



W.P.No.31125 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.09.2023
Pronounced on	10.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.P.No.31125 of 2022
and W.M.P.No.30565 of 2022

M.Ponnichitra

... Petitioner

-VS-

1. The Registrar General,
High Court of Judicature at Madras,
Chennai-600 104.

2. The Principal District Judge,
Namakkal.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to call for the records in the order bearing Roc.No.7856/A/2017 dtd 01.09.2018 passed the second respondent and the order bearing R.O.C.No.77054/2018/C1 dated 04.03.2021 passed by the first respondent and quashing the same and directing the respondents to reinstate the petitioner in service with all consequential service benefits like arrears of salary, increments, promotion, seniority, etc.

For Petitioner : Mr.M.Radhakrishnan
For Respondents : Mr.Ayyadurai, Senior Counsel
For Mr.Durai Eswar



W.P.No.31125 of 2022

ORDER
(By *S.VAIDYANATHAN,J.*)

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This Writ Petition has been filed, seeking to quash the order dated 01.09.2018 passed by the second respondent, discharging her from the service of the Judicial Department and also the order dated 04.03.2021 of first respondent, by which the order of the second respondent was confirmed by the first respondent in the appeal. The petitioner also sought a direction to the respondents to reinstate her in service with all consequential service benefits.

2. The case of the petitioner was that while she was working as Head Clerk in the Court of the Additional District Judge, Namakkal between 08.09.2011 and 05.12.2013, she was issued with a charge memo dated 19.06.2017 by the Judicial Magistrate, Paramathy under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The following three charges were issued against her in the charge memo:

- i) She had lost the original dying declaration of the deceased



W.P.No.31125 of 2022

Amaravathi in Crime No.364 of 2009 on the file of the Nallur Police Station
and had not included in the file;

ii) She had not informed about the loss of the said document to her superiors;

iii) She would be set exparte and further proceedings would be taken in case of non filing of her reply within 15 days in the form annexed.

2.1. It was her further case that she was placed under suspension and a departmental enquiry was conducted by the Enquiry Officer, namely, Chief Judicial Magistrate, Namakkal, who had conducted a joint enquiry along with other staff members. After conducting enquiry, the Inquiry Officer came to the conclusion that the charges 1 & 2 were duly proved and that charge no.3 was not proved. It was submitted that after receipt of Inquiry Report from the second respondent, she had appeared before the second respondent for exoneration of all charges and that she was not given adequate opportunity to deal with the findings of the Inquiry Officer. The



W.P.No.31125 of 2022

second respondent, upon coming to an independent conclusion that she was responsible for misplacement of the documents, passed the impugned order dated 01.09.2018, imposing the punishment of dismissal from service;

2.2. It was also submitted that aggrieved by the order of the second respondent, she had filed an appeal before the first respondent and the said appeal was rejected by the first respondent on 04.03.2021 without even affording an opportunity of personal hearing to her, thereby confirming the order of the second respondent.

2.3. The main ground urged by the petitioner was that the charge memo was issued by the Judicial Magistrate, Paramathy, who was not the competent authority to issue the same, as the first respondent being the Disciplinary Authority should have issued the charge memo and therefore, the charge memo was issued without any jurisdiction. There was vagueness in the charges issued by the second respondent, as the charge no.3 speaks about the future failure of the petitioner to submit her explanation within a specified period.

2.4. The next ground raised was that there was no specific allegation



W.P.No.31125 of 2022

as to the period during which the file was under the custody of the petitioner, i.e., 08.09.2011 to 05.12.2013, which is nothing but non application of mind and the impugned orders were issued on the basis of vague charges. It was her plea that the file had travelled from one place to another during the relevant period and it cannot be said that the petitioner alone was responsible for the loss of the file and moreover, the findings of the Inquiry Officer were not supported by any evidence. Before sending the inquiry report to the petitioner, the second respondent had already agreed with the findings of the Inquiry Officer, which is evident from Paragraph No.2 of the communication dated 14.12.2017, which is against the dictum laid down by the Hon'ble Supreme Court in the case of ECI vs. B.Karunakar, reported in (1993) 4 SCC 727. Thus, it was clear that no opportunity of personal hearing was given to submit a representation on the findings of the Inquiry Officer.

