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W.P. No. 16523 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

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THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P. No. 16523 of 2018

and

W.M.P. No. 19703 of 2018

S. Subbulakshmi

... Petitioner

Vs.

1.The Commandant,
Office of the Commandant,
Battalion – III,
Veerapuram, Chennai – 600 054.

2.The Additional Director General of Police,
Armed Police, Chennai – 600 010.

3.The Commandant,
Office of the Commandant,
TSP Regimental Centre,
Avadi, Chennai – 600 054.

... Respondents

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records in proceedings Na.Ka.No. C1/8356/2018 dated 29.05.2018 on the file of the second respondent confirming the order dated 26.02.2018 passed in Tha.Pa.No.01/2018 on the file of the third respondent herein and quash the same.

For Petitioner : Mr. S. Sadasharam
For Respondents : Mr. M.Alagu Gowtham,
Government Advocate



ORDER

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This Writ Petition has been filed seeking a writ of certiorari, calling for the records relating to the proceedings in Na.Ka.No. C1/8356/2018 dated 29.05.2018 on the file of the second respondent confirming the order dated 26.02.2018 passed in Tha.Pa.No.01/2018 on the file of the third respondent, wherein the order of punishment of withholding of increment for a period of two years without cumulative effect.

2. The case of the petitioner is that she was initially appointed as Sweeper in the office of the third respondent on compassionate ground since the death of her husband. The petitioner had earlier approached this Court and filed W.P. No. 102 of 2018 seeking to retain her in TSP-RC at Avadi, Chennai or to transfer to any other TSP Battalion Centre. This Court by an order dated 09.01.2018, directed the respondents to accommodate the petitioner in a nearby place at Veerapuram. Thereafter, the petitioner was employed as Sanitary Worker in the office of the first respondent. While so, the petitioner was issued a charge memo on 31.01.2018, for making allegations of insubordination and dereliction of duty. On receipt of the charge memo, she has submitted her explanation denying the allegations of charges levelled against her. Thereafter, without conducting any enquiry, the third respondent found her guilty of the charges and passed an order of punishment of withholding of



increment for a period of two years without cumulative effect by order dated 26.08.2018. Aggrieved by the said order, the petitioner preferred an appeal before the second respondent. The second respondent by order dated 29.05.2018 has confirmed the order of the third respondent. Aggrieved by the same, the petitioner filed the present writ petition.

3. The learned counsel for the petitioner submits that without conducting any enquiry, the impugned order passed by the third respondent and confirming the same by the second respondent are totally vitiated in law. He further submits that the petitioner had already been transferred from the office of the third respondent to the office of the first respondent. Hence, the the third respondent have no control over the petitioner. But the charge memo was issued by the third respondent imposing an order of punishment of withholding of increment for a period of two years without cumulative effect and on appeal, the second respondent confirmed the same without jurisdiction. Hence, he prayed for allowing the writ petition.

4. On behalf of the respondents, a counter affidavit has been filed. Based on the averments in the counter affidavit, the learned Government Advocate appearing for the respondents would submit that the petitioner's indisciplinary conduct was hindrance to other workers and in order to maintain discipline in the unit, the petitioner was dealt with on a charge under Section 17 (a) of Taminadu Civil



Services (Disciplinary and Appeal) Rules and issued a show cause notice on 31.01.2018 to submit her explanation. The same was received by the petitioner and submitted her explanation on 14.02.2018. Based on records, the petitioner was awarded a punishment of postponement of increment for a period of two years without cumulative effect on 26.02.2018. Further, the learned Government Advocate submits that the petitioner is rightly punished by the punishing authority based on records/evidence and confirmed by the appellate authority. Hence, the learned Government Advocate sought to dismiss the writ petition.

5. Having heard the learned counsel appearing on either side and careful perusal of the materials available on record, it appears that the disciplinary proceedings were initiated against the petitioner and a show cause notice was issued to the petitioner on 31.01.2018. The petitioner submitted her explanation on 14.02.2018. After receipt of the explanation, the third respondent awarded the punishment of postponement of increment for a period of 2 years without cumulative effect on 26.02.2018. Against the said punishment, the petitioner preferred an appeal before the second respondent. On consideration of the same, the second respondent rejected the appeal of the petitioner and confirmed the order of the third respondent.

