



WP(MD)No.13183 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**WP(MD)No.13183 of 2018**  
**and**  
**WMP(MD)No.12033 of 2018**

P.Arumugam

.. Petitioner

v.

1.The Director General of Police,  
O/o.Director General of Police,  
Beach Road,  
Chennai.

2.The Additional Director General of Police,  
SCRB – Civil Supplies CID,  
Chennai – 35.

3.The Superintendent of Police,  
Madurai Rural Police District,  
Madurai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned show cause notice issued by the second



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respondent in RC.No.C1/PR No.05/2007 dated 26.03.2018 and the consequent impugned dismissal from service order vide proceeding No.RC.No.C1/PR No.05/2007 dated 02.05.2018 on the file of the second respondent, quash the same and consequently, directing the respondents to reinstate the petitioner in service till the disposal of the criminal appeal in CrI.A(MD)No.21 of 2018 pending before this Court.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.K.Balasubramani  
Special Government Pleader

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### **ORDER**

The petitioner is a Grade II Constable. He was initially appointed in Sivagangai District and was subsequently deputed to Civil Supply CID, Nagapattinam, on 10.11.2001. While he was serving in the Civil Supply CID, the petitioner demanded bribe and was also trapped by the Vigilance and Anti Corruption Wing, Thanjavur, in the year 2002. A criminal case was registered as against the petitioner and others in Crime No.5 of 2002 for the offence u/s.7, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act. The Civil Supply CID has also proceeded with a departmental



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proceeding by issuing a charge memo and conducted enquiry. In the meantime, the petitioner was found guilty by the criminal Court in SC.No. 20 of 2014, dated 22.12.2017, convicted to undergo rigorous imprisonment for two years with a fine of Rs.2000/-. As against the conviction and sentence, the petitioner has preferred an appeal and the same is pending before this Court in CrI.A(MD)No.21 of 2018. While so, in the departmental proceedings, a second show cause notice was issued on 26.03.2018 and the petitioner was imposed with a major punishment of dismissal from service. The order of dismissal from service dated 02.05.2018 is challenged in this writ petition.

2.Learned Counsel for the petitioner submitted that the petitioner was originally appointed in the Police Department, which is his Parent Department and that the Deputation Department is not having the power to impose any punishment. In the event, if he is involved in any delinquency, the Deputation Department ought to have referred all the materials to the Parent Department and the Parent Department alone is entitled to conduct enquiry and impose punishment.



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3.Learned Special Government Pleader for the respondents submitted that the petitioner was indulged in a criminal offence by receiving bribe, while he was serving in Civil Supply CID. Therefore, departmental proceeding was initiated by the Civil Supply CID and he has been imposed with the punishment, after the conviction imposed by the Special Court. He fairly submitted that the views of the Parent Department are to be obtained before imposing the punishment as per Section 16B(2) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. However, this provision is not a mandatory one.

4.Learned Special Government Pleader has also relied on a similar order passed by this Court in WP.No.20155 of 2014, dated 15.11.2017, wherein, this Court has taken a decision that it is the Parent Department, which is having the jurisdiction to impose punishment. However, by placing reliance on G.O.Ms.No.111, Personnel and Administrative Reforms Department, dated 02.05.1994, he submitted that the Government has made a clarification by issuing guidelines for the Government Servants who have



been deputed to the Corporations, Boards, Undertakings and Cooperative Institutions that the disciplinary proceedings can be initiated and conducted by the Deputation Department.

5.This Court considered the rival submissions made on either side and perused the materials placed on record.

6.The petitioner has involved in a criminal case while he was serving in Civil Supply CID. Therefore, the Civil Supply CID has initiated disciplinary proceedings. As per Section 16B(2) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, the views of the Parent Department ought to have been obtained before imposing the punishment, however, as rightly pointed out by the learned Special Government Pleader, this provision is not a mandatory one.

7.The Government has passed a Government Order in the form of a clarification in G.O.Ms.No.111, Personnel and Administrative Reforms Department, dated 02.05.1994 that the Department, under whom the



Government Servant was serving at the time of commission of the delinquency, is competent to institute disciplinary proceedings and to impose penalty. The relevant portion is extracted as under:-

*“10. Applicability of Tamil Nadu Civil Services (Classification, Control and Appeal) Rules and Government Servant Conduct Rules:-*

*The deputationist will be deemed to be a member of the State and Subordinate Service to which he would have belonged but for the deputation, for purposes of the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules and the Government Servants Conduct Rules notwithstanding that his services are placed at the disposal of the foreign employer. Besides, he shall also be governed by the special rules of conduct or secrecy, if any, of the Foreign Employer. If the officer had, before his deputation to the foreign employer, committed any act or omission, which renders him, to liable to any penalty specified in the said rules, the State Government or the appropriate disciplinary authority, as the case may be, under whom he was serving at the time of commission of such act or omission, shall alone be competent to institute disciplinary proceedings against him and to impose on him a penalty specified in the said rules, as they think fit and the foreign employer under whom he is serving at the time of institution of such proceedings shall be bound to render all the reasonable facilities to the Government disciplinary authority for conducting such proceedings.”*



