



WEB COPY



W.P.No.14004 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.14004 of 2022

and

W.M.P.Nos. 13254 & 13255 of 2022

T.Sundaram

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Petitioner

Vs

1. Deputy Secretary to Governor &
Comptroller of Household,
Governor's Household Office,
Raj Bhavan,
Chennai – 600 022.

2. Deputy Director of Horticulture,
Office of the Deputy Director of Horticulture,
Raj Bhavan,
Udhagamandalam,
The Nilgiris – 643 001.

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Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent impugned punishment order in Pro.Ref.No.2253/G3/2019 dated 11.05.2022 issued by the first respondent to the petitioner and quash the same and consequently direct the first respondent to reinstate the petitioner in service with all attendant benefits and arrears liable to be paid to the petitioner.

For Petitioner

: Mr.Naveen Kumar Murthi

For Respondents

: Mr.T.Chezhiyan

Additional Government Pleader



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ORDER

This Writ Petition has been filed challenging the order dated 11.05.2022 in Pro.Ref.No.2253/G3/2019, passed by the first respondent, thereby imposed punishment of compulsory retirement with all the retirement benefits due to him.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner had joined the service of the second respondent as a Gardener. He was sponsored through District Employment Office and he was appointed under Rule 10(a)(i) of the General Rules for the Tamil Nadu State and Subordinate Services on 13.12.1990. While being so, by an order dated 03.10.2019, he was placed under suspension. The petitioner had challenged the suspension order before this Court in W.P.No.5780 of 2020 on the ground that he was not paid any subsistence allowance during the period of his suspension. That apart, the petitioner was served with a charge memo on 26.12.2019. Considering those aspects, this Court directed the respondents to reinstate the petitioner and also directed the petitioner to co-operate for disciplinary proceedings. The respondents were directed to pay the arrear of



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subsistence allowance, if any.

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4. The petitioner was served with a charge memo consisting of five charges, which are as follows :-

“Charge No.1 : *You were working as Gardener, Raj Bhavan, Udhagamandalam till 03.10.2019. While you were working as Gardener, you left the office without doing any work after signing the attendance register in the forenoon and afternoon sessions for four days preceding 05.09.2019.*

Charge No.2 :- *When the Horticulture Officer enquired you about this, you abused and misbehaved with him by using unparliamentary words.*

Charge No.3 :- *When the Assistant Director of Horticulture ordered you to come to Chennai on 04.09.2018 and 08.06.2019 to attend the garden works in Raj Bhavan, Chennai, along with other staff of Raj Bhavan, Udhagamandalam, you did not come to Chennai to do the work in Raj Bhavan, Chennai garden.*

Charge No.4 :- *Further, when you were informed to*



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attend the personal hearing on 13.09.2019 at 10.00 am on the allegations made against you, you did not come to Chennai for personal hearing on 13.09.2019.

Charge No.5 : *As per Tamil Nadu Government Servants Conduct Rule 20(1), the Government servant should maintain absolute integrity and devotion to the duty and shall do nothing which is unbecoming of a member of the service. But by committing the above said lapses, you Thiru.T.Sundaram, Gardener, have violated the said rule."*

5. The first charge is that after signing the attendance register, the petitioner left the office without doing any work. The second charge is that when it was questioned, the petitioner abused and misbehaved with the officer by using unparliamentary words. The third charge is that he was directed to report to duty at Chennai to attend the garden work in the Rajbhavan, Chennai. However, the petitioner failed to come to Chennai to report to duty. The fourth charge is that he failed to attend the personal hearing on the allegations. The fifth charge is that the petitioner failed to maintain absolute integrity and devotion to duty. Therefore, the action of the petitioner is unbecoming of a member of the service.

6. An Enquiry Officer was appointed who conducted enquiry.



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Even according to the Enquiry Officer, the first and second charges were not

proved. When the first two charges were not proved, the other charges are consequent to the first two charges. The third charge is that the petitioner was directed to report to duty at Rajbhavan, Chennai, for garden work. No order of transfer was passed by transferring the petitioner from Udhagamandalam to Rajbhavan, Chennai. That apart, when the first two charges were not proved, nothing required to direct the petitioner to report for duty at Rajbhavan, Chennai. When the petitioner did not report at Rajbhavan, Chennai, there is no question of attending the personal hearing held at Chennai. Even then the Enquiry Officer held that the charges 3, 4 and 5 were not proved. That apart, the charge Nos.1 and 2 are prevail in nature and it shows that with a malafide intention the Disciplinary Authority, issued them in order to send the petitioner out from his employment.

7. In fact, the petitioner had attended the first hearing of the enquiry. However, due to COVID-19, the Disciplinary Authority was placed under Quarantine. Therefore, the personal hearing was adjourned. On the said date, due to COVID -19 Pandemic, the petitioner was not able to present for personal hearing at Chennai. That apart, even assuming the charges 1 and 2



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were held proved, the punishment imposed on the petitioner is disproportionate to the charges. The petitioner can be imposed only with a lesser punishment, viz.,censure.

8. A perusal of the counter filed by the learned Additional Government Pleader appearing for the respondents reveals that the due procedure of law is followed and there is no violation of principles of natural justice. Under the procedure laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules, charge memo was issued to the petitioner consisting of five charges. The Enquiry Officer was appointed to enquire the charges. Due to COVID-19 Pandemic circumstances, completion of enquiry got delayed. When this Court directed to reinstate the petitioner by revoking the order of suspension and directed the Disciplinary Authority to complete the proceedings within the stipulated time, enquiry was conducted. The charges 3 to 5 were held as proved. Therefore, the petitioner was imposed with a punishment of compulsory retirement and it cannot be said that it was disproportionate to the charges.

9. In view of the above, the order dated 11.05.2022 in



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Pro.Ref.No.2253/G3/2019, passed by the first respondent, is hereby set aside.

Accordingly, this Writ Petition stands allowed. Instead of compulsory retirement, the petitioner can be imposed with a lesser punishment. Accordingly, the petitioner is imposed with punishment of censure. The petitioner is directed to report to duty in the office of the second respondent, forthwith. The second respondent is directed to permit the petitioner to join duty immediately, after his report. Consequently, connected miscellaneous petitions are closed. No costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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G.K.ILANTHIRAIYAN. J.



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