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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.1899 of 2018
against
WP.No.33208 of 2013

1.The Principal Secretary to Government
Highways & Minor Ports (HL1) Department,
Fort St.George,
Chennai 600 009.

2.The Chief Engineer (General) Highways
Chepauk, Chennai - 600 005.

...Appellants/Respondents

-vs-

M.Kamaraj

...Respondent/Petitioner

Prayer:Writ appeal is filed under clause 15 of the Letter Patent praying to allow the Writ Appeal and set aside the order dated 09.03.2015 in W.P.No.33208 2013.

Prayer in W.P.No.33208/2013: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 1st respondent in connection with the impugned order passed by him in GO(D) No.216, Highways and Minor Ports (HL1) Department dt 25.10.2013 and quash the same.

For Appellants : Mr.K.V.Sajeev Kumar
Special Govt.Pleader

For Respondent : Mr.K.Venkataramani
Senior Counsel for
M/s.M.Muthappan for Respondent



J U D G M E N T

S.VAIDYANATHAN, J.
&
MOHAMMED SHAFFIQ, J.

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The present appeal has been preferred against the order of the learned Single Judge made in W.P No.33208 of 2013 dated 09.03.2015.

2. The writ petitioner, who is the respondent herein was imposed with the punishment of stoppage of increment for a period of three months (01.10.2014 to 31.12.2014) vide G.O.(D). No.216, Highways and Minor Ports (HL1) Department, dated 25.10.2013. The petitioner entered the Government service on 25.11.1981 as Assistant Engineer in Highways Department and thereafter he was promoted as an Assistant Divisional Engineer and later as Divisional Engineer. He was faced with four charges. Similarly, four other employees were also proceeded departmentally. Then the Enquiry Officer submitted a report to the effect that charges 1 and 2 have not been proved. With respect to charge No.3 it has been partly proved and the 4th charge was fully proved. The Enquiry Officer's finding was accepted by the Disciplinary Authority, who after issuance of second Show Cause Notice, imposed the punishment of stoppage of increment for a period of three months without cumulative effect when the order of punishment was challenged before the learned single Judge, it has been set aside against which the respondents/appellants herein are before this Court.

3. The main contention of the appellants was that the writ petitioner/respondent herein committed serious procedural lapses and that the punishment was rightly imposed. It is not that the writ petitioner was alone was subjected to the Disciplinary Proceedings and similarly placed persons have also been proceeded with. However, charges against those persons have been dropped.

4. One of the main contentions of the writ petitioner was that the charge memo was issued belatedly on 14.05.2009 and it was not possible for him to defend the case after a lapse of nine years. Thus by relying upon the decision of the Hon'ble Supreme Court in the case of UCO Bank and others Vs Rajendra Shankar Shukla, reported in (2018) 14 SCC 92, it was argued on the side of writ petitioner that the Court had interfered with the punishment in the said case on the ground of delay in proceeding with the enquiry and granted relief to the employee therein. The relevant portion of the judgment is extracted hereunder:



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"12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submission made by the learned counsel. the first issue of concern is the enormous delay of about 7 years in issuing a charge-sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge-sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.

13. What compounds the default on the part of the Bank is that Shukla was placed in a higher category as a Manager on 19.07.1994 while all these discussions were going on in the Bank. He was also allowed to cross the efficiency bar on 12.08.1996 again while the discussions were going on. Surely, if the Bank was serious about proceeding against Shukla for misconduct, they would not only have taken prompt action in issuing a charge-sheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar."

Before the learned single Judge, it was put forth that there were procedural irregularities and no material document was placed before the Court to establish the charges. The learned single Judge has recorded his findings in Paragraph No.14, which is extracted below:-

"14. The first respondent alleged that the petitioner in collusion with other employees, recorded false measurements and caused financial loss to the Government. The Enquiry Officer scanned the materials and arrived at a finding that the work was executed as per the agreement, using standard materials and as such, there was no loss to the Government. Charges 1 and 2 are closely connected to charges 3 and 4. The Disciplinary Authority alleged that the petitioner committed irregularities in the matter of maintaining records, without actually receiving, lending or borrowing bulk bitumen and emulsion bitumen and made false entries. The Enquiry Officer reported that the petitioner failed to make entries, notwithstanding the fact that the transactions have taken place between R.R.Chidambaram, Bhuvanagiri Town Panchayat and Keerapalayam Panchayat Union. The Enquiry Officer admitted that the work was completed in accordance with the contract. It is also a



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matter of record that the petitioner was in charge of the division from where materials were taken on loan. His failure to record loan transactions was taken as a misconduct. The materials on record would show that the petitioner was holding charge of Assistant Engineer (H) Chidambaram and full additional charge of Nabard section of Chidambaram and he was in-charge of Nabard work. In fact, the Enquiry officer agreed that in view of the petitioner holding the post of both Assistant Engineer of Chidambaram and full additional charge of Nabard Section of Chidambaram, the question of acknowledgment for receiving material does not arise. Such being the position, the Enquiry Officer was not correct in concluding that the petitioner committed a procedural lapse. The question of making an entry would arise only in case the petitioner has taken up a contention that he has received bitumen from another division and used it for laying road. Here in this case, the Enquiry Officer on the basis of available materials very clearly arrived at a finding that the road work was undertaken using bitumen and there was no financial loss to the Government. Since the petitioner was in charge of both the divisions, there was no requirement to record the transaction regarding temporary loan of bitumen. It was a short term loan transaction. Since the bitumen was not readily available to undertake the work, it was taken as loan from the other division, which was also under the control of the petitioner. In fact, the Department should appreciate the swift action taken by the petitioner to complete the work by taking bitumen on loan. In view of the finding with regard to charges 1 and 2, there is no justification for arriving at a different finding with respect to charge No.3, to the effect that the petitioner committed a procedural lapse. I am therefore of the view that the Enquiry Officer and that matter, the Disciplinary Authority, erred in arriving at a finding that the petitioner committed a procedural lapse".

