BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.24734 of 2019
and
W.M.P.(MD)No.21342 of 2019
and
W.M.P.(MD)No.4050 of 2020

K.Vidya ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government,
Finance (T & A-1) Department,
Secretariat, Chennai – 9.

2.The District Treasury Officer/
Enquiry Officer,
Trichy. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent in connection with the impugned Government Orders passed by him in G.O.(2B) No.50 dated 28.09.2018 and G.O.(2B) No.46, dated 03.09.2019 and quash the same.

For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.R.Suresh Kumar,
Addl. Government Pleader.

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was selected and appointed to the post of Typist in the year 1991. She became an Accountant in the year 1997. She was promoted as Superintendent in the year 2009. She was further promoted as Assistant Treasury Officer on 13.09.2013. The petitioner was issued with a charge memo dated 30.06.2016 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. She reached the age of superannuation on 30.09.2018. However, one day prior to her reaching the age of superannuation, she was placed under suspension. She was allowed to retire without prejudice to the pending disciplinary proceedings. An enquiry officer was appointed and he gave his report dated 12.07.2018. Totally seven articles of charge were framed against the writ petitioner. The enquiry officer held that charges 1, 6 and 7 were proved. A copy of the enquiry report was served on the petitioner. The petitioner offered her explanation. Thereafter, the Government issued

G.O.(2B) No.50 Finance Department, dated 28.09.2018, accepting the findings of the enquiry officer and imposing the punishment of censure. Aggrieved by the same, the petitioner filed a review petition. The review petition was rejected and the impugned G.O.(2B) No.46, dated 03.09.2019 was passed. Challenging the same, the present writ petition has been filed.

3.The learned counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the orders impugned in the writ petition.

4.The respondents have filed a detailed counter affidavit and the learned Additional Government Pleader reiterated all the averments set out therein. He submitted that the petitioner was given fair opportunity to defend herself. The enquiry officer found three of seven charges as proved. Only after considering the petitioner's explanation, the Government had imposed very light punishment of censure. According to him, the matter does not call for interference. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. As already noted, out of the seven charges, only three were held to be proved. Charge No.1 is that the petitioner had collected a sum of Rs.1,00,000/- from various employees who came to District Treasury Office, Thanjavur towards donation for conducting State Executive Committee meeting of the Tamil Nadu State Treasuries and Accounts Service Association. Charge No.6 is that the petitioner had deposited a sum of Rs.1,00,000/- in the account of one accountant by name Sivaraj without his knowledge and that she had conspired with Mr.M.Soundararajan, the President of the Sangam. Charge No.7 is that in magazines such as Kumudam reporter allegations have been made that the petitioner had collected a sum of Rs.50,000/- from aided school managements for hosting the farewell function of said Mr.Soundararajan.

6.The enquiry officer had found that the aforesaid three charges are proved. But it is seen that no witnesses were examined and no document was marked. For instance, Mr.Sivaraj was not examined. When the charge is that without his knowledge, a sum of Rs.1,00,000/- was remitted in his bank account, it is only Mr.Sivaraj who alone can testify as to whether this charge is true. The stand of the writ petitioner is that only with the knowledge of Mr.Sivaraj, the amount was deposited. Therefore, without examining the said Sivaraj, no finding could have been given. Charge No.1 is that the petitioner had forcibly collected donations from various officials who come to the office of District Treasury, Thanjavur. But no witness was examined in support of this charge also. As regards, Charge No.7, less said the better. It is well known that in magazines, articles containing allegations against government servants do appear. If there is truth in the articles, then, action can be taken. But if an employee is going to be charge sheeted on the basis of a mere publication, then there would be no end and no one would be safe also. A negative news item published in respect of the writ petitioner cannot by itself form the foundation of a charge. Thus, looked at from any angle, none of the charges are made out. The findings of the enquiry officer are perverse.

7.That is not the only aspect of the matter. The petitioner has brought all this to the notice of the Government in her further representation made in response to the enquiry report. I went through G.O. (2B) No.50, Finance Department, dated 28.09.2018. This Government Order runs to thirty five pages. Pages 1 to 3 are merely narration of antecedent facts. Page Nos.4 to 32 are mere repetition of the charges item-wise, the explanation given by the charged officer and the finding of the enquiry officer. Page Nos.33 and 34 contain the further representation of the petitioner. The final paragraph merely states that the Government had independently examined all the relevant records and come to the conclusion that they concur with the findings of the enquiry officer and impose the punishment of censure. This order passed by the Government by no stretch of imagination can be called as a speaking order. There is absolutely no application of mind at all. G.O.(2B) No.46, dated 03.09.2019 also suffers from the very same vice. None of the contentions of the writ petitioner have even been dealt with. The writ petition deserves to be allowed for the following two reasons:-

(a) The findings of the enquiry officer are perverse. Charge No.7 is not maintainable.

(b) The orders impugned in the writ petition are cryptic, non-speaking and betray total non-application of mind.

8.In this view of the matter, the impugned orders are quashed and the writ petition is allowed. The retirement benefits of the petitioner will be disbursed within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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To:

1.The Additional Chief Secretary to Government,
Finance (T & A-1) Department,
Secretariat, Chennai – 9.

2.The District Treasury Officer/
Enquiry Officer, Trichy.

G.R.SWAMINATHAN, J.

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(1/2)