2.5. It was put forth by the petitioner that the punishment of dismissal from service was highly disproportionate to the misconduct and was violative of Articles 14, 16 and 21 of the Constitution of India. Even the first



W.P.No.31125 of 2022

respondent had not afforded any personal hearing, while confirming the order of the second respondent, which was in contravention of the decision of the Hon'ble Supreme Court in the case of Ram Chander vs. Union of India, reported in (1986) 3 SCC 103. Stating that the impugned orders are perverse in nature, it was pleaded to set aside the same and to render justice to the petitioner.

3. The second respondent has filed a counter affidavit, wherein it was stated that the petitioner had joined as Junior Assistant on 18.07.2011 and was subsequently promoted as Head Clerk and served in the Court of District Munsif-cum-Judicial Magistrate for the period from 08.09.2011 to 15.12.2023. While she was working therein, a dying declaration of one deceased Amaravathi in connection with Crime No.364 of 2009 of Nallur Police Station was received from Judicial Magistrate No.1, Erode on 26.10.2009. When a certified copy of the said declaration was sought by the Police Officials, the petitioner, who was the custodian of the dying declaration had handed over the same to the Typist and it was duly served on the Court Constable on 17.08.2012. Thereafter, the said case was taken



W.P.No.31125 of 2022

on file in PRC No.20 of 2014 on 18.12.2014 and committed to the Principal Sessions Court, Namakkal by the Judicial Magistrate, Paramathy, which was taken on file in S.C.No.15 of 2015 and made over to the Fast Track Mahila Court, Namakkal.

3.1. In the counter affidavit, it was further stated that during trial, though the dying declaration was ordered to be sent, the Judicial Magistrate had not produced the dying declaration and had reported that it was missing. The Judicial Magistrate had also sought a permission to reconstruct the dying declaration upon obtaining a copy from the Nallur Police Officials. Permission was granted for reconstruction, based on which, the case in S.C.No.15 of 2012 was disposed of on 16.02.2021, convicting the accused therein. The fact of missing of document was duly intimated to the Registrar (Vigilance), High Court, Madras.

3.2. It was also stated that Judicial Magistrate, Paramathy had issued a charge memo on 11.08.2016 to the concerned staff members, who worked during the relevant period for misplacement of the dying declaration and not



W.P.No.31125 of 2022

convinced with the explanation offered by the petitioner, charges were framed under Rule 17(b) of the TNCS (D&A) Rules and after following due procedures, the Principal District Judge, Namakkal had appointed the Chief Judicial Magistrate, Namakkal as an Enquiry Officer, who, after perusal of the oral and documentary evidence, had forwarded the Enquiry Report on 13.12.2017. The Principal District Judge, Namakkal had accepted the Enquiry Report and proceeded further as per law, by observing that no further written representation was made by the petitioner. Finding that the petitioner alone was guilty of charges, she was discharged from service, whereas two other delinquents were exonerated from the charges. In the order of the second respondent, it was held that the petitioner had not maintained the running index for the PR case and on account of loss of dying declaration, she had indirectly helped the accused to escape from the clutches of law.

3.3. It was also stated that the petitioner had preferred appeal before High Court, Madras, in which, it was held that there was no ground made out to interfere with the order of the Principal District Judge, Namakkal and



W.P.No.31125 of 2022

upheld the order of the second respondent. The first plea of the petitioner in respect of jurisdictional aspect that the Judicial Magistrate, Paramathy ought not to have framed charges is not sustainable, as the 3rd proviso of Rule 12(2) of Tamil Nadu Civil Services (Discipline and Appeal) Rules stipulates as follows:

“Provided also that all authorities directly higher to the members holding the posts included in the state services may frame charges against such members of the state service under Rule 17(b) or issue show cause notice under Rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an Officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be.”

3.4. The other grounds raised by the petitioner regarding vagueness of the charges and perversity of the findings of the Enquiry Officer were highly untenable, as the order passed by the second respondent was a reasoned one and the same was affirmed by the High Court in appeal. The judgments relied upon by the petitioner are not applicable to the facts of the case, which was observed in the order of the second respondent and considering the gravity of the charges, it cannot be said that the punishment of dismissal from service was disproportionate to the misconduct. Thus, it was prayed



W.P.No.31125 of 2022

that the writ petition filed by the petitioner is liable to be dismissed with costs.

