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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.A.No.1021 of 2020 and
C.M.P.No.12461 of 2021

- 1.The Secretary of information and
Tamil Development Department,
Secretariat, Chennai 600 009.
 - 2.The Directorate of Information and
Public Relation Department and Ex-officio
Additional Secretary to the Government,
8th Floor, Secretariat,
Chennai 600 009.
-Appellants/Respondents

Vs

C.Ramasubba Reddy ...Respondent/Petitioner

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.NO.12250/2010 dated 21.02.2020 passed by this Court.

Prayer in W.P.No.12250 of 2010:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in proceedings No.G.O.(D) No.590 dated 29.9.2009 and quash the same and direct the respondents to regularise the suspension period of the petitioner from 13.7.2005 to 3.12.2007 with all monetary and service benefits.

For Appellants : Mr.V.Jayaprakash Narayanan
Government Pleader assisted by
Mrs.A.Srijayanthi
Special Government Pleader

For RR1 : Mr.R.Prabhakaran



JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J. through Video Conferencing]

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The official respondents in W.P.No.12250 of 2010 are the appellants and for the sake of convenience, the parties are called by their original position. The respondent / writ petitioner has filed the said Writ Petition, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 1st respondent dated 29.09.2009 in G.O.(D).No.590 and quash the same with a consequential direction directing the respondents to regularize the period of suspension between 13.07.2005 to 03.12.2007 with all monetary and service benefit.

2. The Writ Petition after contest, came to be allowed as prayed for and aggrieved by the same, the present Writ Appeal is preferred by the official respondents.

3. The writ petitioner was appointed as Assistant Lecturer in Editing in M.G.R.Government Film and Television Institute, Taramani through Tamil Nadu Public Service Commission on 23.09.1981 and got his promotion as Lecturer (Editing) in the year 1992. Subsequently, acquired Selection Grade in the year 2002 and he retired on superannuation on 30.06.2008.

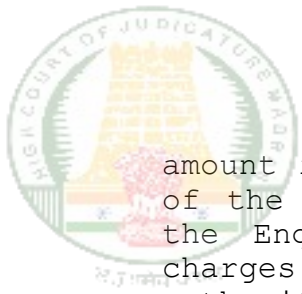
4. The respondent / writ petitioner, while was in service as Lecturer (Editing) has availed various loans from various Banks and Financial Institutions and individuals without prior permission from the Department and thereby, violating Rule 9 of the Government Servant's Conduct Rules, 1973 and the petitioner was placed under suspension vide order dated 13.07.2005 and in contemplation of the enquiry into the grave charges / allegations, he was visited with the disciplinary proceedings in the form of Charge Memo, containing eight charges and an explanation was also called for and the petitioner has submitted his explanations on 03.02.2006 and an Enquiry Officer was appointed and he submitted his report dated 23.05.2007, stating that all the charges were held to be 'NOT PROVED'. The Enquiry Report was perused by the disciplinary authority namely the 2nd respondent, who differed from findings recorded by the Enquiry Officer and issued a show cause notice, for which the petitioner has also submitted his further explanation on 18.10.2007.

5. The Disciplinary Authority, held that except charge no.3, remaining seven charges have been proved and for the proved charges, he was imposed with the punishment, treating the suspension period between 13.07.2005 to 03.12.2007 as



6. The learned Judge, having taken into the consideration the contents of the report of the Enquiry Officer, Showcause notice issued by the 2nd respondent with regard to the non acceptance of the Enquiry Report as well as the response of the respondent / writ petitioner / delinquent official, had found that the finding rendered by the disciplinary authority are without any basis or material and it is perverse and illegal and would also amount to arbitrary exercise of power. The learned Judge further recorded the finding that it cannot be ruled out that the order of injunction restraining the respondent Institute from promoting anybody to the post of Principal in W.M.P.No.20874 of 2004 in W.P.No.17565 of 2004 dated 25.06.2004 was passed and it may be the basis for the disciplinary authority to hold the charges proved without any material legal evidence and citing the said reasons, set aside the impugned order with consequential direction directing the official respondents / appellants to disburse all the monetary and attendant benefits due to the petitioner.

8. Per contra, Mr.R.Prabakaran, learned counsel appearing for the respondent / writ petitioner would submit that the



amount is very trivial in nature and it is also found that none of the allegation in the form of charges have been proved and the Enquiry Officer has rightly reached the conclusion that charges have not been proved. However, the disciplinary authority namely the 2nd respondent, without taking note of the material documents and not properly appreciating the contents of the Enquiry Report, chosen to differ from the findings rendered by the Enquiry Officer and taking into consideration of the fact that the petitioner is nearing the age of superannuation, has rightly ordered the treatment of suspension period as substantive punishment. It is the further submission of the learned counsel appearing for the respondent / writ petitioner that the learned Judge, on an independent application of mind to the entire materials, has rightly reached a conclusion that the findings rendered by the 2nd respondent are perverse and would also amount to arbitrary exercise of power and rightly intervened by allowing the Writ Petition and therefore, this Court in exercise of its power under Clause 15 of the Letters Patent Act, may not interfere with the same and prays for dismissal of this Writ Appeal with costs.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it.

