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W.P.No.4936 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.4936 of 2023

Ganesh Shankar.P.

... Petitioner

Vs.

Registrar General,
High Court of Judicature,
Madras – 600 104.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the entire records of the respondent relating to the order dated 04.07.2022 passed in ROC.No.1116-ARG/2020/B3/MB/B2 and to quash the same and consequently reinstate the petitioner into service with full back wages, continuity of service with all other attending monetary and service benefit.

For Petitioner : Mr.C.S.K.Sathish

For Respondent : Mr.B.Vijay



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ORDER

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(Order of the Court delivered by S.M.SUBRAMANIAM,J.)

The writ on hand has been instituted to quash the proceedings of the Registrar General, imposing the punishment of removal from service of the petitioner. The petitioner was temporarily appointed as Court Manager, under the Madras High Court Adhoc Rules for the post of Court Managers, 2012 as sanctioned under the grant of 13th Finance Commission. The Post of Court Manager shall constitute a separate category in Division-I of Madras High Court Service Rules. Rule 9 stipulates tenure. Sub-clause (i) denotes that all appointments to the Post of Court Manager shall be purely temporary basis. Sub-Clause (ii) indicates the period of their appointment shall be made till the plan period of 13th Finance Commission.

2. Therefore, the post of Court Manager itself is temporary in nature and all appointments to the Post of Court Manager shall be purely temporary basis.



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3. In respect of temporary services, the Appointing Authorities are empowered to issue an order of termination simplicitor if the services of such temporary staff are not to the satisfaction of the Appointing Authority. A termination simplicitor can be issued only on certain circumstances, where there is no stigma attached to the employee concerned. On receipt of any complaint relating to allegations, the Authority Competent is bound to conduct an enquiry by following the procedures and in compliance of the rules of natural justice. In the present case, it is a case, where complaint was made by the learned Principal District and Sessions Judge, Thoothukudi and the said complaint was acted upon by the High Court administration, by initiating disciplinary proceedings. Thus, the procedures as contemplated under the Discipline and Appeal Rules are followed in the case of the writ petitioner.

4. The Charge Memorandum dated 23.06.2021 reveals that 3 charges are framed against the writ petitioner in Annexure-I as under:

Charge-I:

That you, Thiru.P.Ganesh Shankar, formerly Court Manager, Principal District and Sessions Court,



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Thoothukudi, now under suspension, while functioning as Court Manager, had applied for Unearned Leave on Medical Certificate on 14.03.2020 for 14 days from 14.03.2020 to 27.03.2020 and on the request of the Principal District Judge, Thoothukudi made on 16.03.2020, the Dean of the Government Medical College Hospital, Thoothukudi summoned you to appear before the Medical Board on 27.05.2020 at 09.30 A.M. to verify the genuineness of the leave applied. As you have wilfully not appeared on that day, you were again summoned to appear on 24.06.2020 and again you wilfully disobeyed the orders. You, finally appeared on 08.07.2020 after being summoned for the third time after elapse of 4 months time as detailed in the statement of imputations in Annexure-II. You showed utter disregard to the established Rules and procedures and disobeyed it for the reasons best known to you.

Thus, you have committed the acts of serious misconduct of wilful disobedience and in subordination which is unbecoming of a Government Servant and thereby you have violated Rule 20 of Tamil Nadu Government Servant's Conduct Rules, 1973. Thereby you have rendered yourself liable to be proceeded with under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Charge-II

That you, Thiru.P.Ganesh Shankar, formerly Court Manager, Principal District and Sessions Court,



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Thoothukudi, now under suspension, while functioning as Court Manager, after having availed Unearned Leave on Medical Certificate for 4 months in different spells from 14.03.2020 to 17.07.2020, you applied for Earned Leave on 07.08.2020 for three days from 12.08.2020 to 14.08.2020 and left the Headquarters without permission. In spite of having been informed over mobile phone by Tmt.Y.Packiarajam, Chief Administrative Officer, Principal District Court, Thoothukudi on 12.08.2020 evening after 04.00 P.M. about your leave application getting rejected and conveyed the message to join duty immediately, you wilfully ignored it. Instead, you sent an application on 16.08.2020 for extension of Earned Leave from 17.08.2020 till 21.08.2020 and when the Chief Administrative Officer again informed you over mobile phone on 17.08.2020 about the rejection of the said application for extension of leave as detailed in the statement of Imputations in Annexure-II, you again deliberately ignored it, which caused much havoc and dislocation of work in as much as you had been in a top most responsible position in the hierarchy of the ministerial staff in the District Judiciary.

