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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.09.2021
Pronounced On	15.11.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19570 of 2020
and
W.M.P.No.24185 of 2020

(Through Video Conferencing)

D.Asokan

... Petitioner

Vs.

1. The Principal Secretary to Government
Planning, Development & Special
Initiative (OPI) Department,
Fort St.George,
Chennai - 9.
2. The Deputy Secretary to Government,
Planning, Development & Special
Initiative (OPI) Department,
Fort St.George,
Chennai - 9.
3. The Additional Chief Secretary to Government
Planning, Development & Special
Initiative (OPI) Department,
Fort St.George,
Chennai - 9.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent in his Office Proceedings No.234/PD&SI (OP.I) 2019 dated 16.09.2019 and confirmed by the same respondent in GO (D) No.4 Planning, Development and Special Initiatives (OP.I) Department dated 16.11.2020 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits and grant such other further relief.



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For Petitioner : Mr.K.Venkataramani
: Senior Counsel
: For Mr.M.Muthappan

For Respondents: Mr.L.S.M.Hasan Fizal
Government Advocate

ORDER

The petitioner was a driver in the Secretariat. The petitioner had caused an accident on 16.02.2018 and damaged four other vehicles parked at the Secretariat. The accident took place when the petitioner was manoeuvring the Honda City Car bearing registration No.TN04 AG0011 belonging to Secretary to Government, Planning Development & Special Initiative Department.

2. The petitioner was therefore placed under suspension on 19.02.2018 by Principal Secretary to the Government. Thereafter, a Charge Memo dated 06.03.2018 was also issued by the Principal Secretary who is the highest authority in the Department.

3. The allegations against the petitioner was that the petitioner had attempted to manoeuvre Honda City Car bearing registration No.TN04 AG0011 in an inebriated condition and not only damaged the said car but other cars which were parked at the premises.

4. The Following eight charges were framed against the petitioner in the Charge Memo on 06.03.2018.

Charge-I

That the said Thiru.D.Asokan, Driver, Planning, Development and Special initiatives Department while functioning as Driver was found drunk in the office premises on 16.02.2018 thereby violating Rule 21 of the Tamil Nadu Government Servant's Conduct Rules 1973.

Charge-II

That during the aforesaid period and while functioning in the aforesaid office, the said Thiru D.Asokan, Driver, Planning, Development and Special Initiatives Department



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was in an inebriated condition during duty/working hours thereby violating Rule 21 of the Tamil Nadu Government Servants Conduct Rules 1973.

Charge-III

That during the aforesaid period and while functioning in the aforesaid office, the said Thiru D.Asokan, Driver, Planning, Development and Special Initiatives Department, operated the Honda City Vehicle No.TN04 AG 0011, attached to the P.D & S.I Department on 16.02.2018 during office hours, in an irresponsible and improper and dangerous manner owing to intoxication.

Charge-IV

That during the aforesaid period and while functioning in the aforesaid and while functioning in the aforesaid office, the said Thiru D.Asokan, Driver, Planning, Development and Special Initiatives Department, operated the Honda City vehicle no.TN04 AG 0011 on 16.02.2018 attached to the P.D & S.I Department in a negligent manner and caused extensive damage to the vehicle thereby leading to loss of Government property.

Charge-V

That the said Thiru D.Asokan, Driver, caused an accident at approximately 4.40 p.m on 16.02.2018 in the car parking area on the backside of the Namakkal Kavignar Maaligai, Secretariat while driving in reverse the Honda City vehicle No.TN04 AG 0011 attached to the P.D & S.I Department caused damage to the Honda City Vehicle No.TN 01 AK 0246 attached to the Secretary to Government, Energy Department leading to loss of Government property.

Charge-VI

That the said Thiru D.Asokan, Driver, caused an accident at approximately 4.40 p.m. On



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16.02.2018 in the car parking area on the backside of the Namakkal Kavignar Maaligai, Secretariat while driving in front the Honda City Vehicle No.TN04 AG 0011 attached to the P.D. & S.I Department caused damage to another vehicle Swift Dzire TN07CC 4801 attached to the National Informatics Centre, which vehicle was parked nearby.

Charge-VII

That the said Thiru D.Asokan, Driver, caused an accident at approximately 4.40.p.m on 16.02.2018 in the car parking area on the backside of the Namakkal Kavignar Maaligai, Secretariat while driving the Honda City vehicle No.TN04 AG 0011 attached to the P.D. & S.I Department caused damage to another vehicle TATA Indica TN19-W-1820 attached to the TNEB.

Charge-VIII

That during the aforesaid period and while functioning in the aforesaid office, the said Thiru D.Asokan, Driver, Planning, Development and Special Initiatives Department, had behaved in a manner leading to a dangerous situation to passers and by standers with risk of their getting injured which is unbecoming of a Government Servant thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules 1973.

