



W.P.No.18924 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.18924 of 2019

and

W.M.P.No.36296 of 2019

V.Kumaresan

... Petitioner

Vs.

1.Government of Tamil Nadu,
Highways and Minor Ports (HL-1) Department,
Secretariat, Chennai - 600 009.
Represented by Additional Chief Secretary
to Government (FAC)

2.The Director General (H),
Highways Department,
Chennai - 600 025.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to G.O.(D)No.51, Highways and Minor Ports (HL-1) Department dated 09.04.2019 to quash the same and issue consequential directions to the respondents to include the name of the petitioner in the panel for promotion as Assistant Divisional Engineer for the year 2016-2017 which has been deferred due to the pendency of the above disciplinary proceedings and promote him as such with retrospective effect from the date of promotion of his immediate



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junior with consequential benefits.

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For Petitioner : Ms. AL.Gandhimathi
Standing Counsel
for Mr.G.Amalraj

For Respondents : Mrs. C.Meera Arumugam
Additional Government Pleader

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in G.O.(D)No.51, Highways and Minor Ports (HL-1) Department dated 09.04.2019 on the file of the first respondent imposing penalty of stoppage of increment for one year without cumulative effects.

2. The brief facts as set out in the affidavit filed in support of the writ petition are that the petitioner was appointed initially as Assistant Engineer in the Highways Department and his services were subsequently regularized with effect from 17.07.2000. He also satisfactorily completed the period of probation on 16.07.2002. While he was in service, he was issued with a Charge Memo dated 05.09.2013 alleging that he had prepared false vouchers as if six petty works were carried out in May-June 2009 through six individuals, Rs.500/- being paid to each of them, totaling in all Rs.3,000/-, which was misappropriated by the petitioner for personal gain.



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WEB COPY 3. The above Charge Memo was issued by the Tribunal for disciplinary proceedings at Coimbatore. That apart, the first respondent had also issued a Charge Memo dated 20.12.2013 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, against the petitioner and also the Divisional Engineer (H) and the Assistant Divisional Engineer (H), Omalur. A common enquiry was ordered against all the three persons and the Enquiry Officer gave a finding, by way of a report, that all the charges were not proved.

4. The first respondent accepted the said report of the Enquiry Officer and dropped all the charges in G.O.(D)No.241, Highways and Minor Ports (HL-1) Department dated 01.12.2016 and thereby entitling the petitioner for empanelment for promotion as Assistant Divisional Engineer (Highways). Though the departmental proceedings initiated by the first respondent were dropped, citing the pendency of TDP case, the petitioner's representation dated 14.12.2016 was not considered by the respondents for promotion in the panel.

5. The petitioner filed W.P.No.443 of 2017 seeking a direction to the respondents to include his name in the panel for promotion. However, noticing



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the pendency of the TDP case in TDP.No.5 of 2013, this Court directed that the said case should be disposed of within a period of three months. Thereafter, in and by G.O.(D)No.51, Highways and Minor Ports (HL-1) Department dated 09.04.2019, the first respondent had passed final orders imposing penalty of stoppage increments for one year, without cumulative effect. This order is under challenge in the present writ petition.

6. The respondents have filed a detailed counter affidavit stating that there has been no violation of principles of natural justice and the Tribunal for disciplinary proceedings, Coimbatore, clearly held that the petitioner had committed misconduct by not following the procedures while preparing the vouchers in the names of the fictitious persons and therefore, it is a case of the petitioner failing to do his official duty, with full devotion. The respondents had further justified the action taken for the procedural lapse committed by the petitioner and sought for dismissal of the writ petition.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents. This Court has perused the records.



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8. At the outset, it is seen that the main charge which was framed/squatted on the petitioner is common in both the departmental proceedings as well as the TDP case. The charge is that the petitioner prepared false vouchers during May-June 2009 through six individuals, a sum of Rs.500/- each was paid to them by forging the signatures of the above persons and thereby, the petitioner had misappropriated total sum of Rs.3,000/- for personal gain. This action of the petitioner was alleged to be official misconduct, by abuse of official position. This charge was not proved by the Enquiry Officer and it was also accepted and the charges were dropped by the disciplinary authorities. However, in the TDP case, a finding was given that in the six vouchers, the names of the payee were not available and there was no mention of address and father's name of the payee and therefore, this amounted to a procedural lapse in preparing the vouchers. However, the Tribunal went on to hold as follows:-

"There is no evidence in record to prove that the corresponding works related to these vouchers were not carried out. So as such allegation of preparing forged vouchers is not proved."

9. By arriving at such conclusion, the Tribunal ought to have held that the charges were not proved. Surprisingly, though the Tribunal held that the



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allegation of preparing forged vouchers was not proved, the Tribunal went on to hold that the charge was partly proved on the scale of preponderance of probabilities, citing the procedural lapses in preparation of vouchers. When the principle charge itself was misappropriation of funds by forging vouchers and misappropriating Rs.500/- each in respect of each vouchers, such a finding is fallacious.

10. When the Tribunal came to a categorical finding that the vouchers were not forged, the Tribunal ought not to have found that the charge 'partly proved' only on the limited ground of procedural lapse in preparation of the very same vouchers. The first respondent in G.O.(D)No.51, Highways and Minor Ports (HL-1) Department dated 09.04.2019, has also mechanically endorsed the finding of the Tribunal.

11. On a reading of the above impugned order, it is seen that there is no independent application of mind or reassessment of the relevant records. The first respondent has merely concluded as hereunder:-

"3. The Government examined the charge framed against



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the delinquent officer, his statement of defence, the findings of the Tribunal for Disciplinary Proceedings and the further representation of the delinquent officer on the findings of the Tribunal for Disciplinary Proceedings carefully and independently along with connected records and held the charge as partially proved against the delinquent officer. For the partially proven charge, the Government have decided to impose a punishment of stoppage of increment for one year without cumulative effect on Thiru. V. Kumaresan, formerly Assistant Engineer, Omalur and to issue order accordingly. The punishment will be exclusive of the period spent on leave, if any, by the delinquent officer and it will not affect his pension."

12. Apart from the above, there is no discussion or independent appreciation of the evidence leading to the findings or the case of the respective parties, excepting for merely reproducing the charges, statement of defence and findings of the Tribunal for disciplinary proceedings. Such an approach adopted by the first respondent is certainly not proper and especially considering the fact that the main charges of forging vouchers itself was consistently held to be not proved. The respondents ought not to have imposed punishment of stoppage of increments for one year, without cumulative effect on the petitioner, merely because, there was some procedural lapse in preparation of the very same vouchers.

13. The petitioner is therefore entitled to relief in this Court and



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consequently, this Writ Petition is allowed as prayed for. No costs.

Consequently, connected Writ Miscellaneous Petition is closed.

15.06.2023

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes / No

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To

1.The Additional Chief Secretary (FAC),
Government of Tamil Nadu,
Highways and Minor Ports (HL-1) Department,
Secretariat, Chennai - 600 009.

2.The Director General (H),
Highways Department,
Chennai - 600 025.

P.B.BALAJI, J.

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