

(delivered by Krishnan Ramasamy, J.,)

This is an intra-Court appeal filed against the order passed by the learned Single Judge in W.P. No.17948 of 2007 (T) dated 03.11.2020.

2.The brief facts of the case are follows:

An agreement was entered before the Joint Commissioner of Labour, Coimbatore under Section 12(3) of the Industrial Disputes Act, 1947 on 09.04.1988, with regard to the non-payment of wages from October 1986 for the workers working in M/s.New City Engineering Works, Patel Road, Eachanari Pollachi Road, Coimbatore. As per the terms and conditions of the agreement, the Management should have implemented the said agreement on or before 10.06.1988, but, they have failed to do the same. Hence, a complaint dated 25.08.1988 was given by the Union in Government Order (Miscellaneous) No.1536 Labour and Employment Department to file a case under Section 29 of the Industrial Disputes Act against the following stakeholders viz., Thiru.K.Venkatesh, Thiru.V.Velumani, Thiru.K.Swaminathan.

3.Further, order was issued to the Inspector of Labour, Coimbatore to file a case before the Judicial Magistrate No.I, Coimbatore, But, Mr.P.T.Ravidranath, who was working at that time as Inspector of Labour, Coimbatore, filed a case on 20.09.1988, before the Judicial Magistrate No.II, Coimbatore, through the Deputy Inspector of Labour, III Circle, Coimbatore. The said complaint was returned by the Court with an endorsement to rectify the defects. Therefore, the complaint was re-presented before the Court. However, the case was not taken on record and summons were not issued. Therefore, the respondents found fault with the appellant/Sirajudin stating that he has not followed up the case from time to time and informed about the progress of the case to the Inspector of Labour. Since the appellant has not paid any personal attention to the case, two charges were framed against the appellant under Section 17 (B) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. The charges are reads as follows:



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"Charge No.I

Vide Government Order No.Misc.1536 Labour & Employment Department dated 11.08.1989 permission was granted to file a case under Section 29 of the Industrial Disputes Act against stakeholders the Company viz., M/s. New City Engineering Works Ltd, Coimbatore for non implementation of agreement entered under Section 12(3) of the Industrial Disputes Act. In continuation, Thiru. P.T. Ravidranath, who was working at that time as Inspector of Labour, Coimbatore filed a case before Judicial Magistrate II, Coimbatore through Thiru. V.Balakrishnan, the then Deputy Inspector of Labour, III Circle, Coimbatore.

A.Sirajudin assumed charge as Deputy Inspector of Labour, Circle III, Coimbatore on 12.01.1990 in continuation of Thiru.V.Balakrishnan. In regard to this subject, despite having received reminders from the Inspector of Labour, Coimbatore, he failed to pay personal attention, failed to go to the court personally to find out actual status of the case particularly whether the case has been filed and case No. assigned and gave wrong information stating that case adjourned without assigning date and kept pending. Hence, he failed to render the jobs assigned to him properly and failed in his duties.

Charge No.II

Since he did not carry out his duties properly, a situation arose because of him whereby case could not be conducted based on complaints of affected workmen."

4.The Commissioner of Labour, Chennai-6, appointed the Joint Commissioner of Labour as Enquiry Officer and the appellant was called for explanation. The Enquiry Officer recorded the statement of the appellant on 12.06.1996. Thereafter, the appellant gave his written explanation denying both the charges on the same day stating that he followed the case continuously and informed the status to the Inspector of



Labour. He further stated that once the case has been filed, it is for the Court to take the same on record and issue summons and it is not the domain of the appellant. After all, what the appellant can do is only to enquire as to the status orally and inform the same to the higher official from time to time. He also stated that he visited the Court to enquire regarding the case No. N.S.T.C.1625 of 1989 on various dates. Each and every time, when the information was known to him that the case number was not assigned, he informed the same to the Inspector of Labour vide letters dated 14.02.1990, 16.03.1990 and 25.01.1991.

5.As far as Charge No.I is concerned, the Enquiry Officer held that the same was proved and as far as Charge No.II is concerned, he has stated that the charge was not proved as sufficient evidences are not available. An enquiry report was forwarded to the Office of Commissioner and the office of the Commissioner vide memorandum dated 29.06.1999, furnished the copy of the enquiry report to the appellant.

6.The appellant has filed a written defence for the enquiry report, on 13.07.1999 to the Secretary to Government, Labour and Employment Department. In the said defence he has reiterated the averments made by him in the written explanation dated 12.06.1996. Thereafter, the first respondent passed a final order dated 11.02.2000, holding that the Charge No.I was proved against the appellant and Charge No.II was not proved due to the absence of sufficient evidence. Therefore, the first respondent suggested to issue punishment of "censure" against the appellant. Against the said order, the appellant filed a Review Petition on 10.04.2000. The said Review Petition was dismissed on 19.03.2003 by the first respondent.

