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W.P.Nos.2145 & 2146 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.Nos.2145 & 2146 of 2015

W.P.No.2145 of 2015

S.Mohana Jeha (deceased)

1. J.Joe Prakash

2. J.Jeena Prakash

P1 & P2, both are residing at

No.14-48/2, Varavanmuri

Syenamvilai,

Bethelpuram PO

Kanyakumari District.

PIN - 629 803

(Petitioners 1 & 2 impleaded as per order
dated 17.3.2023 in WMP.No.20516/2021)

.... Petitioners

vs

1. The Principal Secretary and
Commissioner Backward Classes
Welfare Department,
Chepauk,
Chennai - 5.

2. The District Collector,
Kanyakumari District.

.... Respondents



W.P.Nos.2145 & 2146 of 2015

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent herein in R.C.No.Ra1/4127/2011 dated 7.1.2014 in awarding the punishment of removal from service and the consequential order passed in appeal by the first respondent herein in Proceedings No.B3/347/2014 dated 17.12.2014 rejecting the appeal petition and quash the same and consequently direct the respondent herein to regularize the petitioner's period of out of employment from 7.1.2014 to till the date of conferring posting, as duty for all purposes and also confer all the attendant and consequential benefits with due regards to petitioner seniority.

For Petitioners : R.S.Anandan

For Respondents : Mr.M.Rajendran
Additional Government Pleader

W.P.No.2146 of 2015

M.Packialekshmi

.... Petitioner

vs

1. The Principal Secretary and
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Welfare Department,
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For Petitioner : R.S.Anandan

For Respondents : Mr.M.Rajendran
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the award of punishment of removal from service dated 07.01.2014 and the consequential order dated 17.12.2014 passed in appeal by the first respondent, rejecting the appeal petition and consequently direct the respondents to regularize the petitioners period of out of employment from 7.1.2014 to till the date of conferring posting, as duty for all purposes and also confer all the attendant and consequential benefits with due regards to petitioner seniority.

2. The petitioners are employed as Matrons in the Government



W.P.Nos.2145 & 2146 of 2015

Backward Classes School Girls Hostel at Kollengode and at Kuzhithurai respectively. Both of them were issued with charge memo separately by the 2nd respondent dated 12.03.2013. The charges being that they have bribed a sum of Rs.1500/- and Rs.1000/- respectively to one Mr.Ganapathy, Warden, Government Backward Classes Hostel on 07.02.2011 and thereby violated Rule 20(1) of Government Servants Conduct Rules. Therefore, three counts of charges were framed and issued against them separately. The petitioners submitted their explanation, denying the charges on 28.03.2013. The charges were found to be proved and the 2nd respondent passed an order of removal from service. Against which, an appeal was filed, but the appeal also came to be rejected vide impugned order dated 17.12.2014 passed by the 1st respondent. Hence, the writ petitions with the aforesaid relief.

3. Heard the learned counsel for the petitioners and the learned Additional Government Pleader appearing for the respondents.

4. Learned counsel for the petitioners would submit that the petitioners have paid a sum of Rs.1000/- each to Mr.Ganapathy, Warden, towards purchasing gifts to be presented to Mrs.N.Saraswathy, Matron's son, whose marriage was fixed on 21.02.2011 and also for other incidental expenses to be spent by the Association, as per the circular issued by the



W.P.Nos.2145 & 2146 of 2015

WEB COPY

Association. There is absolutely no truth on the charges. There is no circumstances warranted for them to pay bribe to the Warden, but without accepting their explanation, an enquiry officer was appointed to proceed with the charges. The list of documents relied upon for framing of charges and the list of witnesses examined to prove the charges have not been supplied to the petitioners before proceeding with the enquiry. Therefore, the entire proceedings and the punishments are liable to be set aside on the ground of violation of principles of natural justice. He would further submit that as against the punishment order, the petitioners have filed an appeal before the first respondent and the same was rejected on 17.12.2014 stating that there was no other new reasons stated by the petitioners/appellants and the explanation submitted by them were already considered by the disciplinary authority and held that the charges are proved.

5. Learned counsel for the petitioners would further submit that for the very same occurrence, a charge memo was framed and issued against Mr.Ganapathy, Warden, by the 2nd respondent on 20.01.2012 and he was placed under suspension. In the said charge memo, the petitioners are cited as 14 and 18th witnesses respectively. While the enquiry was pending against Mr.Ganapathy, without any reasons, after more than a year, the



W.P.Nos.2145 & 2146 of 2015

WEB COPY

petitioners were issued with the charge memo. Further, after conclusion of the enquiry, though the charge was held as proved against Ganapathy, he was awarded with punishment of compulsory retirement from service, since he attained the age of superannuation, as per the order of the 2nd respondent dated 5.11.2017, whereas the petitioners are imposed with the punishment of removal from service on 07.01.2014 itself i.e., well before passing of the order of the compulsory retirement in respect of Mr.Ganapathy. No one was examined and no material evidence was relied on in the enquiry to prove the charges. Therefore, the impugned orders are liable to be set aside.