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8. In fact, this Court in *K.Venkatesan v. Secretary* [WP.No.20155 of 2014, dated 15.11.2017], has held as under:-

*“4. Thus, this Court is of the opinion that there is no infirmity in the charge memo issued against the writ petitioner in proceedings dated 11.6.2014. The charge memo is challenged solely on the ground that the respondent, who issued memorandum of charges, is an incompetent authority as per the Rules. The petitioner is a permanent employee of the Labour and Employment Department. Therefore, the borrowed organisation cannot issue any charge memo against the writ petitioner. It is contended that the respondent is not a disciplinary authority so as to invoke Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as far as the writ petitioner is concerned.*

*5. The learned Counsel for the Writ petitioner strenuously contented that even Rule 16(A) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules do not prescribe that the borrowed authority can initiate disciplinary proceedings after relieving the official from their control. In other words the sole ground raised by the learned counsel for the writ petitioner is that the writ petitioner served in the borrowed department in between 2010 and 2013, thereafter, he was relieved from the office of the respondent and joined in his parent department viz., Labour and Employment Department. After rejoining in the parent department, the borrowed department cannot have any*



authority to initiate disciplinary proceedings is the point raised in this writ petition.

... ..

8. The learned Additional Advocate General is of the view that Rule 16 A empowers the borrowed department to initiate disciplinary proceedings and conduct such proceedings as per necessity and thereafter, send the files to the appointing authority / disciplinary authority for consideration and for passing final order in the disciplinary proceedings. It is emphasized by the learned Additional Advocate General that initiation cannot be questioned since Rule 16A provides power to the borrowed Department also even if an employee is relieved from the borrowed Department. It is further stated that the allegations set out in the charge memo are in accordance with the Rules and they relate to the alleged misconduct committed by the petitioner, when he was working in the borrowed department namely office of the respondent. Thus, all the files will be available only in the office of the respondent and therefore, initiation ought to have been only by the respondent. This apart the respondent alone will be competent to frame the charges since, they will be well versed with the activities and other happenings in the department. Though the very object of the Rules is to provide powers to the borrowed department to initiate the disciplinary proceedings and conduct such proceedings necessarily for the purpose of continuing the disciplinary proceedings.

... ..



12. This Court, has to consider the purpose and object of the rules.

The whole idea for providing such power to the competent officials of the borrowed Department is that an employee cannot be allowed to escape from the clutches of the disciplinary proceedings, if any misconduct is found to have been committed during his tenure on deputation. This apart if an employee continues his misconduct during the course of performance, even he was on deputation, he should not be allowed to escape from the disciplinary proceedings, even after relieving from the office in which he was working on deputation. This court has to consider the very purpose and the object of the Rules so as to provide interpretation. The Rule provides that the borrowing authority under whom the employee is serving at the time of institution of such proceedings shall be bound to draw all the reasons for initiation and conduct of the said proceedings. The Rule do not prevent the borrowed Department from initiating the disciplinary proceedings against the employee. The Rule is not clear in respect of institution of disciplinary proceedings against the employee, who was relieved from the borrowed Department. In the absence of any specific provisions in this regard, this Court, has to adopt a balanced approach in respect of interpreting the Rules. In this case, the object also to be considered. A constructive interpretation is required otherwise the very object of the Rule will be defeated.

13. The whole object of the Tamil Nadu Civil Services (D & A) Rules is to maintain discipline and good conduct for effective public



administration. The Rules are constituted in order to maintain discipline amongst the public servant, who are all responsible for public administration. This being the purpose of the Rule, the harmonious interpretation of the Rule is imminent and this Court, cannot interpret it in such a way to allow a person to escape from the institution of the disciplinary proceedings on hyper technical grounds.

... ..

14. ... (e) In view of the reasons stated in the aforementioned paragraphs, this Court is of the opinion that there is no impediment or otherwise for the borrowed department to initiate disciplinary proceedings against an employee who was on deputation and committed certain irregularities or misconducts or illegalities and relieved thereafter from the borrowed department. The procedure is to be followed is that the competent authority of the borrowed department shall institute the disciplinary proceedings based on the allegations, frame the charges, continue the proceedings in accordance with rules and send the files to the appointing authority of the delinquent official for taking final decision and passing orders in the disciplinary proceedings in accordance with the provisions of the Tamil Nadu Civil Services(Discipline and Appeal)Rules, more so, in respect of imposition of penalty or exoneration."



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9.However, this Government Order in G.O.Ms.No.111, Personnel and Administrative Reforms Department, dated 02.05.1994, was not placed before this Court while dealing with the writ petition in WP.No.20155 of 2014.

10.In view of the above position and the Government Order in G.O.Ms.No.111, Personnel and Administrative Reforms Department, dated 02.05.1994, this Court is not inclined to interfere with the order of punishment passed by the Deputation Department as against this petitioner. Accordingly, this writ petition is dismissed.

11.This Court places its appreciation to the fair submissions made by Mr.K.Balasubramani, learned Special Government Pleader.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No  
NCC : Yes / No  
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**B.PUGALENDHI, J.**

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