6. On perusal of the order dated 26.02.2018 issued by the third respondent, it appears that without conducting any enquiry contemplated under law, the order of punishment was imposed against the petitioner. As seen from the show cause notice



dated 31.01.2018, it is seen that the petitioner was called for to submit her explanation against the charges levelled against her within 15 days on receipt of the notice. At paragraph No.3 of the said notice, it is stated as follows:

“3) The above charges levelled against her is hereby confirmed on the following report/documents.

- i) Report of the Inspector, TSP Regimental Centre dated 23.12.2017.*
- ii) Complaint of C.N. Cherian, Nayak, 722, TSP Regimental Centre, Avadi*
- iii) Complaint of K.Rajinikanth, Police Constable 964, TSP Regimental Centre*
- iv) Complaint of co-employees dated 22.10.2017 of TSP Regimental Centre”*

7. As seen from the above this Court is of the opinion that before issuing show cause notice dated 31.01.2018 itself, the third respondent came to the conclusion that the charges levelled against the petitioner are confirmed, which shows the predetermined mind of the third respondent. Actually, the third respondent ought to have come to the above conclusion against the petitioner only after consideration of the explanation submitted by her.

8. The third respondent on one hand called for explanation from the petitioner for the charges mentioned in the show cause notice and on the other hand, stated that



the charges levelled against the petitioner are confirmed. It shows that the third respondent had already decided to impose punishment against the petitioner, which is contrary to the enquiry proceedings.

9. Besides this, the petitioner in her explanation has clearly stated that one Cherian and Rajini, incharge of sanitary workers, forced her to get liquor bottles in the Army Canteen through her mother and she refused for the same. Further, the said Rajini compelled her to give loan, when she refused, they joined together and made a false allegation against the petitioner. Hence, she requested to enquire into the same to render justice to her. But the third respondent did not choose to conduct any enquiry on the request made by the petitioner. The third respondent without considering the explanation submitted by the petitioner in proper perspective, in a predetermined mind to impose punishment against the petitioner, passed the order dated 26.02.2018 imposing the punishment of postponement of increment for a period of two years without cumulative effect.

10. The third respondent office, which is a disciplinary force like Police, should have considered the allegations made by the petitioner against those 2 employees working in that office in a serious manner and ought to have conducted



proper enquiry to elicit the truth before punishing the petitioner. The second respondent, who is the appellate authority, also without considering the grounds raised by the petitioner in her appeal, rejected the same in a mechanical manner. Further, it is stated that in the order dated 29.05.2018 passed by the second respondent in the appeal filed by the petitioner that the reasons given by the petitioner / appellant therein is not acceptable, but the second respondent failed to state the reasons why he came to the opinion that the reasons/grounds raised by the petitioner / appellant therein are not acceptable.

11. The second respondent while dealing with the appeal filed by the petitioner ought to have remanded the matter to conduct a detailed enquiry. Instead of doing so, the Appellate authority also confirmed the punishment imposed against the petitioner and rejected the appeal without recording any valid reasons.

12. In the counter affidavit filed by the third respondent it is stated that since the petitioner has been charged under rule 17 (a) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, the conduct of oral enquiry is not required to be followed and the authority can pass orders of punishment based on the explanation of the delinquent on the available records/evidence. This Court is unable to accept such a stand of the third respondent when the petitioner raised a specific grounds to conduct enquiry against the incidents happened in their office by making specific



allegation against 2 employees of that office, the third respondent ought to have conducted enquiry by appointing an enquiry officer under Rule 17 (b) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules. If proper enquiry is conducted, the petitioner would have got ample opportunity to produce her evidence and cross examine the prosecution witnesses, who had deposed against the petitioner.

13. As such, this Court is of the opinion that the third respondent utterly failed to conduct proper enquiry and with predetermined mind imposed punishment against the petitioner and the same was also confirmed by the Appellate Authority in a mechanical manner, which are unsustainable and untenable as per the settled proposition of law. Thus the order imposing the punishment against the petitioner by the third respondent and the order of the second respondent confirming the same are liable to be set aside.

14. Accordingly, the order dated 29.05.2018 passed by the second respondent in Na.Ka.No. C1/8356/2018 and the order dated 26.02.2018 passed by the third respondent in Tha.Pa.No.01/2018 are set aside. For the aforesaid reasons, this Writ Petition is allowed.

No costs.

Consequently, connected miscellaneous petition is closed.



W.P. No. 16523 of 2016

29.08.2024

Index : Yes/No

Neutral Citation : Yes/No

AT / pvs

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