6. Per contra, learned Additional Government Pleader appearing for the respondents would submit that during surprise check in the office on 07.02.2011 by the Joint Team of Vigilance and Anti Corruption Cell, it was found that unaccounted money of Rs.11,025/- was found from Mr.Ganapathy, Tutor-cum- Warden of Aralvoimozhly Boys Hostel which was seized by the Vigilance Inspector of Police and a case was registered in Cr.No.02/2011 for the offence punishable under section 102 Cr.P.C. reference with sections 7, 3(1), r/w 13(2) of Prevention of Corruption Act, 1998. On receipt of report from investigating authority, the Commissioner, Backward Classes Welfare had directed the District Collector to place



W.P.Nos.2145 & 2146 of 2015

WEB COPY

Mr.Ganapathy under suspension and to initiate action against four Matrons, including these petitioners, who have allegedly given a sum of Rs.500/- each to Mr.Ganapathy and action was taken against Mr.Ganapathy separately and also action was taken by the District Collector against the petitioners, by framing charges.

7. The Inquiry Officer found that the petitioners had given a sum of Rs.1000/- each for two centres (Hostels) to Mr.Ganapathy to meet out the expenses related to the private driver, who is working in the office and every month this amount was given by the petitioners and that the said unaccounted amount of Rs.11,025/- was found with Mr.Ganapathy, which was seized by the team of Vigilance and Anti Corruption during their surprise visit. It was proved that the petitioners had bribed and acted against Tamilnadu Service Conduct Rules. Therefore, the order of removal from service passed by the 1st respondent is correct and the writ petitions are liable to be dismissed.

8. This Court, considered the submissions made on either side and perused the materials available on record.

9. The charges against the petitioners is that they have bribed a sum of Rs.1500/- and Rs.1000/- respectively to one Mr.Ganapathy. It is the



W.P.Nos.2145 & 2146 of 2015

WEB COPY

contention of the petitioners that they have paid the said sum to Mr.Ganapathy towards purchase of gifts to be presented to Mrs.N.Saraswathy, Martron's son , whose marriage was fixed on 21.02.2011 and also for other incidental expenses to be spent by the Association as per the circular issued by the Association and that no circumstances warranted them to pay bribe to the Warden.

10. It is seen that no one was examined other than the petitioners and no documents were marked to prove the guilt of the charges as against the petitioners. The departmental proceedings is a quasi-judicial proceedings. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against the accused by itself could not be treated to be evidence in the disciplinary proceedings. It is stated by the petitioners that they have given amount for purchasing the gift for the marriage of one Saraswathi's son and other incidental charges for the Association as per the circular issued by the Association and the same has been taken as bribe amount. But, the said circular has not been considered by the Enquiry Officer.

11. It is also noted that for the same occurrence, charges were framed



W.P.Nos.2145 & 2146 of 2015

against Mr.Ganapathy by the 2nd respondent on 20.01.2012 and he was also been placed under suspension and only when enquiry was pending against him, these petitioners were issued with the charge memo after more than a year. But the said Mr.Ganapathy was awarded with the punishment of compulsory retirement from service since he reached the age of superannuation as per order dated 5.11.2017 of the 2nd respondent whereas the petitioners were awarded with the punishment of removal from service on 7.1.2014 itself, well before passing of the punishment order against Mr.Ganapathy, which would show that there is discrimination. Nothing was established against the petitioners as no one was examined and no material evidence was relied on in enquiry to prove the charges. The appellate authority did not consider whether the findings of the enquiry officer is valid and whether any material evidence and documents are available to hold the charge as proved and whether the disciplinary authority considered the points raised by the delinquent in the further representation and whether reasonable opportunity was given to the delinquent etc. The appellate authority, without considering all these aspects, rejected the appeal filed by the petitioners, by simply stating that no new reasons have been stated and held the charges as proved.



W.P.Nos.2145 & 2146 of 2015

WEB COPY

12. For the reasons stated above, this Court is of the opinion that the impugned orders are liable to be set aside. Accordingly, the impugned order dated 07.01.2014 passed by the second respondent and the impugned order dated 17.12.2014 passed by the first respondent are set aside. The petitioners are entitled for all consequential and attendant benefits thereof. The Writ Petitions are allowed. No costs.

17.03.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

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W.P.Nos.2145 & 2146 of 2015

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W.P.Nos.2145 & 2146 of 2015

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(2/2)