Thus, you have committed the acts of serious



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misconduct of wil ful disobedience and insubordination which is unbecoming of a Government Servant and thereby you have violated Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973. Thereby you have rendered yourself liable to be proceeded with Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Charge-III

That you, Thiru.P.Ganesh Shankar, formerly Court Manager, Principal District and Sessions Court, Thoothukudi, now under suspension, while functioning as Court Manager, inspite of instructions issued to you by the Principal District Judge, Thoothukudi in proceedings in D.No.2432/B1/2020, dated 18.08.2020 to hand over the keys of the Bureau, you wilfully disobeyed the said order and after much delay, returned it only on 19.10.2020 which caused much inconvenience and hardship not only to the staff of the Distict Court but also to the Thoothukudi District Court administration.

Thus, you have committed the acts of serious misconduct of wilful disobedience and insubordination which is unbecoming of a Government Servant and thereby you have violated Rule 20 of Tamil Nadu



Government Servant's Conduct Rules, 1973. Thereby you have rendered yourself liable to be proceeded with under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. Annexure –II to the Charge Memo provides statement of imputations in support of the charges framed against the writ petitioner. Annexure-III provides list of documents. Annexure – IV provides list of witnesses. Thus, we do not find any infirmity in respect of the charge memorandum issued against the writ petitioner.

6. It is not in dispute that the writ petitioner participated in the process of departmental enquiry by submitting his explanations. Since the Disciplinary Authority was not satisfied with the explanations submitted by the writ petitioner, appointed an Enquiry Officer to conduct an enquiry. The Enquiry Officer has conducted an enquiry by affording opportunity to the writ petitioner. The writ petitioner participated in the process of enquiry and defended his case. The findings of the Enquiry Officer reveals that all the 3 charges are held proved. The findings of the Enquiry Officer were accepted by the Disciplinary Authority and the 2nd show cause notice was issued inviting



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objections from the Delinquent Officer and on receipt of such objections/explanations, the final order imposing the penalty of removal from service was issued in proceedings dated 04.07.2022, which is under challenge in the present writ proceedings.

7. Mr. C.S.K.Sathish, learned Counsel for the petitioner would submit that the explanations given by the petitioner was not considered properly by the Enquiry Officer during the course of enquiry. The petitioner has explained certain mitigating circumstances occurred during the Covid-19 period and further, expressed his unintentional absence beyond his control. The explanations in detail and the materials submitted to establish the same were not considered by the Enquiry Officer. Thus, the findings of the Enquiry Officer is perverse.

8. Learned Counsel for the petitioner would further contend that the Disciplinary Authority under the Adhoc Rules is Hon'ble Chief Justice. It is not made clear whether, the Disciplinary Authority has applied his mind before taking a decision to impose penalty of removal from service. Since the order impugned would reveal that the Committees decision was approved by the Appointing Authority. He would mainly contend that the punishment of



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removal from service is disproportionate to the gravity of the allegations raised against the writ petitioner. Therefore, the order impugned is to be set aside.

9. Learned Counsel for the petitioner would further contend that certain documents furnished by the petitioner were not taken into consideration by the Enquiry Officer, during the course of enquiry. However, the Delinquent Officer has not raised any objections in this regard, either before the Enquiry Officer or at the time of submitting further explanations on receipt of Enquiry Report along with the 2nd show cause notice. However, we do not find any infirmity in respect of the procedures followed for conducting the departmental Disciplinary Proceedings.