10. The contents of the Enquiry Report would disclose that the Enquiry Officer had taken into consideration the materials placed by the Department and rightly reached a conclusion that none of the allegations in the form of charges have been proved. Though it is open to the 2nd respondent / disciplinary authority to differ from the findings and infact he has also done so, by that time, the petitioner was nearing the age of superannuation and therefore, the 2nd respondent / disciplinary authority thought fit to award punishment of treating the suspension period between 13.07.2005 and 03.12.2007 as a substantial punishment. It is relevant to extract Rule 9 as well as 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 2019.

9. (a) In addition to the penalties specified in rule 8, the penalty of suspension for a period not exceeding fifteen days may be imposed on Forest Guards by the Forest Engineer, Forest Utilization Officer, State Sylviculturist, Working Plans Officer or District Forest Officer, as the case may be.

(b) Notwithstanding anything contained in rule 8, any of the penalties specified in column (2) of Appendix I to these rules may be imposed on the holders of the posts in the Tamil Nadu Jail Subordinate Service, the Tamil Nadu Fire Subordinate Service and the Tamil Nadu Port Subordinate Service specified in the corresponding



entry in column (1) by the authorities specified in the corresponding entry in column (3) thereof.

(c) (1) The Governor or any other authority empowered by him by general or special order may -

(i) institute disciplinary proceedings against any Government servant;

(ii) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is competent to impose under these rules any of the penalties specified in rule 8*.

*(Vide G.O.Ms.No.89, P&AR(N) Department, dt.16.7.2009) (w.e.f.11.2.2008)

(2) The authority competent under these rules to impose any of the penalties specified in items (i) to (iii) and (v) of rule 8 may institute disciplinary proceedings against any Government servant for the imposition of any of the penalties specified in items (iv) and (vi) to (viii) of rule 8 notwithstanding the fact that such authority is not competent under these rules to impose any of the latter mentioned penalties.

9A. *In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders:

*((vide G.O.Ms.No.26, Personnel and Administrative Reforms (N) Department, dated 15.2.2008, w.e.f. 15.2.2008)



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Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government 7 shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules :

Provided further that this rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to Government are jointly involved.

17(e) (1) A member of a service may be placed under suspension from service, where- *

(i) where-a disciplinary Proceedings against him is contemplated or is pending; or

(ii) a case against him in respect of any criminal offence is under investigation, inquiry or trial.

*(vide G.O.Ms.No.29, P&AR (N) Department, dated 23.2.2011) (2) A Government servant who is detained in custody whether on a criminal charge or otherwise, for a period longer than forty-eight hours shall be deemed to have been suspended under this rule.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which



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the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court of law has passed an order purely on technical grounds without going into the merits of the case.

(5) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceedings or otherwise) and any other disciplinary proceedings are commenced or any other criminal complaint is under investigation or trial against him during the continuance of that suspension, and where the suspension of the Government servant is necessary in public interest as required under clause (1), the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings including departmental proceedings taken on the basis of facts which led to the conviction in a Criminal Court.

(6) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

11. A perusal and consideration of the impugned order passed by the 2nd respondent, which is the subject matter of challenge in the Writ Petition would disclose that he has not been clothed with any power to order the punishment of treating the suspension period as a substantive punishment.

12. Now the petitioner is aged about 71 years and the charge memo came to be issued on 06.10.2005, for which the petitioner has submitted his explanation on 03.02.2006 and after conducting disciplinary enquiry, the Enquiry Officer has submitted his report on 23.05.2007 and the disciplinary authority has deviated from the findings recorded by the Enquiry Officer on 31.08.2007. This Court has also independently perused the contents of the Enquiry Report. The Enquiry Officer, after elaborately considering all the materials, had reached a conclusion that



none of the allegations made against the petitioner have been proved. As already pointed out, though it is open to the 2nd respondent / disciplinary authority to differ from the findings and in the light of the fact that the amount also appears to be very trivial in nature and that procedural aspect also said to have been violated, the impugned order of punishment passed by the 2nd respondent, as confirmed by the 1st respondent in the appeal, once again warrants interference and instead of treating the period of suspension as substantive punishment, other minor penalty in the form of postponement of one increment without cumulative effect, may be imposed.

13. In the result, the Writ Appeal is Partly Allowed and the impugned order dated 21.02.2020 made in W.P.No.12250 of 2010, is set aside and the order of the 2nd respondent dated 03.12.2007, as confirmed by the 1st respondent vide proceedings dated 15.02.2008, is modified and the punishment of treating the suspension period as the substantive punishment, is set aside and instead the petitioner is imposed with postponement of one increment without cumulative effect.

14. In the light of the modification of punishment, the respondents 1 and 2 are directed to pass appropriate orders / proceedings, as expeditiously as possible and not later than twelve weeks from the date of receipt of a copy of this order / uploading of the order in the Website and communicate the decision taken to the respondent / writ petitioner and consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary of information and
Tamil Development Department,
Secretariat, Chennai 600 009.



2.The Directorate of Information and
Public Relation Department and Ex-officio
Additional Secretary to the Government,
8th Floor, Secretariat, Chennai 600 009.

+1cc to the Government Pleader Sr.24661
+1cc to Mr.R.Prabhakaran, Advocate Sr.24777

W.A.No.1021 of 2020

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