



W.P(MD)No.7378 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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DATED : 19.04.2023

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

W.P(MD)No.7378 of 2023

and

W.M.P.(MD)Nos.6914 and 6915 of 2023

M.Kanimozhi

... Petitioner

**Vs.**

1.The Additional Chief Secretary to Government,  
Transport Department, St.George Fort,  
Chennai – 600 009.

2.The Deputy Secretary,  
Tamil Nadu Public Service Commission,  
TNPSC Road, Chennai – 600 003.

3.The Transport Commissioner,  
Chepauk, Chennai – 5.

4.The Joint Transport Commissioner,  
Chennai South Zone,  
Chepuak, Chennai.

5.The Joint Transport Commissioner (Admin),  
Transport and Road Safety,  
Anaiyaragam, Chepauk,  
Chennai.

6.The Regional Transport Officer,  
Srirangam, Trichy.

... Respondents

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**W.P(MD)No.7378 of 2023**

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st Respondent in G.O.(2D).No.143 dated 13.03.2023 served on 24.03.2023 and quash the same.

For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.G.Suriyananth,  
Addl. Govt. Pleader for R1, R3 to R6.  
Mr.J.Anandkumar,  
Standing Counsel for R2.

### **ORDER**

Heard the learned counsel on either side.

2.The writ petitioner is holding the rank of Assistant in transport department. By the impugned government order, she was served with charge memo dated 05.11.2008. Enquiry was conducted. The enquiry officer held that the charges framed against the petitioner stood proved. The petitioner filed W.P.(MD)No.9164 of 2011 seeking permission to engage an advocate as defence assistant. The said writ petition was disposed of on 19.04.2011 by granting liberty to the petitioner to engage



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a defence assistant. It appears that a second enquiry officer was also appointed. The report of the second enquiry officer was not furnished to the petitioner.

3.It is not in dispute that the first enquiry officer submitted his report on 29.03.2011. W.P.(MD)No.9164 of 2011 permitting engagement of defence assistant was allowed only on 19.04.2011. In my view, the order dated 19.04.2011 made in W.P.(MD)No.9164 of 2011 was infructuous. But the department for reasons that are not quite clear chose to have a second enquiry. Having appointed second enquiry officer and held second enquiry, it is the duty of the department to have furnished the second enquiry report on the petitioner. However, I leave those issues open and I do not want to go into the same. The fact remains that the impugned order was passed even without serving the report of TNPSC on the petitioner. The Hon'ble Supreme Court in the decision reported in **2011 (4) SCC 591 (S.M.Narula Vs. Union of India)** had held that passing of final order without communicating the report of the service commission is bad in law, because the delinquent was unable to make an effective representation before the disciplinary authority as regards the



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punishment imposed. This decision has been subsequently followed in quite a few decisions. On this sole ground, I interfere with the impugned order. Now that the petitioner is having a copy of the TNPSC report, the petitioner is given liberty to make a further representation as regards punishment within a period of two weeks from the date of receipt of a copy of this order. The impugned order is set aside and the matter is remitted to the first respondent to pass order on merits and in accordance with law. I make it clear that I have not gone into the merits of the matter. The first respondent shall pass an order afresh after receiving the representation from the petitioner. If the petitioner fails to adhere to the time line stipulated above, it is open to the first respondent to dispose of the matter.

4.This writ petition is allowed on these terms. No costs.  
Consequently, connected miscellaneous petitions are closed.

**19.04.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
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**G.R.SWAMINATHAN, J.**

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