4. Learned counsel for the petitioner has submitted that the entire procedures adopted by the second respondent were perverse in nature and against the principles of natural justice. In the absence of any concrete evidence against the petitioner, the findings of the enquiry Officer fixing the sole liability on the petitioner were wholly imaginary. Even from the beginning, the departmental enquiry had proceeded without jurisdiction and therefore, the impugned orders were passed based on the assumption and presumption without mentioning the specific period of misconduct. He has further submitted that it was highly impossible for a delinquent to defend vague charges and even assuming for the sake of argument that the petitioner was the custodian of the document, it was to be necessarily handed over to other persons also for issuance of certified copy and for completion of other formalities, so as to ensure smooth trial of the case. Though the second respondent had stated that due to the act of the petitioner, there was every chance of the accused fleeing away from justice,

10/22



W.P.No.31125 of 2022

it was not the case of the respondents that the petitioner had purposely misplaced the dying declaration by getting bribe. Knowing very well that loss of documents, which are under one's custody, would result in serious repercussion, no delinquent would dare to misplace the same, which would amount to pouring sand on one's own head. Learned counsel for the petitioner also submitted that there was utter violation of principles of natural justice and at every stage, the petitioner was denied the opportunity of personal hearing, which were in violation of the Constitution of India.

5. Learned Senior Counsel appearing for the respondents contended that charges are not vague and it may be true that the petitioner could not have obtained bribe, but the fact remains that the dying declaration given to the petitioner, who was the custodian of the document during the relevant period, was misplaced, which fact was not disputed. He further contended that if the document was not able to be traced and placed before the concerned Court during trial by the Police Officials, certainly the accused, who had been convicted, would have easily escaped from law. Thus, it was contended that the findings of the Enquiry Officer, which were confirmed by



W.P.No.31125 of 2022

the Disciplinary Authority are perfectly in order and warrant no interference by this Court.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. A cursory glance at the facts and circumstances of the case unfolds that the petitioner was placed under suspension for the loss of dying declaration in relation to Crime No.364 of 2009 on the file of the Nallur Police Station. As a custodian of the document, she was solely responsible for safeguarding the same and on account of her carelessness, the vital document was misplaced, for which a detailed enquiry was conducted and she was imposed with the major punishment of dismissal from service. Merely because other delinquents charge sheeted along with her were exonerated from the charges, it does not mean that the same yardstick should be applied to the petitioner, as imposition of punishment or exoneration from charges is purely based on the gravity of the misconduct and therefore, the petitioner cannot seek shelter on that ground.

12/22



W.P.No.31125 of 2022

WEB COPY

8. The main point advanced by the petitioner was that the Judicial Officer, namely, Judicial Magistrate, Paramathy, who had issued the charge memo was not the competent person to issue the charge memo. However, the said plea is unsustainable in the light of the judgment of Hon'ble First Bench of this Court in the case of **P.Ananthakumar vs. The Registrar General, High Court of Madras, Chennai and others [W.P.No.30961 of 2019]** decided on 20.12.2019, wherein it was clearly held that District Munsif-cum-Judicial Magistrate has the power to initiate disciplinary proceedings. For the sake of convenience, the relevant paragraphs of the said judgment are extracted hereunder:

24. Rule 14(a) (supra), provides that the authority which may impose suspension referred to in rule 17(e) or penalties of censure, fine, withholding of increments is the immediate Superior Officer of the State Services or, where the appointing authority for such member is an officer of the Subordinate Services, such officer or any higher authority.

25.....

26. The State of Tamil Nadu has passed G.O.Ms.No.19, P&AR(N) Department, dated 11.02.2008. The relevant portions of the G.O. and the notification read as under:-

"3. The Government have examined the matter carefully. Article 311 (1) of the Constitution of India inter-alia provides: that no person who is a member of Civil Service of a State or holds a civil post under a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. As such, there is no



WEB COPY



W.P.No.31125 of 2022

bar for the appointing authorities to impose minor and major penalties and suspension. Further, the Supreme Court of India in its Order dated 1.12.1994 in Civil Appeal Nos. 8561-62 of 1994 have also observed that initiation of inquiry by an authority subordinate to the appointing authority is unobjectionable. Therefore it is considered to delegate the powers to impose minor and major penalties and also suspension under rule 17 (e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rule to the appointing authorities concerned in respect of those members of the State Services for which the Government are not the appointing authority. It is also considered that if delegation of powers are given to the appointing authorities to impose minor and major penalties and suspension under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on members of State Services and also all officers directly higher to the delinquent officers to frame charges and conduct the inquiry into them, it may lead to quick disposal of disciplinary cases as they are only in better position to assess the nature of irregularities committed by the delinquent officers. The said delegation of powers may also relieve the Heads of Departments and Government from unnecessary burden of work at their level and this will save time and the Heads of Departments may be entrusted with more responsibilities.