7.Aggrieved by the said order, the delinquent Sirajudhin filed O.A.No.1059 of 2004 before the Tamil Nadu Administrative Tribunal and due to the abolition of the Tamil Nadu Administrative Tribunal the said O.A., stood transferred to the High Court and re-numbered as W.P.No.17948 of 2007 (T). The learned Single Judge was pleased to pass the final order in W.P.No.17948 of 2007 (T) on 03.11.2020 by dismissing the writ petition.

8.Aggrieved over the said order of dismissal, the present writ appeal has been filed by the appellant.



9.The learned counsel appearing for the appellant would submit that a complaint was filed by the appellant's predecessor, Mr.Balakrishnan, against the Management of M/s. New City Engineering Workers. The said complaint was returned and the same was re-presented on 08.11.1989, by the predecessor of the appellant. Thereafter, the appellant has been following the status of the complaint in the Labour Court from time to time. In fact, the complaint was presented to one Leelambal, employee of the Court, who has duly signed the papers. The appellant has informed about the status of the case to the Higher Officials from time to time. Further, once the case has been filed in the Court and re-presented in a proper way, it is for the Court to number it and issue summons to the parties, which is an established procedure. Whereas, insisting the appellant/delinquent to follow up the case and give the status in writing is not proper. If at all, the appellant can request the Court staff to find out the status, otherwise, the case will be listed on the basis of the scrutiny made by the concerned Section Officer of the Court. When such procedure has been followed in the Court, insisting the appellant to go and get the case numbered at the earliest point of time is not in accordance with law.

10.The learned counsel further submitted that the appellant enquired about the status of the case from time to time and informed the same to the Higher Officer in writing vide letters dated 14.02.1990, 16.03.1990, 25.01.1991. The appellant had put all his effort to get the case be numbered and the status of the same has been informed from time to time to his higher ups. Hence, the Enquiry Officer had wrongly come to the conclusion that the appellant has not informed the status to the Inspector of Labour, Coimbatore, which amounts to violation of good conduct and held that Charge No.I was proved. The same was accepted by the first respondent and a memorandum dated 29.06.1999 was issued.

11.Further, in the Enquiry Officer's report, it is stated that the appellant has not provided any evidence in writing to show that he enquired in the Labour Court and informed to the Higher Official. When such being the case, there was no direction to the appellant from the Higher Official in writing to enquire about the status of the case. It is necessary to prove the date on which the Inspector of Labour requested the



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appellant in writing. No such evidence was filed and in the absence of such evidence, the Enquiry Officer came to the conclusion that the Charge No.I was proved which is totally illegal. All these aspects were not considered by the learned Single Judge. Therefore the same is liable to be set aside and prayed for allowing the appeal.

12.Per Contra, the learned Government Advocate appearing for the respondents submitted that since the appellant has not taken any steps to get the matter numbered and informed the status to the Higher Official from time to time, the same amounts to serious misconduct. Therefore, two charges were framed against the appellant. Charge No.I was proved against the appellant and punishment of Censure was issued. The learned Single Judge considered all these aspects and confirmed the order of the first respondent. Therefore, no interference is required in the order passed by the learned Single Judge and prayed for dismissal of this appeal.

13.We have heard the learned counsel appearing for the appellant as well as the learned Government Advocate for the respondents and perused the materials available on record.

14.On 09.10.1995, the second respondent had issued a charge memo against the appellant stating that the appellant has failed to discharge the job assigned to him properly. Thus, the fourth respondent was appointed as Enquiry Officer. On 12.06.1996, the enquiry was conducted and the statement of the defence was recorded. On the same day, the delinquent/appellant filed his written defence to the enquiry officer. Though, the enquiry was conducted as early as on 1996, the findings of the Enquiry Officer was not released. Therefore, the appellant approached the Tamil Nadu Administrative Tribunal by way of filing O.A.No.7464 of 1998. On 15.09.1998, the Tribunal directed the respondents 2 and 4 to pass the final orders and thereafter, the Enquiry Officer filed his report on 23.09.1998, wherein, it is stated that the Charge No.I, was proved against the appellant. As far as Charge No.II is concerned, it was declared that the same was not proved due to the absence of evidence. On 29.06.1999, the appellant was called by the second respondent to give his reply to the findings of the Enquiry Officer. The appellant filed his written defence on 13.07.1999. On 11.02.2000, the first respondent issued G.O.No.111, (Labour &



Employment (E1) Department), imposing punishment of "censure" on the appellant for Charge No.I, which was proved against the appellant. Thereafter, the Review Petition was filed by the appellant on 10.04.2000. However, the same was dismissed on 19.03.2003, confirming the punishment of censure imposed on the appellant on 11.02.2002. Therefore, the appellant preferred W.P.No.17948 of 2007 (T), which was also dismissed on 03.11.2020.

