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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-03-2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM
And
THE HONOURABLE MR. JUSTICE K.RAJASEKAR**

WP No.11958 of 2023

N.Natarajan

.. Petitioner

-VS-

1.The High Court of Madras,
Represented by its Registrar-General,
High Court Campus,
Madras-600 104.

2.The Principal District Judge,
Erode District,
Erode-638 011.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 26.09.2019 (served on 04.02.2021) made in ROC No.1059/2015/C1 passed by the first respondent



confirming the punishment of withholding increment for a period of one year with cumulative effect imposed in the order dated 07.05.2013 made in A.No.4/Comp/2007-D.No.6593 passed by the second respondent, quash the same and consequently direct the respondents to grant notional promotions to the post of Head Clerk of the Judicial Magistrate Court, Grade II Bench Clerk and the Head Clerk of Sub Court, on par with the petitioner's position as on the date of the order of punishment and grant pay fixation, arrears and revised pension benefits to the petitioner.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.M.Santhanaraman

ORDER

[ORDER OF THE COURT WAS MADE

BY S.M.SUBRAMANIAM, J.]

The punishment of stoppage of increment for one year with cumulative effect imposed on the petitioner in proceedings dated 07.05.2013 confirmed by the Appellate Authority in proceedings dated 29.06.2019, are under challenge in the present writ petition.



2. The petitioner was appointed as Senior Bailiff and promoted to the post of Bench Clerk Grade-II and retired from service on attaining the age of superannuation on 31.05.2013. A charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued against the writ petitioner in proceedings dated 12.04.2007. The charge was "that while K.Natarajan Assistant is not a custodian on the first Additional Sub Court case bundles, has caused commission of tampering the suit pro-note with smudger in OS No.275 of 2005 and thereby committed dereliction of duty".

3. The petitioner submitted his explanations denying the charge. Not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer, who in turn had conducted enquiry and submitted Final Report on 21.12.2012.

4. The Enquiry Officer held that the charge against the petitioner is proved. The report was accepted by the Disciplinary Authority and by enclosing the report, a second show cause notice was issued to the writ petitioner, seeking his further objections on the findings of the Enquiry



Officer. The petitioner defended his case by submitting his objections. The Disciplinary Authority passed final order, imposing the penalty of stoppage of increment for one year with cumulative effect. The appeal filed by the petitioner before the first respondent was rejected vide proceedings dated 26.09.2016. Thus the present writ petition came to be instituted.

5. Mr.N.Manokaran, learned counsel for the petitioner, would submit that the findings of the Disciplinary Authority is not definite about the misconduct of dereliction of duty allegedly committed by the petitioner. Based on certain presumptions, the Disciplinary Authority arrived a conclusion, which is impermissible in view of Article 311 of the Constitution of India, read with Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The holistic reading of the above provisions require a definite finding regarding the charges and in the present case, the Disciplinary Authority presumed that the petitioner committed the misconduct of dereliction of duty. Thus the order of punishment is infirm and liable to be set aside.



6. A common enquiry was conducted in respect of three employees working in the same Court. Though the petitioner has pointed out the lapses of other employees, that was not taken into consideration both by the Enquiry Officer and by the Disciplinary Authority. Thus the order is to be set aside.

7. Mr.M.Santhanaraman, learned counsel for the respondents would oppose the contentions raised on behalf of the petitioner by stating that the Disciplinary Authority considered the findings of the Enquiry Officer in right perspective. The Enquiry Officer found that the charges are proved against all the three employees. While-so, the petitioner cannot claim any immunity from and out of the findings made in respect of certain lapses and dereliction of duty during the course of employment.

8. Considering the arguments, we could find that the procedures as contemplated under the Discipline and Appeal Rules were followed scrupulously. Opportunities, as contemplated, were afforded to the delinquent Officers. The delinquent Officers participated in the process of



enquiry defending their cases. Thus there is no infirmity in respect of the procedures followed. The rules of natural justice have been followed.

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9. In our considered opinion that the ground raised by the petitioner, which the Disciplinary Authority has not considered the allegations independently and formed an opinion based on certain presumptions and assumptions. In this context, it is relevant to consider the finding in the order impugned passed by the learned District Judge, Erode dated 07.05.2013, which reads as under:-

“Each individual role could not be specifically fixed for tampering of suit pro-note. However, taking into consideration as all the delinquents were handling the relevant case records during the relevant period and they also not brought to the knowledge of Court about smudging. All the delinquents can not shift their responsibility for handling of case records and they can not shift their burden to each other. Therefore, I am of the view that all are responsible for the tampering of suit pro-not in OS No.274 of 2005 on the file of I Additional Sub Judge, rode. However, considering the lack of



evidence as to the act of individual, I am of the view that such sort of tampering left without any punishment against staff who has handled at the relevant time, it would encourage such unscrupulous staff to continue the same who are handling the public documents in Court of Law. Further, the said suit has already been settled out of Court. The fact of settled out of Court submitted by the plaintiff's counsel dated 10.01.2008 has been recorded by the I Additional Sub Judge, Erode on 22.01.2008. Since the disputes between the parties has been settled out of Court, I am of the view that the delinquents are liable to be inflicted punishment leniently under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules as they are responsible for tampering of pro-note in OS No.274 of 2005 on the file of I Additional Sub Judge, Erode.”

10. The holistic reading of the entire findings would reveal that preponderance of probabilities were considered by the Enquiry Officer and the Disciplinary Authority. In respect of lapses, negligence and dereliction of duty, preponderance of probabilities are sufficient enough to punish the



employee. Though allegations are serious in nature, the punishment of stoppage of increment for one year with cumulative effect was imposed on the petitioner. Therefore, the Disciplinary Authority considered all the factors and imposed a lighter punishment instead of major penalty. Since there is no direct proof against the commission of misconduct on the part of the petitioner, lighter punishment of stoppage of increment for one year with cumulative effect was imposed. Thus we do not find any infirmity in respect of the punishment imposed. The Appellate Authority also has independently considered the materials available on record and rejected the appeal in proceedings dated 26.09.2019.

11. We are of the considered opinion that appeal was rejected after a lapse of about four years and Mr.N.Manokaran, learned counsel for the petitioner, would submit that the copy was served after two years from the date of disposal of the appeal by the first respondent. Such an inordinate delay in disposing of the appeal and communicating the order in appeal needs to be avoided.



12. In view of the facts and circumstances, we do not find any acceptable reason to interfere with the order of punishment and the order of the Appellate Authority. Consequently, the present writ petition stands dismissed. However, there shall be no order as to costs.

(S.M.SUBRAMANIAM,J.) (K.RAJASEKAR,J.)

04-03-2024

Index : Yes/No
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Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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High Court of Madras,
High Court Campus,
Madras-600 104.
- 2.The Principal District Judge,
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