



WEB COPY

W.P[MD]No.10169 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.P.[MD]No.10169 of 2020

and

W.M.P.[MD]No.9050 of 2020

N.Packialakshmi

... Petitioner

Vs.

1.The Judicial Magistrate,
Devakottai,
Sivagangai District.

2.The Principal District Judge,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the impugned order of punishment passed by the first respondent in No.1/19 dated 17.06.2019 as conformed & modified by the second respondent in his proceedings in Appeal No.01/2019 dated 16.03.2020 and quash the same.

For Petitioner : M.R.V.Rajkumar

For Respondents : Mr.G.Thalaimutharasu

O R D E R

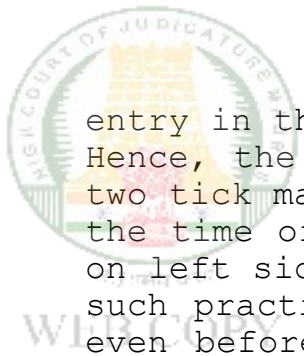
[Order of the Court was made by T.S.SIVAGNANAM, J.]

With the consent on either side, the Writ Petition itself is taken up for final disposal.

2.Heard Mr.R.V.Rajkumar, learned Counsel appearing for the petitioner and Mr.G.Thalaimutharasu, learned Counsel appearing for the respondents.

3.This writ petition has been filed challenging the order of punishment passed by the first respondent dated 17.06.2019, as modified by the second respondent in his proceedings in Appeal No.01/2019 dated 16.03.2020.

4.The learned Counsel for the petitioner has elaborately set out as to what was the allegation against the petitioner and submitted that the learned Judicial Magistrate did not give sufficient opportunity to the petitioner and without any corroborative evidence after verification of the hearing book on 16.06.2019, punishment was imposed on 17.06.2019. Further, it is submitted that though maintaining a hearing book is the duty of the Grade III Bench Clerk, with regard to the mode of maintaining the



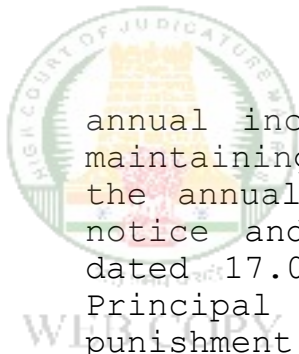
entry in the book, every Court / Judge has adopted their own method. Hence, the finding of the learned Judicial Magistrate that there is two tick marks one at the time of calling of the case and another at the time of adjournment and further the last hearing date should be on left side, but the same was not available is unsustainable, as no such practice was followed during the tenure of the petitioner and even before she joined duty, no such practice was followed in the Judicial Magistrate Court, Devakottai. Further, no instructions were given as alleged in the punishment order.

5.The learned Counsel further submitted that the Judicial Magistrate who imposed the punishment completely overlooked the admitted factual position that all the cases posted for hearing were fed into the CIS system everyday and the cause list of day to day posting of the cases are taken from the CIS version by taking printout with stage of the case and as assuming there is any mistake by oversight, there is no possibility of affecting the proceedings. Further, the learned Counsel has taken us through the hearing book details and demonstrated as to how entries have been made on the next adjourned date and that the proceedings are perverse.

6.Learned Counsel appearing for the respondent submitted that the petitioner joined as Grade III Bench Clerk on 16.09.2017 and on the crucial date of seniority and preparation of panel for the year 2019-2020 as on 01.07.2020, the petitioner's name was placed at Sl.No.2 in the promotional panel. It is submitted that on 14.06.2019, the Judicial Magistrate got a notice that the petitioner has not properly maintained the diary and hearing book and for nearly 100 cases, the petitioner has got adjournments on the reason that service was awaited. Further, on 14.06.2019, a memo was issued to the petitioner calling for explanation for missing case bundles in S.T.C.No.117 of 2019 and for not maintaining the diary and hearing book properly and for not verifying the service of Court notice for two years and got adjournment on the reason services are awaited. The petitioner was granted 24 hours time for submission of explanation.

7.Learned Counsel for the respondents further submitted that the petitioner in her explanation, submitted that S.T.C.No.117 of 2019 was taken on file on 08.02.2019 and thereafter on 20.03.2019, the bundle was handed over to Record Clerk for issuance of process and from 08.05.2019, the bundle is missing. Further, the petitioner stated that she has been searching for the case bundle and sought further time up to 30.06.2019. At that point alone, explanation was accepted for the time being and time to trace the bundle was granted till 30.06.2019, but the petitioner did not trace the bundle. Therefore, charge proceedings were initiated by the Principal District Judge, Sivagangai by proceedings dated 31.08.2020.

8.Further it is submitted that on 17.06.2019, the Judicial Magistrate, Devakottai has passed an office order and cancelled the



annual increment sanctioned for the month of April 2018 for not maintaining the diary properly and further it was ordered to cancel the annual increment for April 2019, for not verifying the Court notice and acknowledgement cards. Aggrieved, by the said order, dated 17.06.2019, the petitioner preferred an appeal before the Principal District Judge, Sivagangai. In the appeal, the order of punishment was modified. It was found by the appellate authority that cancelling an increment already granted is not a penalty under Rule 8 of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules, 1955 and it is only withholding of increments to be granted which will be a penalty. Therefore, a modification was made ensuing two increments of the petitioner being withhold.

9.After elaborately hearing the parties appearing on either side and carefully perusing the materials placed on record, we find that the order of punishment or the order of the appellate authority cannot be termed to be perverse. The role of a Bench Clerk that too in a Criminal Court is very vital. It is the bounden duty of the Bench Clerk to ensure that cases are promptly entered in the hearing book and service of notice is clearly monitored and in that process, several unknown persons are likely to be affected because the Court deals with criminal proceedings. The explanation was considered by the authority, order of punishment has been passed which was modified by the appellate authority to be in tune with Rule 8 of the said Rules. Thus, in the absence of any perversity on the part of the authorities, this Court is of the view that the order of punishment imposed on the petitioner cannot be interfered with.

10.For the above reasons, the writ petition fails and dismissed. It is settled legal position that the scope of interference under Article 226 of the Constitution on the factual findings recorded by the disciplinary authority as confirmed by the appellate authority is very limited. Therefore, this Court cannot sit in a judgment, over the decision of the disciplinary authority as if it is a third appellate authority. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

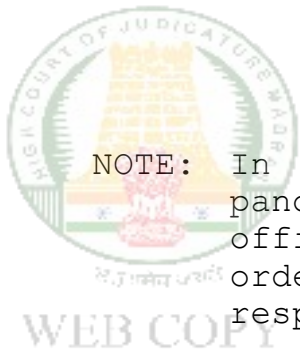
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Sub Assistant Registrar(CS)

MR

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate,
Devakottai,
Sivagangai District.
- 2.The Principal District Judge,
Sivagangai District.

W.P. [MD]No.10169 of 2020
16.06.2021

KK(06.07.2021) 4P 3C