4. The Government have, therefore, decided, - (i) to delegate the powers to impose minor and major penalties on all members of the State Services and the powers to suspend them under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, to the appointing authorities ; and (ii) to delegate the powers to frame charges under rule 17(b) or to issue showcause notice under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to all authorities who are immediately above the members of the State Services even though they are not competent to impose penalties on them.

5. Accordingly, the Government pass the following orders:- All the appointing authorities for the posts included in the State Services, (wherever the Government are not the appointing authority) may impose minor and major penalties on the members of State Services and they may suspend such members; under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, where such members of State Services were originally



WEB COPY



W.P.No.31125 of 2022

appointed by the Government, they shall remit the papers to Government for passing final orders in the cases of disciplinary proceedings instituted under rule 17(b) of the said Rules, after following all the procedures upto the stage of completion of inquiry to satisfy the requirement in Article 311 (1) of the Constitution of India. The said appointing authorities are to exercise the above powers subject to the provisions in rule 9 A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

(ii) All authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of, State Services under rule '17(b) or issue show cause notice under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, subject to provisions in rule -9 A of the said Rules, even if they are not the competent authority to impose the penalty' and they may conduct the. inquiry themselves or request the competent authority to appoint an inquiry officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final,orders, after the case is processed upto the level of completion of inquiry or after the-receipt of explanation to show cause notice, as the case may be.

6. In the light of the order in paragraph 5 above, the Government have also decided to amend rules 9(c)(1)(ii), 12, 13, 20(3),20,(4) and Appendix IV and to omit rule . 11of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

7. The following Notification will be published in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in Volume I of the Tamil Nadu Services Manual, 1987).

2. The amendments hereby made shall come into force on the 11th February, 2008.

AMENDMENTS

In the said Rules,-

(1) in rule 9, in sub-rule (e), in clause (1); in sub-clause (ii),



WEB COPY



W.P.No.31125 of 2022

for the expression "rule 11", the expression "rule 12" shall be substituted; (2) rule 11 shall be omitted; (3) in rule 12,- (i) in sub-rule (1), after the second proviso, the following proviso shall be added, namely:- "Provided also that the High Court of Judicature at Madras may impose on members of the Tamil Nadu State Judicial Service any of the penalties specified in items (i), (iii), (iv), (v) and (ix) in rule 8."; (ii) for sub-rule (2), the following sub-rule shall be substituted, namely:- "(2) Notwithstanding anything contained in these rules, the appointing authority or any authority administratively higher to the appointing authority may impose the penalties specified in items (i), (iii) to (viii) and (ix) of rule 8 on members of the State Services: Provided that where the members of the State Services have been appointed by the Government or by any authority administratively higher than the appointing authority, the penalties mentioned in item (iii) in so far as it relates to withholding of promotion and items (iv), (vi), (vii) and (viii) in rule 8 shall be imposed only by the Government or by such higher authority: Provided further that where the State Government are the appointing authority for members holding the posts included, in the State Services, the Heads of Departments concerned may impose any of the penalties specified in items (i) and item (iii) in so far as it relates to withholding of increments and items (v) and (ix) in rule 8 on those members other than such members who are immediately below such Heads of Departments: Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under rule 17(b) or issue show cause notice under rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an inquiry officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed upto the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be: Provided also that where the appointing authority, or the authority administratively higher to the appointing authority, have passed orders of suspension under rule 17(e) on the members of the State Services, they may exercise the power to impose the penalty specified in item (ix) in rule 8 on such members."

27. A perusal of para 3 of G.O.Ms.No.19, would show that



WEB COPY



W.P.No.31125 of 2022

the Government wanted to give the power to place an employee under suspension under Rule 17(e) of the Discipline and Appeal Rules to an authority higher than the delinquent employee, even though he might not be the appointing authority. The above mentioned G.O. gives the power to initiate disciplinary proceedings under Rule 17(b) to an authority higher than the delinquent employee by making amendments in Rule 12 which deals with powers of the State Government and Head of the Department to institute disciplinary proceedings. It is to be noted that while Rule 12 deals with the power of State Government and Heads of the Department to impose penalties, Rule 14(a)(1) deals with the authorities competent to pass orders of suspension and minor penalties except withholding of promotion on member of Subordinate Service.

