



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.6913 of 2017

and

W.M.P. (MD)No.5459 of 2017

WEB COPY

Rajinikanth

... Petitioner

vs..

1.The Deputy Transport Commissioner,
Trichy Region,
Tiruchirppalli.

2.The Regional Transport Officer,
Srirangam,
Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned orders Se.Mu.Anai No.55377/A2/2010, dated 06.09.2011, and Na.Ka.No.1528/A1/2010, dated 03.02.2012 passed by the respondents respectfully and quash both and consequently, direct the respondents to reinstate the petitioner as Night Watchman in the second respondent Office.

For Petitioner : Mr.R.Murugappan

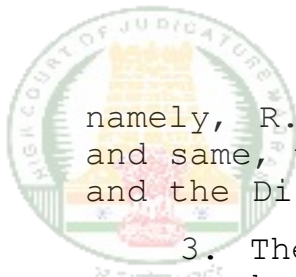
For Respondents : Mr.D.Sasikumar

Additional Government Pleader.

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned orders dated 06.09.2011, and Na.Ka.No.1528/A1/2010, dated 03.02.2012 passed by the respondents respectfully and to quash both and consequently, direct the respondents to reinstate the petitioner as Night Watchman in the second respondent Office.

2. The petitioner worked as Night Watchman in the second respondent Office. The second respondent framed charges against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, vide, dated 06.09.2011. An Enquiry Officer was appointed and based on the Enquiry report, the petitioner was dismissed from service, on the ground of long absence and on other charges. The petitioner preferred an appeal to the first respondent and the same was dismissed on 03.12.2012. The petitioner's main ground of attack is that the Enquiry Officer,



namely, R.Pandiyan, as well as the Disciplinary Authority are one and same, which is evident from the enquiry report, dated 08.08.2011 and the Disciplinary Authority ordered, dated 06.09.2011.

3. The first respondent has filed a counter affidavit and in paragraph 4, it has been stated that there is amendment in Rule 17 and the relevant portion of the amendment is extracted hereunder:

"4. I respectfully submit that the petitioner has raised main ground in the writ petition stating that, the second respondent was acted as the Enquiry Officer as well as the Disciplinary Authority, it is legally unsustainable under the law. Except this ground, the petitioner did not raise any other valid grounds. The other ground raised by the petitioner regarding the delay of 5 years in filing the present Writ Petition as "Ignorance of Law". I respectfully submit that ignorance of law is not a ground to file Writ Petition as held by the Hon'ble Apex Court. I submit that the above said ground is legally not valid, Because, there is no bar the Enquiry Officer to act as Disciplinary Authority. The Government passed order in G.O.Ms.NO.77 Personnel and Administrative Reforms (N) Department, dated 06.02.1996, as follows:

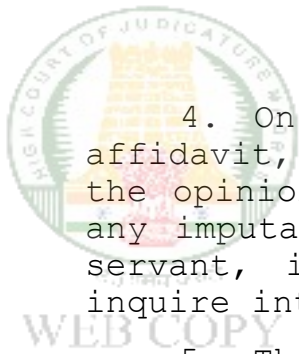
AMENDMENT

In the said Rules, in Rule 17, after sub-rule (f), the following sub-rule shall be inserted, namely:

(g) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Government servant, it may itself inquire into or appoint an authority to inquire into the truth there of".

Explanation: Where the disciplinary authority itself holds the inquiry, any reference to the "inquiring authority" shall be construed as a reference to the disciplinary authority"

In view of the above said G.O clearly stating that, the Enquiry Officer himself acted as Disciplinary Authority. Further, the second respondent is the appointing authority as well as disciplinary authority in this case. Therefore, the second respondent is competent authority to impose punishment to the delinquent servant under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in this case. Hence, there is no infirmity in dismissal order passed by the second respondent."



4. On perusing all the amendment, as stated in the counter affidavit, it is seen, whenever, the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against the Government servant, it may itself inquire into or appoint an authority to inquire into the truth there of.

5. The amendment clearly states that for inquiring into the "truth", it is a preliminary enquiry. After a preliminary enquiry, if any truth is there, the higher authority will issue a charge memo and conduct an enquiry. Therefore, this enquiry as stated in the counter affidavit is different from the enquiry proceedings, this enquiry is only a preliminary enquiry. Therefore, the contention of the respondent that the enquiry officer and the disciplinary authority can be one and the same is rejected and the contention of the petitioner is accepted. The respondent has raised another ground of limitation/laches, since, the enquiry was conducted and passed an order in the year 2011, the petitioner has filed a writ petition in the year 2017. Based on the illegal enquiry, imposing major punishment of dismissal from service is illegal and therefore laches ought to be condoned. Therefore, the contention of laches is rejected.

6. The Writ Petition is allowed, directing the respondents to conduct re-enquiry by appointing appropriate Officer and follow the principles of natural justice and conduct the enquiry in accordance with law. The entire process shall be completed within four months from the date of receipt of a copy of this order.

7. Therefore, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

jbr

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 Deputy Transport Commissioner,
Trichy Region,
Tiruchirppalli.

2.The Regional Transport Officer,
Srirangam,
Trichy District.

+1 CC to M/s.R.MURUGAPPAN, Advocate (SR-36952[F] dated 02/12/2021)

+1 CC to M/s.SPL GP (SR-37033[F] dated 02/12/2021)

Order made in

W.P. (MD)No.6913 of 2017

01.12.2021

NSN (CO)

GC(21.12.2021) 4P 5C