5. In the Disciplinary Proceedings initiated against the petitioner, the following witnesses were examined:-

1. Thiru.K.Purushothaman, Driver, Energy Department, Secretariat , Chennai-600 009.
2. Thiru.K.Manickam, Joint Secretary to Government Planning, Development and Special Initiatives Department Secretariat, Chennai-600 009.
3. Tmt.N.Tamiljothi, Section Officer, Public (MV) Department, Secretariat, Chennai-600 009.
4. Thiru.D.Dhamodharan, Section Officer,



Planning, Development and Special
Initiatives Department, Secretariat,
Chennai-600 009.

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6. In the disciplinary proceedings, the Enquiry Officer found the petitioner guilty of the above charges and was dismissed from service by the third respondent vide order dated 16.09.2019. The further appeal/revision was also dismissed by the third respondent vide order dated 16.11.2020.

7. It is the specific case of the petitioner that the petitioner was not under the influence of alcohol when the incident took place. It is the case of the petitioner that on 15.02.2018, the petitioner was suffering from cough, headache and suffocation and was under treatment and taking medicine and was advised bed rest to two days. It was further submitted that he was advised to take cough syrup and was informed that cough syrup should be taken only in night and that he would be drowsy in the morning.

8. Before the disciplinary authority, a copy of discharge certificate from the hospital was filed and to show that the petitioner was rushed to the Government Royapettah Hospital on the previous day of the incident was given treatment by the casualty medical officer in the OP Department and was prescribed cough syrup and was advised to take rest.

9. It is the further case of the petitioner that as a driver attached to the Secretary to Government, Planning, Development & Special Initiative Department, he could not apply leave and therefore he reported to duty on the following day when the incident took place.

10. It is the case of the petitioner that he was not drunk and was not in the habit of drinking alcohol and the medicine that he had taken during the previous night contained a small content of sedative which induced drowsiness and therefore the accident took place when he was attempting to manoeuvre the car allotted to him.

11. It is further case of the petitioner that the Enquiry Officer has wrongly found the petitioner guilty of all the charges even though the four witnesses examined before the Enquiry Officer were not allowed to be cross-examined by the petitioner.



12. It is further submitted that the case of the petitioner is that the statement of witnesses were recorded in the absence of the petitioner and therefore the finding of the Enquiry Officer was vitiated and therefore the impugned order dated 16.09.2019 passed by the third respondent in the disciplinary proceedings were liable to be quashed.

13. It is further submitted that the statutory appeal/revision filed ought not to have disposed by the 3rd respondent in a mechanical manner, as the third respondent was the original authority who acted as the disciplinary authority.

14. It is further submitted that the appeal should have been referred to the Principal Secretary to Government as the Appellate Authority instead of the third respondent. It is further submitted that the third respondent having acted as an original authority could not have acted as an Appellate Authority.

15. The Learned Senior Counsel for the petitioner further submits that the Charge Memo was issued by the highest authority and therefore both the Enquiry Officer and the Disciplinary Authority could not have been expected to come to a unbiased and fair conclusion on facts.

16. The Learned Senior Counsel for the petitioner submitted that though the petitioner was unstable after the incident, there is no evidence to corroborate the charge that the petitioner was under the influence of alcohol and was drunk at the time of the accident.

17. Appearing on behalf of the respondent, the learned Government Advocate submits that the petitioner reported to duty in an inebriated condition and therefore caused heavy loss to the parked vehicles by hitting the parked motor vehicles.

18. He submits therefore that the third respondent was justified in passing the impugned orders in as much as the petitioner was not only risking the life of the person who was to travel in the car but also public at large.

19. It is further submitted that it has been confirmed that the Car did not have any mechanical defect and the loss caused to the vehicle was about Rs.2,77,400/-.

20. He submits that the scope for judicial review under



Article 226 is limited. It is submitted that the third respondent has not committed any procedural irregularity in the disciplinary proceeding and therefore the present writ petition lacked merits is liable to be dismissed. The learned Government Advocate therefore prays for dismissal of the present writ petition.

21. Heard the Learned Senior Counsel for the petitioner and the learned Government Advocate for the respondents. I have also perused the impugned orders passed by the third respondent both as the Original Authority as well as the Appellate / Revisional Authority vide order dated 16.09.2019 and 16.11.2020.

22. Facts are not in dispute. The fact that the petitioner had caused damage to the Honda City car bearing registration No.TN04 AG 0011 and the other cars parked while attempting to reverse the said Honda City Car assigned to him to drive on 16.02.2018 is not in dispute.

23. The petitioner was placed under suspension on 19.02.2018, on account of the damages caused to the vehicles belonging to the first respondent and few other vehicles which were parked in the Secretariat Office.

24. Though eight different charges were framed in the Disciplinary Proceedings, the sum and substance of the charges against the petitioner are that the petitioner was drunk and was in an inebriated condition when he damaged the parked vehicles while attempting to reverse Honda City car bearing registration No. TN04 AG 0011 attached to the Planning, Development & Special Initiative Department.

