



W.P(MD)No.20599 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2024

CORAM :

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20599 of 2022

and

W.M.P.(MD)No.14938 of 2022

K.Mariselvam

... Petitioner

Vs

**1. The Director of Backward Class Welfare,
Directorate of Backward Class,
Ezhilagam, Chepauk, Chennai-5.**

**2. The District Backward Class and
Minorities Welfare Officer,
Tenkasi, Tenkasi District.**

**3. B. Gunasekar
The District Backward Class and
Minorities Welfare Officer,
Tenkasi, Tenkasi District.**

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to impugned proceedings order in கு.க.ஞ/1/4805/2020 dated 07.05.2021 of the 2nd respondent herein and quash the same.



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For Petitioner : Mr.Pon Ramkumar.T,
For R1 & R2 : Mr.K.Balasubramani
Special Government Pleader
For R3 : Mr.Vinoth
For Mr.N.C.Ashok Kumar

ORDER

The petitioner is a Cook has filed this petition as against the charge memo, dated 07.05.2021 issued against him under Section 17 B of the Tamil Nadu Civil Service Discipline and Appeal Rules.

2. The petitioner was issued with the charge memo as under:

(i) That he has lodged a false complaint to the higher officials with regard to the appointment of a jeep Driver in ந.க.ஞ1/4805/2020, dated 18.11.2020.

(ii) He has lodged a false complaint as against the District Adi Dravidar Welfare Officer that he has abused him by degrading his community and lodged a complaint under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(iii) He has produced a certificate as if he served as a Driver with a



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private person while he was in service.

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(iv) He being the working president of the SC/ST Officers Association, he was the instrument in lodging the complaint through the working President of SC/ST Officers Association against the administration.

3. The learned Counsel appearing for the petitioner submits that the petitioner is the senior most Cook working in the District Backward Community Center. The Government has considered for promotions to those who are working as Cook, as Watchman and also from Watchman to Driver, vide G.O.(Ms).No.46, dated 01.08.2014. Without considering his seniority, the third respondent has recommended one Sriram Muniyasamy, who is a junior to the petitioner, as Watchman as G.O. (Ms)No.46. Therefore, this petitioner has submitted a representation to the higher officials that he is the senior most and he needs to be considered. The higher officials conducted an enquiry and found that the said Sriram Muniyasamy ought not to have promoted as Watchman and set aside the promotion order, dated 30.09.2020. The third respondent, in order to accommodate Sriram Muniyasamy, once again recommended



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him as Driver as per G.O.(Ms)No.46, the post of Driver can be filled up only from the cadre of Watchman. The promotion of the said Sriram Muniyasamy as Watchman was already set aside on 30.09.2020. Even then, he was recommended for promotion as Driver in violation of G.O. (Ms)No.46. Therefore, this petitioner has submitted another representation on 19.11.2020. Pursuant to his representation, the appointment order of Sriram Muniyasamy, dated 18.11.2020 was also set aside by the competent authority on 18.12.2020. Since this petitioner has lodged the complaint, the third respondent who promoted the said Sriram Muniyasamy against the Government order with *mala fides* has issued this charge memo impugned in this writ petition. Therefore, according to the learned counsel for the petitioner, the charge memo, dated 07.05.2021 was issued only with *mala fides* since the order of appointment of Sriram Muniyasamy, dated 11.09.2020 as Watchman and 18.11.2020 as Driver were cancelled. The learned Counsel also submits that the charges stated in the charge memo are all the charges, which can be prosecuted only under Section 17 (a) of The Tamil Nadu Civil Services Disciplinary and Appeal Rules. However, the charge memo was issued under Section 17 (b) of the Disciplinary and Appeal Rules. The learned Counsel has also relied on the category of charges which can be prosecuted under Sections



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17(a) and 17(b) of the said Rules.