28 to 31.....

32. All these judgments deal with the power to initiate disciplinary proceedings. In view of Rule 12 of the Discipline and Appeal Rules as amended from time to time, District Munsif-cum-Judicial Magistrate being a higher authority has the power to initiate disciplinary proceedings. A holistic reading of Rule 14 read with para 3 of G.O.Ms.No.19, P&AR(N) Department, dated 11.02.2008, gives the power to an authority higher than the delinquent employee to place a delinquent employee under suspension under Rule 17(e) of the Discipline and Appeal Rules pending departmental proceedings."

9. The only lacuna we find in the proceedings of the Disciplinary

Authority is that after receipt of the enquiry report, the Disciplinary Authority should have acted like a Postman by merely forwarding a copy of the report to the delinquent, calling for explanation and thereafter decide whether charges are proved or not. In the present case, the Disciplinary Authority stated that he had accepted the findings of the Enquiry Officer and thereafter, decided to forward the same to the petitioner, which is



W.P.No.31125 of 2022

erroneous and unheard in law. In the light of the judgment of the Supreme

Court in the case of Managing Director, ECIL, Hyderabad and others vs.

Karunakar and others, reported in (1993) 4 SCC 727, the matter needs

fresh consideration and the matter ought to be remanded to rectify the

defects from where it has crept in. In the said judgment, the Supreme Court

further observed as follows:

"The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

From the above, it is obvious that the petitioner is not entitled to any

monetary benefits till the completion of fresh enquiry.

10. Insofar as the plea of punishment being disproportionate to the proved charges is concerned, we are reminded of the judgment of the Apex



W.P.No.31125 of 2022

Court in the case of *Union of India and others vs. P.Gunasekaran,*

reported in *(2015) 2 SCC 610*, in which it was categorically held that unless the punishment shocks the conscience of the Court, there is no need to interfere with the punishment. In the light of the judgment, if the case on hand is analyzed, no other conclusion than the one that the nature of charges levelled against the petitioner is grave in nature, can be arrived at and taking note of the seriousness of the allegation, we are not inclined to infer that the punishment is disproportionate and mould the relief in order to bring down the life of litigation. The next contention advanced by the petitioner as to the vagueness of the charges issued by the second respondent, has no legs to stand, as admittedly, the petitioner was the custodian of the document in question during the relevant point of time and the trial might have ended in favour of the accused therein in case the dying declaration was not reconstructed and placed before the Trial Court.

11. For the foregoing discussions and observations, in order to fill up the lacuna committed by the Disciplinary Authority, we are constrained to interfere with the order. Accordingly, this Writ Petition is allowed and the matter is remitted to the Disciplinary Authority to rectify the defects from



W.P.No.31125 of 2022

where it had happened, viz., to forward the enquiry report, call for objection from the delinquent and thereafter, decide as to whether the charges are established or not and take a decision depending upon the satisfactory explanation given by the petitioner. Normally, we would have exercised our discretion and straightaway modified the punishment in terms of the judgment of Apex Court in the case of **Union of India and others vs. P.Gunasekaran (supra)**, if it shocks our conscience and also taking note of the fact that more than 10 years have gone by from the date of issuance of charge sheet, this is not a fit case to exercise such discretion. Since we set aside the order of the learned Single Judge, she may be put back to her original position. However, as she was dismissed from service and only now we set aside the order of dismissal, the period was to be treated as without employment and she may be treated to be under suspension from today and be paid accordingly. In view of the judgment of the Supreme Court in the case of **Managing Director, ECIL, Hyderabad and others vs. Karunakar and others**, the petitioner is not entitled to any backwages for the present till a decision is taken by the Disciplinary Authority based on the order of this remand. No costs. Consequently, connected miscellaneous petition is closed.



W.P.No.31125 of 2022

(S.V.N.J.) (K.R.S,J.,)

.11.2023

Speaking order/Non-speaking order

Index: Yes / No

Internet: Yes / No

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S.VAIDYANATHAN,J.

and

K.RAJASEKAR,J.

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WEB COPY



W.P.No.31125 of 2022

PRE-DELIVERY ORDER IN
W.P.No.31125 of 2022

10.11.2023