



W.P. No.11148 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2023

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.11148 of 2012

K.Palanisamy

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. By the Principal Secretary to the Government,
Health and Family Welfare Department,
fort St.George,
Chennai-600009.

2.The Director of Public Health and
Preventive Medicine,
Chennai-600006.

3.The Deputy Director of Health Service,
Krishnagiri, Krishnagiri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorarified Mandamus to call for the
records relating to the impugned order of the first respondent in
G.O.(D) No.80, Health and Family Welfare (D-1) Department, dated



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27.01.2012 and quash the same and direct the respondents to permit the petitioner to retire from service with effect from 31-01-2012 with all attendant benefits.

For Petitioner : P.Manoj Kumar

For Respondents 1 to 3 : Mr.K.Surendran
Additional Government Pleader.

ORDER

This writ petition has been filed questioning the order passed by the first respondent vide G.O.(D) No.80, Health and Family Welfare (D-1) Department, dated 27.01.2012. The said order was passed by the first respondent in exercise of power under Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules (herein after referred as 'Rule') and the order passed by the 3rd respondent in proceedings R.No.4083/A2/2009, dated 08.04.2011 was revised duly setting aside the same and ordered for further enquiry into the charges framed against the petitioner herein.

2. The brief facts that are relevant for the disposal of the writ petition are as under:

While the petitioner herein was working as Field Worker in Public



Health Department, he was removed from services through proceedings Na.Ka.No.4033/A3/93 dated 22.03.1994 on the ground that the petitioner was absent from duty with leave for a period from 21.07.1991 to 10.06.1993. Aggrieved by the said order, the petitioner preferred an appeal before the 2nd respondent herein and the 2nd respondent by an order in R.No.57168/DA/94/S3/32 dated 24.09.2007 set aside the said removal order and remanded the matter back for fresh enquiry. Consequently, on conducting fresh enquiry, the charges that were leveled against the petitioner were held not proved and the charges were also dropped through proceedings dated 08.04.2011 by the 3rd respondent. While things stood thus, the case of the petitioner for regularizing the period of absence and for treating the same as Medical leave has come up for consideration before the 1st respondent. At that stage, the 1st respondent issued the impugned order dated 27.01.2012 in exercise of its power under Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. In the counter affidavit filed by the 2nd respondent, it is stated that the only reason for exercising the power under Rule 36 of Tamil Nadu



Civil Services (Discipline and Appeal) Rules is that, in case, if the charges leveled against the petitioner are treated as not proved, then, the same would pave way for the petitioner to again approach this Court to treat his suspension period and dismissal period as duty period without actually being in Government service i.e., for a period of nearly 14 years.

4. In the instant case, though no penalty is sought to be imposed on the petitioner or enhanced nor proposed for enhancement of any such penalty, the order dated 08.04.2011, which was passed in favour of the petitioner, dropping the charges against him is sought to be set aside by passing the impugned order, thereby, once again subjecting the petitioner to disciplinary proceedings. Though such a situation does not come within the scope of proviso of Rule 36, in view of the settled legal position, any order to be passed prejudicially affecting the delinquent employee, especially in the case of disciplinary proceedings, cannot be passed behind his back without giving an opportunity to him. Further, the reason furnished in the counter affidavit can never be a ground for exercising power under 36 of the Rule. It is only in case if the first respondent finds that order dated 08.04.2011 was passed for



extraneous consideration or in ignorance of evidence on record, etc., the power under Rule 36 can be exercised. But, that is not the case on hand.

However, in terms of proviso to Rule 36, no order imposing and enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed.

5. A bare perusal of the impugned order does not show that the 1st respondent has given an opportunity of hearing to the petitioner before issuing the impugned order. Further, the impugned order also does not show any reason for exercising the power under Rule 36 except saying that the disciplinary authority ought to have deviated from the findings recorded by the enquiry Officer. As to why the disciplinary authority should deviate from the findings recorded by the enquiry officer is not spelled out in the impugned order. Thus, impugned order is an unreasoned order and also an order passed in violation of the principles of natural justice.



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6. In the light of the above and in the fact situation of the case on hand, the principles of natural justice are bound to be read into proviso Rule 36 of the Rules. In the light of the admitted facts and circumstances, as the petitioner herein was not put on notice before passing impugned order thereby subjecting the petitioner to disciplinary proceedings once again at the fag end of the service and re-initiating such disciplinary proceeding after his retirement, would definitely cause prejudice to the petitioner. In the circumstances, the impugned order is liable to be set aside on the ground of violation of principles of natural justice and also on the ground on being bereft of reasons.

7. Accordingly, the impugned order is set aside. However, taking into consideration, the fact that the petitioner has already attained the age of superannuation on 31.01.2012 and he was not allowed to retire from service, the writ petition is allowed with a further direction to the respondents to settle and pay all the terminal benefits payable to the petitioner as expeditiously as possible, at any rate, within a period of three months from



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the the date of receipt of a copy of this order. The miscellaneous applications, if any, shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

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