10. Mr.B.Vijay, learned Counsel for the respondent would oppose the contentions of the petitioner by stating that the procedures as contemplated under the Discipline and Appeal Rules were scrupulously followed. Though the petitioner continued as a temporary employee in the cadre of Court Manager, the rules of natural justice have been followed by issuing a charge memo, by conducting enquiry, issuing 2nd show cause notice



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along with the Enquiry Report and by duly considering the recommendations of the Committee. Therefore, there is no infirmity in the impugned order. The contention of the petitioner was that certain documents filed by him were not taken into consideration during the course of enquiry is untenable. All the documents presented by the petitioner along with the explanations to the Charge Memo were considered by the Enquiry Officer and the petitioner had participated in the process of enquiry. That being so, now the petitioner cannot raise such a ground that certain documents were not considered.

11. We have considered the arguments as advanced between the parties to the *lis* on hand.

12. The charges framed against the petitioner would reveal that the petitioner remained absent without obtaining prior permission from the Authority concerned and more so, he has committed an act of insubordination and disobedience in complying with the lawful instruction of the learned Principal District and Sessions Judge. The complaint given by the learned Principal District and Sessions Judge, Thoothukudi would reveal that the



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petitioner was not performing his duties with devotion and several lapses and indifferent behaviors are set out in the complaint by the learned Principal District and Sessions Judge. The overall conduct of the petitioner was considered by the Committee constituted by the Hon'ble Chief Justice and the Committee's recommendations in this regard were considered by the Appointing Authority.

13. Deliberations were made to ascertain the work performance of the writ petitioner, in the context of the complaint received and the Departmental Disciplinary proceedings initiated.

14. Learned Counsel for the respondent would bring it to our notice that the writ petitioner on an earlier occasion was placed under suspension, on account of certain serious allegations. However, his explanations given was accepted magnanimously by the Judicial administration, with a hope that he will change his attitude and perform his duties with full devotion. Since, the petitioner has committed misconducts again and again, the complaint given by the learned Principal District Judge was acted upon. The writ petitioner was a habitual defaulter in performance of his duties as Court Manager,



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which resulted in initiation of departmental disciplinary proceedings.

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15. The power of Judicial Review of the High Court under Article 226 of the Constitution of India is to ensure that the processes through which a decision taken by the competent Authority is in consonance with the statutes and rules in force, but not the decision itself.

16. The Court in exercise of power of Judicial Review must restrict its review to determine whether;

- (i) the rules of principles justice have been complied with;
- (ii) the finding of the misconduct is based on some evidence;
- (iii) the statutory rules governing the conduct of the discipline have been observed;
- (iv) the findings of the disciplinary authority suffer from perversity
- (v) the penalty is disproportionate to the proven misconducts

17. Applying the above tests, the present case satisfies the requirements. The charges were framed and departmental disciplinary



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proceedings were conducted by complying with the rules of natural justice.

The petitioner participated in the process of enquiry and defended his case.

The Enquiry Report would reveal that the findings of the misconduct are based on some evidence. The post of Court Manager is governed under the Adhoc Rules and temporary in nature. However, the complaint given by the learned Principal District and Sessions Judge was acted upon by instituting regular disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, the Rules governing the disciplinary proceedings were followed by the respondents. Finally, the ground raised by the petitioner that the punishment is disproportionate, deserves no merit consideration, in view of the past conduct as well as the charges framed against the petitioner resulting in punishment of removal from service. The Disciplinary Authority has considered all the grounds raised by the writ petitioner and arrived at a conclusion that further continuance of the service of the petitioner would be detrimental to the Judicial administration. Pertinently, the petitioner at the time of initiation of departmental disciplinary proceedings was a temporary employee, served in the cadre of Court Manager. Therefore, we do not find any infirmity or perversity, in respect of the processes adopted and decision taken to impose the penalty of removal



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from service.

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18. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs.

[S.M.S.J.] [K.R.S.J.]
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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To

Registrar General,
High Court of Judicature,
Madras – 600 104.



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S.M.SUBRAMANIAM,J.
AND
K.RAJASEKAR,J.

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