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WA No. 207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.207 of 2023
and
CMP No. 2124 of 2023

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Home (Transport) Department
Secretariat, Chennai - 2

2. Principal Secretary and Commissioner of Transport
Chepauk, Chennai - 5 .. Appellants

Versus

K. Hari .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set
aside the order dated 09.02.2022 made in WP. No. 8854 of 2011

For Appellants : Mr. Silambanan
Additional Advocate General
assisted by Mr. S. Yashwanth,
Additional Government Pleader

For Respondent : Mr. A. Ganesan



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JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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We have heard the learned Additional Advocate General appearing for the appellants as well as the learned counsel for the respondent and perused the materials placed before us.

2. Challenging the order dated 09.02.2022 passed by the learned Judge allowing the Writ Petition No. 8854 of 2011 filed by the respondent herein, the appellants have come up with this writ appeal.

3. The necessary facts leading to the filing of this writ appeal are as follows:

3.1 The respondent herein was appointed as Shroff through employment exchange and he joined duty on 10.09.1990 in the office of the Regional Transport Officer, Chennai (North), Chennai - 600 013. In the year 2000, the respondent was awarded selection grade in the cadre of Cashier, which is equivalent to the post of Shroff. While the respondent was working as Cashier in the office of Regional Transport Officer, Chennai, a surprise joint inspection was conducted by the District Inspection Cell Officer and the



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Deputy Superintendent of Police, Vigilance and Anti-Corruption department

on 21.01.2000. During such surprise inspection, it was noticed that three outsiders were assisting the respondent in his official work in the cash counter. For such act of the respondent, disciplinary action was initiated against him by issuing a Charge Memo dated 26.09.2003 under Rule 17(b) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge is to the effect that there was excess money of Rs.78/- found in the cash and three unauthorized persons were in the cash counter No.1 for assisting the respondent in his official work. The respondent submitted his explanation dated 10.12.2003 denying the charges. Notwithstanding the explanation offered by the respondent, an enquiry officer was appointed. After due enquiry, the enquiry officer held the charge against the respondent as "not proved". However, the first appellant issued a notice dated 18.07.2008, disagreeing with the findings of the enquiry officer and called upon the respondent to submit his further explanation. Accordingly, the respondent submitted his further explanation on 27.08.2008. Not satisfied with the further explanation offered by the respondent, the first appellant passed the order in G.O. (D) No.47, Home (Tr-II) Department dated 02.02.2010 imposing the punishment of "Stoppage of increment for a period of two years with cumulative effect which will affect his pension".



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3.2. Challenging the order of punishment dated 02.02.2010 passed by the first appellant, the respondent filed W.P. No. 8854 of 2011 praying to quash the said order and to direct the appellants herein to confer him all consequential benefits, including promotion, from the date on which his junior came to be promoted.

3.3. The learned Judge, by the order dated 09.02.2022, allowed the writ petition on the ground that the reason assigned by the first appellant in the notice dated 18.07.2008, calling upon the respondent to offer his further explanation, is unacceptable inasmuch as the first appellant, while disagreeing with the findings of the enquiry officer, did not say as to how such findings are unacceptable. The learned Judge also observed that in the normal circumstances, the matter would have been remanded back to the appellants for fresh consideration of the order of punishment, however, since the respondent retired on 30.06.2015, much prejudice would cause to him if the matter is remanded back to the first appellant. Accordingly, the learned Judge, while setting aside the order dated 02.02.2010, directed the appellants to extend all service and monetary benefits to the respondent, including pensionary benefits. Aggrieved by the order dated 09.02.2022 in WP No. 8854 of 2011, the present intra-court appeal is filed by the appellants.



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4. Mr. Silambannan, learned Additional Advocate General would submit that the charge against the respondent is that he had engaged the outsiders to assist him in discharge of his official work. During the investigation by the investigation agency on 21.11.2000, it was noticed that three touts have been engaged by the respondent for discharge of his official work. The investigation agency also recorded the statement of the respondent and he admitted that he had paid Rs.50/- daily to Thiru. Selvakumar, one of the touts, for the help rendered by him in collecting money. Notwithstanding the same, the enquiry officer concluded that the charges against the respondent are not proved. Therefore, the disciplinary authority issued a notice dated 18.07.2008 specifically stating that the report of the enquiry officer is unacceptable and called upon the respondent to submit his further explanation. In response, the respondent also submitted his further explanation on 27.08.2008. Thereafter, the first appellant passed the order dated 02.02.2010 imposing the punishment. Thus, when the procedural formalities preceding the order dated 02.02.2010 have been duly complied with by the appellants, the learned Judge is not right in holding that the order dated 02.02.2010 is not a speaking order and interfering with the punishment. The learned Additional Advocate General also invited the attention of this Court to the order dated 02.02.2010 and submitted that the charges framed against the respondent, the



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defence raised before the enquiry officer, the disagreement notice issued, further explanation submitted have been duly considered and a detailed order has been passed by the first appellant. In any event, when the first appellant had complied with all the procedures established under law, before passing the order dated 02.02.2010, interference by the learned Judge in exercise of power under Article 226 of The Constitution of India is not warranted. Furthermore, the punishment imposed is proportionate to the charges levelled against the respondent. Unless the punishment shocks the conscience of the Court, interference of such order in exercise of the discretionary relief conferred under Article 226 of The Constitution of India is unjust. The learned Additional Advocate General therefore prayed for allowing the writ appeal.

5. Per contra, the learned counsel for the respondent submitted that the order dated 02.02.2010 is a non-speaking order. The learned Judge extracted the operative portion of the order dated 02.02.2010 and rightly held that the first appellant did not discuss about the findings rendered by the enquiry officer or set out independent reasons as to how such findings are unacceptable while deferring with the report of the enquiry officer. The learned counsel further submitted that the respondent retired long back on 30.06.2015 and therefore, the learned Judge, instead of remanding the matter



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back to the appellants thought it appropriate to allow the writ petition and directed the appellants to confer all consequential benefits. However, the learned counsel for the respondent fairly agreed to remand the matter to the first appellant for considering the matter afresh on merits and as per law.

6. In view of the above submissions made by the counsel for both sides, the directions issued by the learned Judge in Para No.6 of the order dated 09.02.2022 passed in WP No. 8854 of 2011 is set aside and the matter is remanded to the first appellant to consider the further explanation dated 27.08.2008 submitted by the respondent to the notice dated 18.07.2008, afford an opportunity of hearing to the respondent and thereafter pass a reasoned order, on merits and in accordance with law. Such an exercise shall be completed by the first appellant within a period of 12 weeks from the date of receipt of a copy of this order.

7. With the above direction, the writ appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J] [M.S.Q., J]
09.03.2023

Index : Yes / No

Internet : Yes / No

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