25. The case of the petitioner is that the petitioner was suffering from severe cold, cough and headache due to which he was having suffocation / breathing problem and therefore had consumed the medicines and cough syrup prescribed by the Doctor.

26. The entire edifice of the impugned orders of the third respondent is based on the Enquiry Officer's report dated 03.09.2018. The Enquiry Officer concluded that the petitioner was in an inebriated condition / drunk while causing damage to the vehicles.

27. The said finding is based on the statement of one K.Purushothamman, Driver attached to (Secretary to Government Energy Department) who was examined as a witness and D.Ashokan (Planning, Development and Special Initiatives Department).



However, these witnesses were not allotted to be cross-examined.

28. It was incumbent on the part of the respondents to have sent the petitioner for medical examination immediately after the incident which resulted in damage to the parked cars in the Secretariat Premises.

29. The conclusion based on the oral deposition of K.Purushothamman, Driver attached to the (Secretary to Government Energy Department) and another driver D.Ashokan (Planning, Development and Special Initiatives Department) to conclude that the petitioner was under the influence of alcohol and drunk at the time of the accident cannot be sustained even if they had a bonafide belief.

30. The petitioner has also enclosed copies of the medical records to substantiate that he was undergoing medical treatment for cold, cough and headache due to which he was having suffocation / breathing problem.

31. Merely because the petitioner was not in a stable condition to walk after the incident also would not ipso facto, justify a conclusion that the petitioner was drunk or in an inebriated condition considering the fact that the petitioner had admittedly consumed the cough syrup prescribed by the Doctor from Royapettah Medical Hospital.

32. Since the petitioner was not sent for a medical examination by the respondent, there is a preponderance of probability that the petitioner was indeed suffering from severe cold and was under the influence of medicines which would have induced drowsiness. This is because the petitioner has produced medical records to show that he was prescribed medicines including cough syrup on the previous day of the incident. It cannot be surmised that the petitioner was drunk. It would be unfair to conclude that the petitioner was in an inebriated condition on account of the cough syrup prescribed by the Doctor.

33. The consumption of cough syrup would have naturally induced drowsiness as it contains alcohol in small quantity as per the relevant pharmacopoeia. The consumption of such prescribed medicines cannot be treated on par with the consumption of alcohol or prohibited drug to attract Rule 21 of Tamil Nadu Government Servant Conduct Disciples and Appeal Rules, 1973 to conclude that the Government Servants was drunk while attending office particularly in the light of the admitted fact that the accident was on account of consumption of



prescribed medicines.

34. The punishment of dismissal from service imposed by the third respondent as an Original Authority is disproportionate for the mistake committed by the petitioner and therefore liable to be modified.

35. At the same time, the petitioner should have been cautious. He should not have reported to duty to drive car as he was exposing not only himself but the public and public property at large at risk but also the occupants of the car to risk for whom he was assigned to drive the car apart from risking his own life.

36. Therefore, the petitioner cannot be exonerated for the loss caused to the property of the government and for threatening the safety of the public by driving the vehicle while under the influence of the medicine knowing fully well it would be hazardous to drive the car.

37. The petitioner should be made liable to make good for the loss caused to the Government on account of his carelessness. Therefore, liberty is given to the third respondent to recover an equitable amount from the petitioner for the loss caused to the Government over a period of time.

38. Since the petitioner had damaged the vehicles which were parked and since the Government Vehicles are not insured and the Government would have been forced to bear the expenses, the amount spent by the Government is liable to be recovered from the petitioner.

39. In the light of the discussions, this writ petition is partly allowed by quashing the impugned orders dated 16.09.2019 and 16.11.2020 passed by the third respondent with liberty to the third respondent to recover the loss caused to the Government from the petitioner. The third respondent shall recover the same from the petitioner considering the remaining length of the service of the petitioner.

40. The respondents are therefore directed to reinstate the petitioner to service with effect from 01.01.2022. The petitioner shall be kept under a watch and if desired, may be transferred to any other department in the Secretariat, subject to his suitability to drive cars or discharge any other function. It is made clear that barring continuity of service, the petitioner shall not be entitled for any salary from the date of the impugned order of the third respondent dated



16.09.2019 till the date of reinstatement on 01.01.2022.

41. The writ petition stands allowed with the above observations. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

rgm/drl

To

1. The Principal Secretary to Governments
Planning, Development & Special
Initiative (OPI) Department,
Fort St.George,
Chennai - 9.
2. The Deputy Secretary to Government,
Planning, Development & Special
Initiative (OPI) Department,
Fort St.George,
Chennai - 9.
3. The Additional Chief Secretary to Government
Planning, Development & Special
Initiative (OPI) Department,
Fort St.George,
Chennai - 9.

+1cc to Mr.M.Muthappan, Advocate SR.No.58738

+1cc to the Government Pleader SR.No.58882

W.P.No.19570 of 2020

and

W.M.P.No.24185 of 2020

SRA(CO)
GN(23/12/2021)