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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P. (MD) No. 7357 of 2020

and

W.M.P. (MD) Nos. 6805, 6806 & 6808 of 2020

R.Banumathy

: Petitioner

Vs.

1.The Principal District Judge,
Principal District Court,
Ramanathapuram,
Ramanathapuram District.

2.The Additional District Judge,
Additional District Court,
Ramanathapuram,
Ramanathapuram District.

3.The District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
Thiruvadanai,
Ramanathapuram District.

4.The Enquiry Officer and Judicial Magistrate,
Additional Mahila Court,
Ramanathapuram,
Ramanathapuram District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to the Charge Memo No.Nil dated 18.02.2020 issued by the third respondent to the petitioner and quash the same and consequently, direct the respondents to grant all the service and monetary benefits to the petitioner from 01.11.2019 within a stipulated time limit.

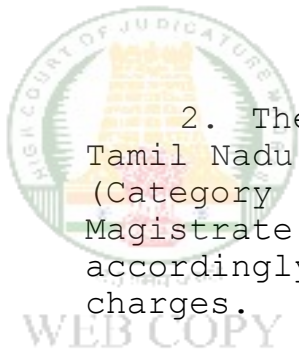
For Petitioner : Mr.R.M.Makesh Kumaravel

For Respondents : Mr.D.Sivaraman

ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.**)

The petitioner has come forward to file this writ petition challenging the charge memo issued by the third respondent dated 18.02.2020.



2. The petitioner was originally appointed as Copyist in the Tamil Nadu Judicial Ministerial Service. While working as Head Clerk (Category II) and posted to the District Munsif cum Judicial Magistrate Court, Thiruvadanai, she did not report for duty and accordingly, she was charged with unauthorized absence, among other charges.

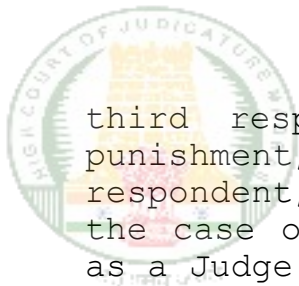
3. It appears, yet another charge has been issued against the petitioner for forgery and fabrication of records, for which, a charge memo was issued as early as on 12.02.2019. Incidentally, she was placed under suspension on 27.11.2019 under Rule 17(e)(ii) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. Challenging this suspension order, the petitioner has filed a writ petition in W.P.(MD)No.90 of 2020, which was dismissed as withdrawn, with a direction to complete the departmental proceedings within a period of eight weeks. The enquiry is also over and an extension is now sought for, since the time limit of eight weeks period as ordered in W.P.(MD)No.90 of 2020 has expired.

4. The learned Counsel appearing for the petitioner has raised two grounds challenging the present impugned charge memo pertaining to unauthorized absence, namely, the authority, who issued the charge memo, is shown as a witness, which would vitiate the very issuance of the charge memo. Secondly, the subsistence allowance, which the petitioner is entitled to, has not been given.

5. In the counter affidavit filed by the first respondent, it has been stated that the first respondent is the competent disciplinary authority. The charge memo was issued by the third respondent, on the instructions of the first respondent. The subsistence allowance has not been given, since the petitioner has not submitted the certificate as required under Fundamental Rule 53 (2) and she is not residing at Thiruvadanai, as against Paramakudi, during the period of suspension. It is further stated that what has been furnished by way of an address is that of the address of the Counsel. The petitioner has also received the communication sent by the respondents at Paramakudi.

6. The learned Counsel appearing for the petitioner submitted that the rental records were produced to show that she is residing, at least, now, in Thiruvadanai. The charge memo, having been issued by the third respondent, cannot be sustained in the eye of law.

7. We do not find any merit in the contentions raised by the petitioner. As rightly submitted by the learned Counsel appearing for the respondents, the disciplinary authority is the first respondent and mere issuance of the charge memo, at the instance of the disciplinary authority, by the third respondent would not vitiate the same. Mere issuance of charge memo would only mean initiation of a departmental proceeding and therefore, we do not



third respondent is not the authority to initiate and impose punishment, the charge memo issued at the instance of the first respondent, cannot found to be one without jurisdiction. In fact, the case of the petitioner is that the third respondent cannot act as a Judge of his own cause, which is not factually correct.

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8. The fact that the third respondent has been arrayed as a witness would also not vitiate the charge memo *per se*, as the charge is one of unauthorized absence. In a departmental proceedings, it is for the department to substantiate the charge. The third respondent is the custodian of the records and therefore, he has to be enquired.

9. On the question of payment of subsistence allowance also, we do not find any merit insofar as non-payment is concerned. The records would indicate that the petitioner was residing in a different place, contrary to the order of suspension passed and she has not filed any certificate of unemployment, as required under Fundamental Rule 52(3). However, the petitioner has produced rental records to show that she is now residing at Thiruvadanai.

10. In such view of the matter, on the production of non-employment certificate within a period of two weeks from the date of receipt of a copy of this order, the respondents shall pass appropriate orders granting subsistence allowance, henceforth, starting from the month of March, 2021.

11. The enquiry with respect to the earlier charge memo, which is the subject matter of W.P.(MD)No.90 of 2020 and which is said to be at the verge of conclusion, will have to be concluded within a period of eight weeks from the date of receipt of a copy of this order. Inasmuch as enquiry officer has been appointed in respect of the present charge and the enquiry having been commenced, we direct the respondents to conclude the same within a period of twelve weeks from the date of receipt of a copy of this order.

12. With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar (CS)



To

1. The Principal District Judge,
Principal District Court,
Ramanathapuram,
Ramanathapuram District.
2. The Additional District Judge,
Additional District Court,
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Ramanathapuram District.
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Additional Mahila Court,
Ramanathapuram,
Ramanathapuram District.

Copy to:

The Registrar(Judicial),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SIVARAMAN (SR-6088[F] dated 19/02/2021)

+1 CC to M/s.R.M.MAKESH KUMARAVEL, Advocate (SR-6458[F] dated 22/02/2021)

W.P. (MD) No. 7357 of 2020
18.02.2021

MJ(CO)
KK(25.02.2021) 4P 8C