



W.P(MD)No.25681 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P(MD)No.25681 of 2022**  
**and**  
**W.M.P(MD)No.19789 of 2022**

C.Mahendran

... Petitioner

Vs.

1.The Commissioner,  
HR & CE Department,  
Chennai-34.

2.The Joint Commissioner,  
HR & CE Department,  
Tirunelveli-627 002.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order in Se.Mu.Na.Ka.No.31687/2019/L2, dated 26.10.2022 and consequential order in Se.Mu.Na.Ka.No.31687/2019/L2, dated 01.11.2022 on the file of the first respondent and quash the same and to pass such further or other orders as this Court.

For Petitioner : Mr.G.Prabhu Rajadurai



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For Respondents : Mr.K.S.Selvaganesan  
Additional Government Pleader

### **ORDER**

This writ petition has been filed to quash the orders, dated 26.10.2022 and 01.11.2022 passed by the first respondent.

2. The case of the petitioner is that the petitioner was appointed in the year 2010 as Executive Officer Grade - III in the Hindu Religious and Charitable Endowment Department on being selected through TNPSC. Initially, he was posted in Arulmighu Erumbeeswarar Temple, Thiruvarambur, Trichy District. The petitioner was transferred to Thiruvekadamudaiyan Temple in Ariyakudi Village. Thereafter, in the year 2016 the petitioner was promoted as Executive Officer Grade II and posted at Pillaiankattalai Trust, Tirunelveli. He joined the said post on 04.08.2016. Thereafter, on 10.02.2019, he was transferred to Maayuranathasamy Temple, Rajapalayam. In the year 2021, he was further transferred to Arulmighu Srinivasa Perumal Temple, Nachiyar Village. He presently working in the said temple as Executive Officer Grade. The Assistant Commissioner was appointed as enquiry officer, who conducted enquiry, but without examining any witnesses, concluded the enquiry after



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hearing orally to the charges. The copy of the report of the enquiry officer, dated 07.09.2022 was served upon through the communication of the first respondent, dated 28.04.2022. The petitioner found that the enquiry officer has found charges Nos.3, 5, 14 and 15 as not proved but erroneously found that the other charges are proved. The petitioner submitted his explanation to the charges held to be proved by enquiry officer. The first respondent however, by his proceedings, dated 26.10.2022 held that the report of the enquiry officer is accepted in respect of the charges and imposed a punishment of reduction to a lower post for 2 years with cumulative effect. Subsequently, the first respondent passed consequential order, dated 01.11.2022 ordering that the petitioner was appointed as Executive Officer Grade III in Arulmighu Anumaar Thirukoil, Kumbakonam. Hence, the present writ petition.

3. The learned Counsel appearing for the petitioner submitted that the petitioner was imposed with a punishment under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 by which he was reduction to lower rank for a period of two years from Grade II Executive Officer to Grade III and the order to that effect was issued on 26.10.2022. Pursuant to the impugned order passed on 26.10.2022, the order, dated 01.11.2022 was issued



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by the first respondent, posting the petitioner as Executive Officer Grade III at Arulmighu Anumaar Thirukoil, Kumbakonam. The learned Counsel appearing for the petitioner mainly contended that the punishment was imposed under 17(b) and the procedures contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 was not followed. No proper enquiry was conducted. No witnesses were examined. Hence, the order passed by the first respondent imposing the punishment under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 is liable to be quashed and prays to allow the writ petition.

4. The learned Counsel appearing for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court in W.A(MD)No.1448 of 2021, dated 16.11.2022 and the relevant paragraphs are extracted hereunder which reads as follows:

*"6.This Court in the case of S.Kannan Vs., State of Tamil Nadu, rep., by its Secretary to the Government, Home Transport-II Department, The Transport Commissioner and the Joint Transport Commissioner, Chennai Zone, Transport Department reported in (2009) 8 MLJ 217 had held that unless*



*a major punishment is really warranted, the framing of charges under 17(b) of the Rules is not necessary and should be avoided.*

*7.The relevant portion of the order reads as follows:*

*.....*

*14.The only point that arises for determination in this case is, whether the charges framed against the petitioner attract Rule 17(a) or Rule 17(b) of the Rules ?*

*15.For deciding the charges to be framed under Rule 17(b), the Government, vide Circular No. 14353, P&AR; (Per.N)/93-1, dated 11.03.1993, has framed certain guidelines, which read as under:*

*Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption etc., charges under Rule 17(b) have to be framed in the following types of cases for imposing any one of the major penalties:*

*(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.*

*(a) possession of assets disproportionate to the known sources of income;*

*(b) obtaining or attempting to obtain illegal gratification ;*

*(c) misappropriation of Government property, money or shares;*

*(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc;*



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(2) *Falsification of Government records.*

(3) *Irregularity or negligence in the discharge of official duties with a dishonest motive.*

*(emphasis supplied)*

(4) *Misuse of official position for personal gain.*

(5) *Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.*

(6) *Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills etc. Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.*

*(emphasis supplied)*

11. *On a perusal of the above guidelines, what comes to be known is that none of the charges framed against the petitioner comes under the above category of cases. Though the charges are framed against the petitioner under Rule 17(b) as if there is irregularity or negligence in the discharge of official duties, as adumbrated in clause 3 of the guidelines referred to supra, the said negligence, alleged by the respondents, does not contain the dishonest motive, which is a crucial factor for deciding the category of the charge i.e., under 17 (a) or under 17 (b).*

12. *The very object of framing of the guidelines is that unless a major punishment is really warranted, namely, dismissal from service,*



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*removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.'*

*8.The aforesaid decision was followed by another learned Single Judge of this Court in **W.P(MD).No.12725 of 2011, dated 22.03.2013** in the case of **M.Sampoornam Vs., State of Tamil Nadu, rep., by its Secretary to Government, Revenue Department, Secretariat, Chennai-9** and another and held thus:*

*'12.In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17(a) and not under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding.'*

*9.The aforesaid orders are self explanatory in nature. 10.In view of the same, the very conduct of the respondents in proceedings against the petitioner under 17(b) of said Rule for the minor charges and also in view of their own Circular No.4342/2017/L1, dated 02.02.2017, there was no justification on their part and as*



*such, the entire disciplinary proceedings itself would stand vitiated.*

*11.For all foregoing reasons, the impugned order in G.O.(Pa) No.72 (Tourism, Culture and Religious Endowments (Aa.Ni 2-2) Department), dated 24.04.2017 on the file of the first respondent stands quashed. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."*

*8.This Court is of the opinion that the learned Judge, having regard to the nature of the charges framed against the respondent, which are minor delinquency, and taking into consideration the guidelines issued by the Government for framing charges against the delinquent as well as the earlier orders of this court, wherein, it was categorically held that "unless a major punishment is warranted, the framing of charges under 17(b) of the Rules is not necessary and should be avoided", has rightly set aside the order of punishment passed by the first appellant against the respondent herein, as not maintainable. Therefore, the appellants have not made out any ground much less valid ground to interfere with the order of the learned Judge."*

**5.** In the above judgment, Clause 3 deals with "irregularity or negligence in the discharge of official duties with a dishonest motive" and only in such cases, the punishment of 17(b) of the Tamil Nadu Civil Services (Discipline



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and Appeal) Rules, 1955 can be imposed on the delinquent officer and in the case on hand, the same is not proved against the petitioner.

6. The learned Additional Government Pleader appearing for the respondents submitted that there were total 16 charges, out of which 4 charges were found not to be proved by the enquiry officer and the same was accepted by the first respondent / Commissioner. He further submitted that among the proved charges, the report of the enquiry officer related to charge Nos.6, 8 and 12 are grave in nature. Hence, the punishment of reduction in rank from Executive Officer Grade II to Grade III was imposed on the petitioner.

7. **The counter affidavit was filed by the first respondent on 01.06.2023. The counter affidavit is silent in regard to the procedure followed in the case on hand while imposing the punishment under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Nowhere in the counter affidavit it is mentioned that the procedures contemplated in the Rules has been followed by the first respondent.**



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**8.** In view of the above factual matrix of the case, the order passed by the first respondent is liable to be set aside. Accordingly, the same is set aside and the matter is remanded back to the first respondent for fresh consideration.

**9.** The first respondent may also consider imposing of the punishment under 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 without cumulative effect taking into consideration that the petitioner is already undergone the punishment period of 2 years reduction in rank which starts from 01.11.2022 which will get over on 01.11.2024. The said exercise shall be completed within a period of four (4) months from the date of receipt of a copy of this order.

**10.** In the result, the writ petition stands disposed of with the above observations and directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

**24.10.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes  
BTR



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**J.SATHYA NARAYANA PRASAD, J.**

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