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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.8854 of 2011
and
M.P.No.2 of 2011

K.Hari

...Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home (Transport) Department,
Secretariat, Chennai - 2.

2.Principal Secretary and
Commissioner of Transport,
Chepauk, Chennai - 5.

...Respondents

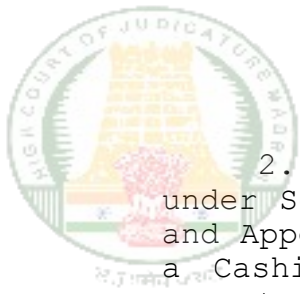
PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in G.O.(D) No.47, Home (Tr.II) Department, dated 02.02.2010 and quash the same and direct the respondents to confer all the consequential benefits to the petitioner, including promotion from the date on which his junior came to be promoted.

For Petitioner : Mr.P.Ganesan
for M/s.C.S.Associates

For Respondents : Mr.Veda Bagath Singh,
Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.



2. The petitioner herein was dealt with charges framed under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the allegation that, when he was serving as a Cashier in the respondent department, there was an excess amount of Rs.78/- in his cash counter and 3 unauthorised persons were engaged by him in his official work in the cash counter. After due enquiry, the Enquiry Officer held the charge against the petitioner as "not proved". However, the first respondent herein, through an order dated 18.07.2008, had disagreed with the findings of the Enquiry Officer and held the charge to be "proved" in a cryptic manner as follows:-

Reasons for Disagreement

The Inquiry Officer in his findings had failed to note the presence of outsiders inside the O/o. the Regional Transport Officer operating cash track machine and computer machine. The charge is therefore held proved.

3. It is no doubt true that the Disciplinary Authority may have the powers to defer from the findings of the Enquiry Officer. However, while such a disagreement is made, there is a duty cast on the Disciplinary Authority to discuss about the findings of the Enquiry Officer and set out the reasons as to why such findings are unacceptable and thereby defer from such findings. In the instant case, the disagreement of the enquiry findings has been made in a single line, stating that the Enquiry Officer has failed to note the presence of outsiders in the cash counter. Such a finding is deemed to be a non-speaking order and consequently amounts to non-application of mind.

4. In normal circumstances, this Court would have remitted the matter back to the first respondent for reconsideration. However, the petitioner herein had retired on 30.06.2015 and therefore, remitting the matter back to the first respondent would cause serious prejudice to the petitioner herein.

5. The first respondent herein had passed an order of punishment dated 02.02.2010, by imposing a punishment of stoppage of increment for a period of 2 years with cumulative effect. In view of the finding of this Court that the deferment order of the first respondent is a non-speaking order, the consequential order of punishment cannot be sustained.

6. In the light of the above observation, the impugned order passed by the first respondent herein dated 02.02.2010 is quashed. Consequently, there shall be a direction to the first respondent to extend all the service and monetary benefits to the petitioner herein, including the pensionary benefits, within



a period of four (4) weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Secretary to Government,
The State of Tamil Nadu,
Home (Transport) Department,
Secretariat, Chennai - 2.

2.The Principal Secretary and
Commissioner of Transport,
Chepauk, Chennai - 5.

+1cc to M/s.C.S. Associates, Advocate SR. No.8477

+1cc to Government Pleader SR. No.9026

W.P.No.8854 of 2011
and
M.P.No.2 of 2011

MT (CO)
PR (01/03/2022)