15.Now, the issue to be decided here is as to whether the Charge No.I, framed against the appellant was proved or not?

16.The allegation against the appellant is that despite several reminders from the Inspector of Labour, Coimbatore, he had failed to pay attention personally to find out actual status of the case, particularly, whether the case has been numbered or not rather he gave wrong information stating that the case was adjourned without assigning the date. The contention of the appellant is that, originally a complaint was filed against the Management of M/s.New City Engineering Workers, however, the same was returned to rectify the defect. The said complaint was re-presented on 08.11.1989, but, no case number was assigned by the Court. The appellant informed about the status of the case on 14.02.1990, 16.03.1990 and 25.01.1991 to his Higher Officials. His further contention is that on 07.03.1990, 06.04.1990, 01.06.1990, 22.06.1990, 20.07.1990, 08.08.1990, 31.08.1990, 23.10.1990 and 28.11.1990, he went to the Court to enquire about the status of the case and every time he has informed his higher official that the case number was not allotted. Further, the appellant has stated that it is not his duty to get the case numbered, whereas, it is for the Court to number it and send the information to the parties.

17.No doubt, once the case is filed in the Court, it is the duty of the Court to send information about the hearing date to the parties. In the present case also, obviously, it is the duty of the Court to number the case, wherein, the appellant has no role to interfere into the affairs of the Court in the process of numbering the case. The appellant can only follow up the case and inform the same to the Higher Officer from time to time. It appears that the charges were framed on the ground that the appellant has not diligently moved the Court to get the case numbered.



18.A perusal of the enquiry report and other document would reveal that the appellant had informed about the status of the case from time to time to his Higher Official both orally and by writing. This aspect was not considered by the Enquiry Officer. Further, the Enquiry Officer had stated that the delinquent appellant has not informed about the developments of the case from time to time in writing. However, we are unable to trace out any evidence which would prove the case of the respondents that they have requested the appellant in writing, to enquire about the status of the case. In this regard, the respondents have not produced any evidence. In the absence of such evidence, we are unable to agree with the finding of the Enquiry Officer and consequently imposing the punishment of "censure" against the appellant by the Government, thus, the said punishment is liable to be set aside.

19.Further, as stated above, the case against the Management of New City Engineering Workers was filed and the same was returned for rectification of defects and after rectification, the case was re-presented in the Court. Thereafter, it is for the Court to process, number the same and send intimation to the parties. The appellant had informed about the status of the case from time to time to his Higher Ups. All these aspects have not been considered, therefore, we find serious fault in the process of decision making on the part of the Enquiry Officer and the respondents as well, and the said fault in the decision making process of the respondents have not been dealt with properly by the learned Single Judge when the same came up before the Court for Judicial Review in W.P.No.17984 of 2007 (T).

20.The learned counsel for the appellant submitted that the indictment the appellant was charged with is entirely different from the charge of which, he was found guilty by the Enquiry Officer. Therefore, the appellant cannot be found guilty of an offence, which he had not been charged with. It was further pointed out that in the joint inquiry by the fourth respondent/Enquiry Officer, the appellant and his predecessor in office were charged on two counts that were identical and the charge against the appellant alone was held to be proved based on the perverse findings of the Enquiry Officer. The Co-delinquent, who was the predecessor of the appellant, and who was also indicted of identical charge, was absolved. It was



also a matter of fact that the enquiry was completed in two sittings on 20.05.1996 and 12.06.1996 and the report was filed only after the order of the Tamil Nadu Administrative Tribunal was passed on 15.09.1998. The learned Single Judge without considering all these aspects has dismissed the writ petition confirming the punishment of "censure". Certainly, punishment of censure will have an effect though it will be in currency for six months. Once the punishment of censure is not challenged, it has to be taken into consideration for the purpose of deciding promotion etc., as has been done in this case.

21.Considering all these aspects indicated above, we are of the view that the imposition of punishment was without foundation and the punishment of censure is liable to be quashed. Accordingly, the order passed by the learned Single Judge in W.P.No.17948 of 2007 (T) dated 03.11.2020 is set aside and the impugned order passed by the first respondent in G.O.No.111, (Labour & Employment (E1) Department), dated 11.02.2020, is hereby quashed.

22.In the result, the writ appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To:

- 1.The Secretary to Government,
The State of Tamil Nadu,
Labour and Employment Department,
Fort St.George, Chennai - 600 009.
- 2.The Commissioner of Labour,
Teynampet, D.M.S. Compound, Chennai 600 006.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Government Estate, Chennai 600 002.



4.The Enquiry Officer and
Joint Commissioner of Labour,
Coimbatore.

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+3CCs to M/s.Susanna Prabhu, Advocate, SR.No. 36200

W.A.No.1439 of 2021

SJ(CO)

B.VC (26/08/2021)