



WEB COPY



W.P.No.15737 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.15737 of 2023 and WMP No.15201 of 2023

K.Sugumar

...Petitioner

Vs

The Divisional Engineer,
Construction and Maintenance,
Highways Department,
Erode-638 002

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records pertaining to the impugned order passed by the Divisional Engineer, Construction and Maintenance, Highways Department, Erode 638 002, the respondent herein vide his proceedings No.Se.Mu.Ka.No.2709/2022/A5 dated 18.04.2023 and quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural justice and thereby direct the respondents herein to reinstate the petitioner into service with all consequential monetary and service benefits.

For Petitioner : Mr.A.R.Suresh

For Respondents : Mr.P.Sanjay Gandhi
Government Advocate

ORDER



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The petitioner herein, who is a regular Gang Mazdoor, was removed from service on 18.10.2022 on the allegation that he had prepared a fake No Objection Certificate in the name of S.Kuzhandai Raju for the purpose of presenting it to the Indian Oil corporation for establishing a Petrol Bunk and obtained a sum of Rs.5,000/- as illegal gratification. Challenging the same, the present writ petition has been filed.

2. Learned counsel for the petitioner submits that prior to the impugned order neither a show cause notice was issued nor an enquiry was conducted and therefore, the order itself is liable to be quashed.

3. Per contra, learned Government Advocate placed reliance on the impugned order and submits that the delinquency against the petitioner is that he had received illegal gratification for preparing a No Objection Certificate which is very serious in nature and therefore, the impugned order terminating his service cannot be found fault with. Learned Government Advocate also placed reliance on the averment made in the impugned order that the petitioner was given an opportunity for six months.

4. It is not in dispute that the petitioner is a regular employee of the



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respondent herein. As a matter of fact the impugned order itself would substantiate that the petitioner had joined the service as Gang Mazdoor on 05.11.1997 at Namakkal and his services were regularised with effect from 11.11.1998. Thereafter, probation was declared on 13.11.1999. Thereafter, selection grade and special grade of pay were granted to the petitioner on 01.04.2013 and 11.05.2022.

5. The procedure prescribed for imposing major penalty against a member of the Service is prescribed under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules. When the petitioner is a regular employee of the respondent, the law requires that the respondent should follow such a procedure before imposing a major penalty.

6. The impugned order does not refer to any show cause notice calling upon the petitioner on the proposed disciplinary action or any enquiry having been conducted before the impugned order was passed. Thus, the very basis on which the major penalty has been issued through the impugned order, cannot be sustained since it is in the violation of the established procedure for conduct of disciplinary proceedings.



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7. Though the impugned order refers to an opportunity having been extended to the petitioner, there is absolutely no reference to any notice or otherwise in this regard. In the absence of such particulars, it can only be inferred that the petitioner was not afforded with prior opportunity before the passing of impugned order.

8. In the result, the impugned order dated 18.04.2023 passed by the respondent is hereby quashed. Consequently there shall be a direction to the respondent to forthwith reinstate the petitioner back into service, with effect from 18.04.2023, together with continuity of service and all other attendant and monetary benefits. The order of reinstatement shall be passed atleast within a period of one week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes
Speaking order
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To

The Divisional Engineer,
Construction and Maintenance,
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M.S.RAMESH,J.,

sr

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