

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.15149 of 2018

And

W.M.P.No.17963 of 2018

P.Jayamurthy

... Petitioner

Vs.

1.The State of Tamil Nadu

rep. by the Secretary to Government,  
Revenue and Disaster Management Department,  
Unit Works,  
Work - 10 (1) Section  
Secretariat,  
Chennai - 600 009.

2.The Tribunal for Disciplinary Proceedings,

Rep. by the Secretary / Disciplinary Proceedings Commissioner,  
Kuralagam,  
Chennai - 600 108.

3.The Tamil Nadu Public Service Commission,

Rep. by the Secretary,  
Frazer Bridge Road,  
Chennai - 600 003.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the first respondent in connection with the order passed by him in proceedings in G.O.(Ms).(2D).No.31, dated 29.01.2018 and quash the same and direct the respondents to reinstate the petitioner in service with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan

for Mr.R.Jayaprakash

For Respondents : Mr.S.Thangavel for R1 and R2

Special Government Pleader

Mr.Karthik Rajan for R3

O R D E R

The petitioner has filed this writ petition seeking to quash the order dated 29.01.2018 passed by the first respondent and to direct the respondents to reinstate him in service with all monetary and service benefits.

2.The learned counsel appearing for the petitioner submitted that the petitioner served as Warden in various places.

While so, on 16.07.2009 a surprise check was conducted by the Vigilance and Anti Corruption Officials and five Officials including the petitioner were alleged to have committed official misconduct. After the enquiry of the second respondent, he was issued with memo dated 04.06.2014 of the first respondent and was asked to submit his explanation. The petitioner submitted his explanation dated 13.11.2014, however, after a lapse of nearly four years, vide order of the first respondent dated 29.01.2018, he was imposed with the punishment of compulsory retirement from service.

3. The learned counsel appearing for the petitioner further submitted that the petitioner was imposed with punishment based on the Tamil Nadu Public Service Commission's report, however, he was not served with a copy of the report. In support of his contentions, the learned counsel drawn the attention of this Court to the decisions of the Hon'ble Apex Court reported in (2011) 4 SCC 589 (Union of India and others Vs. S.K.Kapoor) and (2011) 4 SCC 591 (S.N.Narula Vs. Union of India and others).

4. The learned Special Government Pleader appearing for the respondents submitted that the Government on receipt of the findings of the second respondent decided to impose the penalty of compulsory retirement and thereafter consulted with the Tamil Nadu Public Service Commission as per Regulations 18(1)(b)(iii) of Tamil Nadu Public Service Commission Regulations. Thereafter, the Government once again examined the charges framed and with self-esteem and after careful consideration, passed the impugned order.

5. Heard both sides and perused the materials available on record.

6. The Hon'ble Apex Court in the decision reported in (2011) 4 SCC 589 (Union of India and others Vs. S.K.Kapoor) has observed as follows:

"5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same." and in the decision reported in (2011) 4 SCC 591 (S.N.Narula Vs. Union of India and others) has observed as follows:

"3. It is to be noticed that the advisory opinion of the Union Public Service Commission was not communicated to the appellant before he was heard by the disciplinary authority. The same was communicated to the appellant along with final order passed in the matter by the disciplinary authority.

4. The appellant filed OA No. 1154 of 2002 before

the Central Administrative Tribunal, New Delhi and the Tribunal held that there was violation of the principles of natural justice and the following direction was issued:

"We are of the considered opinion that this order is a non-speaking one and as such we are of the view that the same cannot be sustained and is liable to be quashed. Accordingly, we quash the impugned order and remand the case back to the disciplinary authority to pass a detailed reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order in accordance with instructions and law on the subject."

7. In the present case, the impugned order passed is apparently a non-speaking order, that too without furnishing a copy of the Tamil Nadu Public Service Commission's Report. Hence, in the light of the decisions cited supra, this Court is inclined to set aside the impugned order.

8. Accordingly, the impugned order dated 29.01.2018 is set aside. The matter is remanded back to the respondents for fresh consideration and for passing appropriate orders, after following due process of law. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

1. The Secretary to Government,  
Revenue and Disaster Management Department,  
Unit Works, Work - 10 (1) Section  
Secretariat,  
Chennai - 600 009.

2.The Secretary / Disciplinary Proceedings Commissioner,  
The Tribunal for Disciplinary Proceedings,  
Kuralagam,  
Chennai - 600 108.

3. The Secretary,  
The Tamil Nadu Public Service Commission,  
Frazer Bridge Road,  
Chennai - 600 003.

+1CC TO MR.R.Jayaprakash, ADVOCATE, SR.NO. 18392

+1CC TO M/S.SPECIAL GOVERNMENT PLEADER, SR.NO. 19186

W.P.No.15149 of 2018  
And  
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PMK (CO)  
KKN 21.04.2021



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