



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2022

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) .No.9982 of 2019

and

W.M.P. (MD) .No.7776 of 2019

S.Catherine Malliga

... Petitioner

Vs.

1.The Principal Secretary to Government,
Health and Family Welfare (D2) Department,
Secretariat,
Fort St.George,
Chennai-9.

2.The Director,
Directorate of Public Health and Preventive Medicines,
Chennai-6.

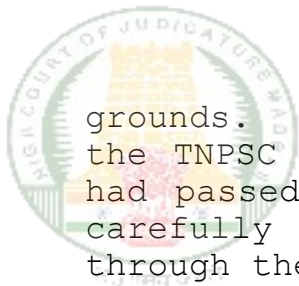
...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the first respondent herein in G.O.(D).No.196 dated 19.02.2009 and G.O.(D).No.744 dated 27.06.2011 confirmed G.O.Ms.No.620 Health and Family Welfare (D2) Department dated 09.07.2012 and to quash the same as illegal, incompetent and to pay the consequential benefits including service and monetary with all arrears with interest within time stipulated by this Court.

For Petitioner : Mr.D.Selvanayagam
For Respondents : Mr.G.Suriyananth,
Additional Government Pleader.

ORDER

Among the six charges framed against the petitioner, the Inquiry Officer held charge No.3 to have been proved. However, the disciplinary authority while accepting the report of the Inquiry Officer, insofar as the charges No.2 to 6 are concerned, had deferred from the findings in charge No.1 and held it to be proved. The first respondent herein, through an order dated 19.02.2009, had imposed punishment of stoppage of increment for a period of six months with cumulative effect. As against the punishment, the



grounds. The first respondent herein had obtained the opinion of the TNPSC dated 31.01.2011 and by placing reliance on the opinion, had passed a cryptic order observing that the review petition was carefully examined and thereby, confirmed the original punishment through the impugned order dated 27.06.2011.

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2. Learned counsel for the petitioner predominantly raised two grounds. Firstly, he submitted that several grounds raised in the review petition have not been considered by the authority and secondly that the views of TNPSC was not served on him.

3. Learned Additional Government Pleader placed reliance on the counter affidavit and submitted that the procedures laid down under the Tamil Nadu Civil Services (Discipline and Appeal) Rules were properly followed and the punishment imposed is a minor punishment, which is proportionate to the proven charges.

4. Rule 20 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules reads as follows:

"20.(1) A member of a State Service or a member of a Subordinate Service including a person who has ceased to be a member of such service in whose case the Government have passed original orders, shall be entitled to submit, within a period of two months from the date on which the order was communicated to him, a petition to the Government for review of the orders passed by them on any of the grounds specified below:-

(a) that the order was not passed by the competent authority;

(b) that a reasonable opportunity of defending himself was not given;

(c) that the punishment is excessive or unjust;

(d) discovery of new matter or evidence which the appellant alleges and proves to the satisfaction of the Government was not within his knowledge or could not be adduced by him before the order imposing the penalty was passed;

(e) evident error or omission such as failure to apply the Law of Limitation or an error of procedure apparent on the face of record; Provided that the Government may, in its discretion, condone any delay in submitting the petition for review within the said period of two months.

(2) The petition for review which does not satisfy any of the above grounds shall be

summarily rejected.



(3)Where an authority other than the State Government, by virtue of sub-rule (2) of rule 12, has passed orders imposing a penalty on a member of the State Service, such member shall be entitled to appeal to the Head of Department, if the orders were passed by an authority subordinate to the Head of Department or to the Government, if the orders were passed by the Head of Department."

5. Thus, when the Government intends to pass orders on the review application, there must be a subjective satisfaction expressed in the said order and the other stipulations in the Rules should also be adhered to. In the instant case, apart from placing reliance on the views of the TNPSC, no subjective satisfaction has been arrived at by the Government while passing the said order. Even otherwise, when the Government intends to rely upon the views of TNPSC, there is a duty cast on them to supply a copy of the same on the delinquent officer before placing any reliance on it. In the case of **J.Murugabharathi Vs. The Agricultural Production Commissioner and Principal Secretary to Government** passed in **W.P. (MD).No.18206 of 2019 dated 01.04.2021**, I had placed reliance on a decision of the Hon'ble Division Bench of this Court and held that non-furnishing of the TNPSC's view to the petitioner is fatal. The relevant portion of the order reads as follows:

"14.The impugned order also places reliance on the advice of the TNPSC, dated 08.05.2019. The petitioner has raised a ground that a copy of the TNPSC's advice, was not served on him. This statement is not disputed. On the other hand, the impugned order ratifies the by non-furnishing of the advice report, by serving a copy of the TNPSC report, along with the impugned order of punishment. This procedure has been held to be impermissible in various decisions of this Court, including the order of an Hon'ble Division Bench of this Court in Union of India, Ministry of Defence and another reported in (2005) 2 5 MLJ 154, wherein it was held that the delinquent employee would be entitled to a copy of the report of the Public Service Commission, before passing of an order of punishment. Further, non-furnishing of the report would also disable the delinquent officer to give an effective objection, since he would be deprived of knowing the contents of the report. Thus, the manner in which the disciplinary proceedings had culminated into the impugned punishment, Regulations and scaled



proportion is contrary to the Regulations and settled propositions of law."

6. Apparently, both these requirements of subjective satisfaction as well as supply of the views of the TNPSC had been disregarded. On this ground, the consequential punishment passed by the Government in the impugned order dated 27.06.2011 cannot be sustained.

7. The petitioner herein had produced a copy of the review petition dated 22.06.2009 based on which the present impugned order in review has been passed. A perusal of the review petition reveals that the petitioner has raised several grounds attacking the original order of punishment dated 19.02.2009. This Court is of the view that if the matter is remitted back to the Government for re-appraisal of the grounds raised by the petitioner in the review petition, after supply of a copy of the TNPSC views through the consequential direction to re-consider the same, the ends of justice will be secured.

8. Accordingly, the impugned order passed by the Government in G.O.(D).No.744 Health and Family Welfare (D2) Department dated 27.06.2011 is set aside and the matter is remitted back to the first respondent herein for re-consideration. The first respondent shall supply a copy of the TNPSC views dated 31.01.2011 to the petitioner and thereafter, after extending due opportunity to the petitioner for filing a further representation, shall consider all the grounds raised by her including the grounds in the further representation and pass a speaking order in conformity with Rule 20 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The first respondent herein shall pass such final orders at least within a period of three (3) months from the date of receipt of the petitioner's further representation.

9. This Writ Petition stands ordered accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
Health and Family Welfare (D2) Department,
Secretariat,
Fort St.George,
Chennai-9.

2.The Director,
Directorate of Public Health and Preventive Medicines,
Chennai-6.

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-24484[F] dated 07/06/2022

+1 CC to M/s.SPL.GP (SR-24592[F] dated 08/06/2022)

**W.P. (MD) .No.9982 of 2019
07.06.2022**

nsn(CO)
TR(14.06.2022) 5P 5C