



Writ Petition No.10903 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.04.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

Writ Petition No.10903 of 2018
& WMP No.12832 of 2018

R.Kesavan

..Petitioner

vs.

1.State of Tamilnadu,
rep. by the Secretary to Government,
Highways Department,
Fort St.George,
Chennai-600 009

2.The Chief Director(H),
Highways Department,
Guindy, Chennai-600 025.

3.The Chief Engineer,
Construction and Maintenance,
Guindy, Chennai -600 025.

4.The Superintending Engineer(H),
Construction and Maintenance,
Chennai Division,
Chennai-600 006.

5.The Divisional Engineer,
Construction and Maintenance,
Highways Department,
Thiruvallur,



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Thiruvallur District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 16.04.2018 in Ref.no. 5746/2017 /NIR.1/2017 (seyalmurai aanai no. 5746/2017/NIR.1/2017) of the 5th respondent and quash the same and consequently direct the 5th respondent to reinstate the petitioner with back wages.

For Petitioner : Ms.R.Nandhini

For Respondents : Ms.E.Ranganayaki, AGP

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 16.04.2018 in Ref.no.5746/2017/NIR.1/2017 (seyalmurai aanai no. 5746/2017/NIR.1/2017) of the 5th respondent and to quash the same and consequently direct the 5th respondent to reinstate the petitioner with back wages.

2. The petitioner herein was appointed as Office Assistant by the fifth respondent vide proceedings bearing no.SE.MU.KA.No.4/95/1/B2 dated



09.01.1995 on compassionate ground, consequent upon the death of his father in harness on 28.05.1987. The petitioner continued in service till 2004. In the year 2004, he was subjected to disciplinary proceedings and after conducting a detailed enquiry on the allegation that the petitioner did not possess the requisite qualification to hold the post of Office Assistant and also on the allegation that the educational certificates produced by the petitioner at the time of securing the appointment on compassionate ground, are fake. The said disciplinary proceedings concluded vide proceedings no.5746/B2/200/99 dated 14.01.2004, imposing the punishment of stoppage of 3 increments with cumulative effect. Thereafter, the petitioner continued in service till the year 2018. The punishment that was imposed on the petitioner was also given effect to. While so, the 5th respondent herein, who passed the original order of punishment dated 14.06.2004, issued a memo no.5746/2017/NIR1 dated 14.03.2018 to the petitioner stating that the punishment that was imposed on the petitioner through proceedings dated 14.06.2004, is contrary to G.O.No.190, Personnel and Administrative Reforms Department dated 09.06.1995 and in order to set right the same, required the petitioner to submit his academic certificates that were submitted by the petitioner at the time of his initial appointment on



compassionate ground. The said order dated 14.03.2018 is stated to have issued in exercise of powers under Rule 36(i) of the Tamilnadu Civil Services (Disciplinary & Appeal) Rules (herein after referred to as "the Rules"). In response to the same, the petitioner submitted his explanation dated 22.03.2018 and thereafter, the fifth respondent cancelled the proceedings dated 14.06.2004 by issuing the proceedings no. 5746/2017/NIR.1/2017 dated 16.04.2018 and simultaneously also issued further proceedings no.5746/2017/NIR.1/2017 dated 16.04.2018, dismissing the petitioner from service and relieved him from service on the very same day. Aggrieved by the said order dated 16.04.2018, the petitioner approached this Court, by filing the present Writ Petition.

3.The learned counsel for the petitioner raised several contentions against the impugned order dated 16.04.2018, mainly on the ground that the exercise of power under Rule 36 of the Rules, cannot be invoked after a long lapse of time and also further contended that there is a specific embargo under Rule 36 itself namely under 36(i) (iii) (iv), to exercise such power after the long lapse of time and the power conferred under Section 36 has to be exercised within the time stipulated. It is also contended that the 5th



respondent, who passed the original order dated 14.06.2004 cannot exercise the power under Rule 36 of the Rules and it is only the Appellate Authority or the higher Authority than the original authority, can only exercise such power.

4. On the other hand, the learned Government Pleader appearing for the respondents while reiterating the contentions raised in the counter affidavit, also contended that admittedly, the petitioner does not possess the requisite qualification for holding the post of Office Assistant and therefore, he cannot be permitted to continue in service and he is liable to be removed from service and accordingly, he has been removed from service by issuing the impugned order which require no interference. She further contended that the question of delay and lapse of time does not apply to the case on hand as admittedly, the petitioner does not possess the requisite qualification to hold the post as on the date of issuing the impugned order.

5. This Court has thoroughly considered the submissions made by the learned counsel on either side and perused the entire material placed on record.



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6. It is not necessary for this Court to go into the merits of the case on hand, for the simple reason that the 5th respondent, who passed the impugned order, dismissing the petitioner from service is totally incompetent to exercise the power under Rule 36 of the Rules.

7. The Rule 36 of the Rules reads as under:

“36. REVISION:

(1) Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or

(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or

(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order ; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or



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(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as they or it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)*, (vi), (vii) 24 and (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub-rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary”

7. Under the above Rule, it is only the State Government; or the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department or the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised, can exercise the power under Rule 36. Under Clause (iv), Sub Rule



(1) of Rule 36, any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order, can also exercise the power under Rule 36.

8. In the instant case, the 5th respondent herein is the authority, who had originally imposed the punishment as early as on 14.06.2004 on the petitioner. The very same authority, invoked the power under Rule 36 of the Rules, and passed the impugned order in question. Admittedly, the 5th respondent herein is neither Head of the Department nor the Appellate Authority. He is also not an authority specified by the State Government by a general or special order, for the purpose of exercising the power under Rule 36. In the absence of power or jurisdiction conferred on the 5th respondent under Rule 36, the action of the 5th respondent in invoking power under Rule 36 and passing the impugned order, is liable to be declared as one, without jurisdiction. On this ground alone, the impugned order is liable to be set aside. Hence, this Court is not inclined to go into other aspects and the grounds raised by the learned counsel for petitioner.



9. It is brought to the notice of this Court that during the pendency of the present Writ Petition, the petitioner had attained the age of superannuation and hence, the reinstatement of the petitioner in service, does not arise. The petitioner was appointed as Office Assistant on compassionate ground, consequent upon the death of his father and also the fact that the petitioner had continued in service till the age of 59 years and also attained the age of superannuation. Further, it is also necessary to notice that the petitioner was imposed with the punishment of stoppage of 3 increments as early as in the year 2004 and the question of revising the said order at this distant point of time even by the competent authority, who is competent to exercise the power under Rule 36, cannot be permitted. No doubt, the revisional power can be exercised by the competent authority at any time as and when fraud is brought to the notice of revisional authority. But it is not a case where the fact of producing fake certificates or about the petitioner not possessing the requisite qualification, is not within the knowledge of the respondents. But for the reasons best known, the petitioner was allowed to continue in service till attaining the age of superannuation and on this ground also, this Court is not inclined to allow the respondents to raise the same question at this length of time.



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10. Accordingly, the impugned order dated 16.04.2018 passed by the 5th respondent in Ref.no.5746/2017/NIR.1/2017 is set aside, for want of jurisdiction and accordingly, the Writ Petition is allowed. The petitioner shall be deemed to have retired on attaining the age of superannuation. The respondents shall settle all the terminal benefits of the petitioner as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order: Yes/No
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Mr.MUMMINENI SUDHEER KUMAR, J

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