5. The learned single Judge has also observed that ignoring the reply given to the comments of the Enquiry Officer, the Disciplinary Authority has imposed the punishment, even though charges have been framed under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Taking note of the fact that similar proceedings were taken against R,Shanmugam, Joint Chief Engineer and H.Mohammed John, Divisional Accountant and that the very same four charges were framed against them, the Enquiry Officer has taken a different view in respect of them and reported that the charges were not proved against those persons. Hence, the learned single Judge has held that the writ petitioner should not have been treated differently.



6. It is no doubt true that the judicial review is very limited in matters arising out of departmental proceedings and Court must have strong reasons to disagree with the findings of the Enquiry Officer and the Disciplinary Authority to come to a different conclusion. This is one such case, where identical charges were issued to three persons, out of which, Enquiry Officer had reported that charges have not been proved against R. Shanmugam and H. Mohammed John and the Government have accepted the report and dropped further action. The writ petitioner has been singled out and treated differently. It is represented by both parties that Joint Chief Engineer is the superior officer to the writ petitioner, namely, Divisional Engineer against whom charges have been dropped and the Government have not proceeded further. Taking note of the delay in initiation of enquiry and conclusion of enquiry after a period of 10 years, the learned Single Judge has granted relief to the writ petitioner and interfered with the punishment. Hence, we find that there are no reasons to disagree with the findings of the learned Single Judge, who has set aside the punishment of stoppage of increment for a period of three months. One of the issues raised before this Court in the writ appeal is that the writ petitioner had already filed W.P.No.33208 of 2013, wherein he has sought for implementation of the punishment ordered in W.P.No.3986 of 2014 dated 12.02.2014 and this Court has passed the following order to implement the said G.O.(D).No.216 dated 25.10.2013 and the relevant paragraph No.4 is extracted hereunder:

"4. Though the petitioner filed writ petition in W.P.No.33208 of 2013 before this Court challenging the punishment imposed against him, he made a representation to the respondents for implementation of the said punishment since if the order of punishment order is implemented from the date on which he was served, the period of punishment will be over by 01.12.2013 and thereby he would become eligible for next promotion. The petitioner relied upon the guidelines issued by the Government in respect of giving effect to the punishment in Lr.No.28790/3/2000/1 Personnel & Administrative Reforms (s) Department dated 05.07.2001 in and by which, it is categorically stated that an order imposing any punishment including withholding of increment takes effect from the date on which the said order is communicated to the concerned government servant. In fact, after imposing the punishment, there was no impediment for the respondents to implement the order of punishment since there was no interim order in the writ petition filed by the petitioner restraining them from implementing the order of punishment. Therefore, it is incumbent upon the respondents to implement the order of punishment once imposed against the petitioner.



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Accordingly, the respondents are directed to implement the punishment imposed on the petitioner in GO (D)No.216 Highways and Minor Ports (HL1), dated 25.10.2013 from the date on which it was communicated as per the guidelines issued by the Government in Letter No.28790/3/2000/1 Personnel & Administrative Reforms (s) Department dated 05.07.2001, within a period of four weeks from the date of receipt of a copy of this order."

7. A reading of the affidavit filed by the writ petitioner in support of that writ petition and the prayer would make it very clear that he did not want to miss the bus to get promotion and submitted that the punishment may be implemented without prejudice to his rights to question the punishment which was pending in W.P.No.33208 of 2013. The said writ petition was allowed and now is affirmed by this Court. It is submitted that promotion is a different cause of action, which cannot be clubbed along with the punishment issued, that was the subject matter of the writ petition and that the writ petitioner will have to file a separate writ petition seeking for promotion. We are not inclined to accept the contention. Once the impugned order is quashed, it is deemed that the order impugned in the writ petition is non-est in the eye of law and the employee should have been considered for promotion. In this case, even assuming for the sake of argument that the writ petitioner has not filed W.P.No.33208 of 2013 and accepted the punishment, atleast from the futuristic date, he should have been considered and promoted and depending upon the outcome of the writ petition the benefits could have been extended retrospectively. In the present case on hand neither the case of the writ petitioner has been considered for the future promotion nor benefits have been extended even after the writ petition was allowed. If the writ petitioner was eligible as per the order of this Court dated 12.02.2014 in WP.No.3986 of 2014 and he being in service, the benefits ought to have been extended from the future date, taking note of the crucial date and zone of consideration, if found eligible. Once the order has been quashed, the writ petitioner would be automatically entitled to all the benefits, as if there is no punishment at all in the eye of law.

8. With the above observation, this Writ Appeal is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar



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To:

1.The Principal Secretary to Government
Highways & Minor Ports (HC1) Department,
Fort St.George,
Chennai 600 009.

2.The Chief Engineer (General) Highways
Chepauk, Chennai - 600 005.

+1cc to Mr.M.Muthappan, Advocate SR. No. 13294

W.A.No.1899 of 2018

KV (CO)

PR (04/07/2022)