



W.P. No. 31258 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K. RAJASEKAR

W.P. No. 31258 of 2023

&

W.M.P. No. 30697 of 2022

Geetha

..Petitioner

Vs.

1. Principal District Judge and
Revision Authority,
Principal District Court,
Tiruppur, Tiruppur District.

2. The Chief Judicial Magistrate,
Disciplinary cum Appointing Authority,
Tiruppur.

3. The Judicial Magistrate No.1
Udumalpet, Tiruppur District.

..Respondents



W.P. No. 31258 of 2022

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to quash the order dated 09.05.2022 in D.P.A. No. 02/2022 passed by the 1st respondent.

For Petitioner :: Mr. Vetrivel for
Mr. B.M. Subash

For Respondents :: Mr.V. Ayyadurai,
Senior Advocate for
Mr.A. Durai Eswar

ORDER

(Order of the Court was made by S. Vaidyanathan,J.)

The present writ petition has been filed challenging the order dated 09.05.2022 passed by the 1st respondent.

2. The facts, in brief, that gave rise to filing of writ petition:

(i) The employee was appointed as an Office Assistant in the office of Judicial Magistrate, Dharapuram, vide order dated 17.10.2013. On 23.08.2015 and 24.08.2015, Judicial Magistrate, Dharapuram, inspected the property room of this Court and found that 31 cell phones kept as case properties were missing. Consequence thereto, a written complaint was filed with the Inspector of Police, Dharapuram against the petitioner and another



W.P. No. 31258 of 2022

person. Based on the said complaint, an FIR was registered in Crime No. 772 of 2015 on 27.08.2015 and the petitioner was arrested and remanded to judicial custody on 20.09.2015. The petitioner came to be suspended from service by the Judicial Magistrate, Dharapuram vide proceedings dated 02.09.2015.

(ii) Thereafter, charges were framed against the petitioner and another person under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules and subsequently, an Inquiry Officer was appointed, who filed his report on 11.05.2017 to the Chief Judicial Magistrate (Disciplinary cum Appointing Authority), Tiruppur. The Chief Judicial Magistrate, Tiruppur, passed final order dated 31.10.2017 awarding punishment demoting the petitioner from the post of Office Assistant to Masalchi.

(iii) In the meantime, the criminal case, which was taken up in C.C. No. 455 of 2015 by the Judicial Magistrate, Dharapuram, ended in conviction of the petitioner for the offence under Section 381 IPC and he was sentenced to undergo two years RI together with a fine of Rs.2000/- carrying a default sentence of simple imprisonment for one month vide order



W.P. No. 31258 of 2022

dated 10.12.2018. The conviction and sentence imposed on the petitioner was challenged by way of an appeal in Criminal Appeal No. 4 of 2019 on the file of III Additional District and Sessions Judge, Dharapuram and by order dated 28.11.2019, the Appellate Court acquitted him of all the charges.

(iv) After the acquittal by the Criminal Court, the petitioner preferred an appeal bearing D.P.A. No. 01/2021 before the Principal District Judge, Tiruppur, which came to be dismissed by order dated 20.10.2021 remitting the matter back to the Appointing Authority to independently reconsider the punishment imposed and to decide the suitability of the petitioner since the petitioner herein was still under probation and to discharge her from service if she was not found suitable.

(v) On remand, by order dated 18.04.2022, the Appointing Authority, namely, the Chief Judicial Magistrate, Tiruppur, held that the petitioner had completed one year of service on 18.03.2014 and since her probation was not extended by the Appointing Authority or Appellate Authority within six months, she was deemed to have satisfactorily completed her probation on 18.03.2014 and therefore, she could not be



W.P. No. 31258 of 2022

discharged from service. Thereafter, the 1st respondent herein, invoking the revision powers, vide proceedings bearing No.D.P.A. No. 02/2022, by order dtd 09.05.2022, set aside the order passed by the Appointing Authority and remanded the matter back to the Appointing Authority for fresh consideration after hearing the petitioner and to pass suitable orders on the proportion of punishment imposed and if the suitability of the petitioner was found to be not satisfactory, the same to be communicated to her within one month. Challenging the said order, the present writ petition has been filed.

3. Heard the learned counsel on either side and perused the materials on record.

4. A reading of the order passed by the Appellate Authority would reveal that while remitting the matter, the authority had set aside the punishment and asked the Appointing Authority to decide about the declaration of probation. After having found that the employee was deemed to have satisfactorily completed her probation, the punishment alone needs to be imposed. A reading of the relevant Rules would make it clear that the post of Office Assistant falls under Class III and the post of Masalchi comes



W.P. No. 31258 of 2022

under Class IV. A Government Servant cannot be demoted to a post lower than that to which he was directly recruited as has been held by the Hon'ble Apex Court in the judgment rendered in ***Nyadar Singh and Ors V. Union of India and Ors*** reported in ***AIR 1988 SC 1979***. The Disciplinary Authority/Appointing Authority is yet to pass an order imposing punishment. Merely because the employee has been acquitted by the Appellate Court in the criminal proceedings eventhough convicted by the Trial Court, it cannot be said that she cannot be imposed with punishment. Departmental proceedings and Criminal proceedings are independent of each other. In the criminal case, the issue has got to be decided beyond reasonable doubt whereas in the departmental proceedings, it is suffice if preponderance of probabilities alone are considered. In this case, the petitioner is holding the post of Office Assistant in view of the order of the Appellate Authority dated 20.10.2021. The Appointing Authority/Disciplinary Authority is expected to take a decision with regard to the punishment to be imposed based on the findings of the Enquiry Officer on the charges framed against the petitioner, after giving an opportunity of hearing to the petitioner, after calling for the comments on the



W.P. No. 31258 of 2022

Enquiry Officer's report, if not done earlier. The Disciplinary Authority shall not state that Enquiry Officer's Report is accepted and then call for the comments. If so done, it would amount to pre-judging the issue. While forwarding the Enquiry Officer's report, the Disciplinary Authority acts as a postman, i.e, just forward the report and call for remarks. The decision shall be taken by the Appointing Authority/Disciplinary Authority within a period of one month from the date of receipt of a copy of this order.

5. The writ petition stands disposed of accordingly. No costs.

Connected W.M.P. is closed.

nv

(S.V.N.J.) (K.R.S.J.)
14.07.2023

S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.



W.P. No. 31258 of 2022

nv

WEB COPY

To

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