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4.The learned Special Government Pleader by referring to the orders of the Commissioner, Backward Classes Welfare, Chepauk, Chennai, submits that the order of appointment of one Sriram Muniyasamy as stated by this petitioner was cancelled on 30.09.2020 and on 18.12.2020 pursuant to the representation of the petitioner.

5.The learned counsel appearing for the third respondent submits that this petitioner as a member of the SC/ST Officers Association created problem in administration and has also produced a false certificate as if that he had experience as a Driver with a private person when he was in service as Cook in the Adi Dravidar Welfare Department. The learned Counsel also submits that the petitioner with vengeance that he has not been considered for the post of Watchman and the post of Driver has maliciously instituted the complaint as against the third respondent under the SC/ST Act and therefore, that was enquired by the Deputy Superintendent of Police Tenkasi and the same was closed. The protest petition filed by the petitioner before the concerned Court in P.C.R No.871 of 2021 was also dismissed. The learned Counsel also



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submits that he is not the appointing authority for the post of Jeep Driver and he has only recommended to the Revenue Divisional Officer and the Revenue Divisional Officer is the appointing authority.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.The third respondent has appointed one Sriram Muniyasamy as a Watchman from the post of Cook as per G.O(Ms)No.46, dated 01.08.2014. According to the petitioner, he is the senior most Cook and as per G.O(Ms)No.46, dated 01.08.2014, he ought to have been referred instead of Sriram Muniyasamy. Therefore, this petitioner to enforce his right has submitted a representation to the higher officials, that was considered by the higher officials and the appointment of Sriram Muniyasamy by the third respondent was found to be wrong and it was set aside. Even after the order of higher officials, dated 30.09.2020 setting aside the order of appointment of Sriram Muniyasamy as Watchman, the third respondent once again recommended for promotion of said Sriram Muniyasamy as a Driver and accordingly, the said Sriram Muniyasamy was also promoted on 18.11.2020. The petitioner appears to



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have submitted a representation on this promotion on 19.11.2020 and therefore, the issue was once again visited by the higher officials and this order of appointment of Sriram Muniyasamy as Driver, dated 18.11.2020 was also subsequently cancelled on 18.12.2020. Thereafter, this impugned show cause notice was issued by the third respondent on 07.05.2021, after the orders of the cancellation of the appointments, dated 30.09.2020 and 18.12.2020. The first charge itself reads that for having submitted a representation, this petitioner has been dealt with by these impugned charge memo. The petitioner is entitled to enforce his right by submitting his representation.

7.Considering the manner, in which the appointments made by the third respondent was set aside by the higher officials, this Court is of the view that this impugned charge memo has been issued with *mala fides* as against the petitioner. The second charge as against this petitioner is that this petitioner has lodged a complaint before the Tenkasi police that he was abused by degrading his community. The learned counsel for the third respondent submits that the same was enquired by the Deputy Superintendent of Police, Tenkasi and it was closed as mistake of fact and the petition filed by the petitioner before the PCR Court in P.C.R No.



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871 of 2021 was also closed as mistake of fact.

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8.This Court is unable to accept the manner, in which the petitioner's complaint, if any, lodged before the police under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act has been dealt with by the police as well as by the Court. In the event if the petitioner has lodged a complaint, the Deputy Superintendent of Police is not having any power to conduct an investigation without even registering a case and it is not known how the PCR Court has also closed the case as mistake of fact in P.C.R.No.871 of 2021. Considering the manner, in which the charge memo was issued, this court is of the view that the charge memo has been issued with *mala fides* and therefore the impugned charge memo is quashed.

9.Accordingly, this writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

18.11.2024

Internet :Yes
Index :Yes/No



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NCC

:Yes/No

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To

1. The Director of Backward Class Welfare,
Directorate of Backward Class,
Ezhilagam, Chepauk, Chennai-5.

2. The District Backward Class and
Minorities Welfare Officer,
Tenkasi, Tenkasi District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI, J.

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