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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.14674 of 2022

and

WMP.No.13874 of 2022

M.P.Muruganantham

.. Petitioner

Vs

- 1 The Registrar General
High court of Judicature at Madras
Post Box No.78, Chennai - 104.
- 2 The Principal District Judge, Namakkal
Combined Court Complex Building
Namakkal - 637 001.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records pertaining to the order dated 17.04.2021 passed by the 2nd respondent in ROC No.5633/A/2019 and the order dated 17.6.2021 in order Roc No.45460-A/2021/C1 passed by the 1st respondent, quash the same and consequently direct the respondents to restore the petitioner's pay with all consequential benefits including arrears and to sanction and pay the petitioner revised terminal benefits based on such restored and revised pay payable to the petitioner as on the date of the petitioner's superannuation.

For the Petitioner : Mr.V.Ajoy Khose

For the Respondents : Mr.Fakir Mohideen



ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition has been filed challenging the order dated 17.4.2021 inflicting a punishment of reduction to lower post on the petitioner and the order dated 17.6.2021 passed by the appellate authority modifying the punishment to reduction in time scale of pay by three stages for a period of one year with cumulative effect.

2. The challenge to the order passed by the disciplinary authority so as the appellate authority has been made precisely on the ground that certain documents referred by the Enquiry Officer to prove the charge were not supplied to the petitioner. In view of the above, not only the principles of natural justice are violated, but also the procedure for conducting the disciplinary proceedings. The Enquiry Officer referred to certain documents to hold the charge proved against the petitioner, without furnishing copies of the same to the petitioner. It is also without supplying a copy the preliminary enquiry report. Thus, on both grounds the order of the disciplinary authority so as the appellate authority deserve to be set aside. It is more so when the petitioner had taken both the issues in the appeal, but the appellate authority did not deal with it, though modified the punishment by reduction in time scale of pay by three stages for a period of one year with cumulative effect looking to the fact that the petitioner has already retired and reduction of rank may seriously affect the pensionary benefits.

3. Learned counsel has thus given a reference of the enquiry report so as the order passed by the appellate authority to substantiate his argument, more specifically, paragraphs 9 and 11 of the enquiry report. Thus, a prayer is made to set aside the orders impugned and allow the writ petition.

4. We have considered the submissions made by learned counsel for the petitioner and also perused the materials on record.

5. The fact in issue is that the petitioner was served with a charge sheet containing the following allegation:

"That you, Thiru.M.P.Muruganatham, Head clerk, Chief Judicial Magistrate Court, Namakkal, during your tenure as Head Clerk at District Munsif-cum-Judicial Magistrate Court, Natham on 04.05.2018, you have preferred a false, frivolous complaint against the Presiding Officer of the then District

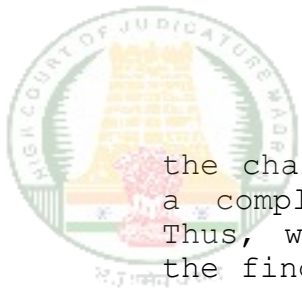


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Munsif-cum-Judicial Magistrate, Natham by obtaining signatures from other staff members without showing the contents of the complaint to them and forwarded the same to the Hon'ble High Court, Madras and the Principal District Judge, Dindigul and due to your act, name of the Judicial Officer among the District Judiciary as well as public is defamed and your act also lead to wastage of precious time of the Courts of the Principal District Judge, Namakkal & Dindigul and the administrative offices and due to your intolerable attitude, the precious time of the Hon'ble High Court, Madras also wasted. Further, your act shows that you have not maintained absolute integrity and breached devotion to duty and you have thus violated Rule 20 of the TNGSC Rules, 1973."

6. After issuance of the charge sheet and upon calling for explanation, disciplinary proceedings was initiated and, accordingly, Enquiry Officer was appointed. In the enquiry, the petitioner had participated and he was furnished the documents relied on by the Administration and at the same time, he was allowed to produce his defence. The witnesses produced by the Administration were allowed to be cross-examined by the petitioner. Thus, there is no challenge to the validity of the enquiry. The challenge made to the enquiry report so as the punishment and the order of the appellate authority is precisely on one ground. It regarding non-supply of the copies of the letters dated 14.05.2018 and 21.05.2018, which were relied on by the Enquiry Officer to prove the charge and at the same time for the non-supply of the preliminary enquiry report which was also relied on by the Enquiry Officer.

7. To analyse the issue aforesaid, we have perused the enquiry report so as the order of the disciplinary authority imposing punishment and, lastly, the order passed by the appellate authority. In the enquiry report, the Enquiry Officer has narrated about the preliminary enquiry report on the complaint recorded by the Principal District Judge, Dindigul and for that we have gone through paragraph 11 of the enquiry report and find that a reference of the preliminary enquiry report has been given in reference to the argument of the delinquent that the alleged letter dated 04.05.2018 was a grievance petition and not a complaint. A reference of the facts, which includes holding of preliminary enquiry, has been given. A mere reference of the preliminary enquiry report, while stating the facts of the case, would not mean a reliance, but for narration of facts given by the petitioner. The findings recorded in the preliminary enquiry report have not been taken as basis to prove



the charge. The argument of the petitioner as to whether it is a complaint or the grievance petition has been dealt with. Thus, we do not find that the Enquiry Officer has relied upon the finding of the preliminary enquiry report to hold the charge as proved. Thus, the argument in reference to the reliance of the preliminary enquiry report without serving a copy of it on the petitioner cannot be accepted.

8. The second argument is in regard to Ex.P1 dated 04.05.2018, which was sent to the High Court. Again, paragraph 9 of the enquiry report makes a statement of fact, but is not taken to be a proof to establish the charge. Mere making a statement of fact without taking it to be a proof, cannot be held to be in violation of principles of natural justice. Thus, we are unable to accept the second limb of argument to hold the enquiry to be vitiated. It is more so when the enquiry report shows that witnesses P.W.1 to P.W.14 were examined and they are the direct witnesses qua the letter dated 04.05.2018 containing their signatures, though they were not instrumental in it. They were the best witnesses to prove or disprove the allegation against the petitioner. The witnesses aforesaid were allowed to be cross-examined by the petitioner. A detailed discussion about the material evidence to prove the charge has been given in the enquiry report. The oral testimony of D.W.1 produced by the petitioner was not accepted, as the said witness had no connection with Ex.P1 i.e. the complaint made, based on which, charge-sheet was served on the petitioner. The petitioner even produced documents Exs.D1 and D2 and the same have been considered by the Enquiry Officer, which is apart from the document Ex.D3.

9. In the light of the discussion aforesaid and finding that the Enquiry Officer recorded his finding in reference to the witnesses examined and upon perusing the documents, the imposition of punishment by the disciplinary authority, thereupon and interfered by the appellate authority to reduce the punishment, does not call for interference on the grounds urged.

10. The writ petition fails and it is accordingly dismissed. There will be no order as to costs. Consequently, W.M.P.No.13874 of 2022 is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar



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The Registrar General

High court of Judicature at Madras

Post Box No.78, Chennai - 104.

2

The Principal District Judge, Namakkal

Combined Court Complex Building

Namakkal - 637 001.

Copy to:

The Section Officer,

Legal Cell, High Court, Madras.

+1cc to Mr.V.Ajoy Khose, Advocate SR. No. 36253

W.P.No.14674 of 2022

GPL (CO)

NSK (28/06/2022)