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W.P.No.4160 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2025

CORAM

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.4160 of 2022

P.Sivasakthi

...Petitioner

Vs.

The Additional Chief Secretary to Government,

Government of Tamil Nadu,

Home(Transport-II) Department,Fort St. George

Chennai-600 009.

.. Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records which culminated in passing the order in G.O.(2D).No.305, Home (Transport-II) Department dated 01.12.2021, quash the same and consequently direct the respondent to confer all consequential service and monetary benefits to the petitioner.

For Petitioner

: Mr.S.Mani

For Respondents

: Mr.L.S.M.Hasan Fazil



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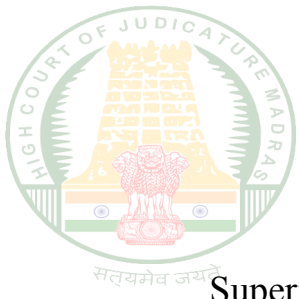
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Additional Government Pleader

ORDER

This writ petition has been filed for issuance of Certiorarified Mandamus for quashing the impugned order dated 01.12.2021, and directing the respondent to confer all consequential service and monetary benefits to the petitioner.

2.The petitioner was selected and appointed to the post of Assistant by the Tamil Nadu Public Service Commission, on 06.12.2012. She joined the post on 10.12.2012. She was transferred and posted as Assistant in the office of the Regional Transport Officer, Salem, on 07.12.2013, she joined the transferred place on 11.02.2013, and was allotted the seat B4. However no work was assigned to the petitioner and she was kept idle for reasons unknown to her. On 15.12.2013, at about 4.30 p.m. a raid was conducted by the Vigilance and Anti Corruption sleuths in the office premises of the Regional Transport Officer, Salem. The petitioner states that at the time of such inspection, no amount was recovered from the petitioner by the vigilance personnel. The Deputy



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Superintendent of Police, had in the search report, confirmed that no amount was recovered from the petitioner and an amount of Rs.200/- was kept in her wallet. Thereafter, the Tribunal for Disciplinary proceedings, Coimbatore, initiated disciplinary proceedings on 02.09.2014 in T.D.P. Case No. 5 of 2014, in connection with the incident which occurred on 20.07.2017 and the petitioner was arrayed as Accused No.11. After detailed enquiry, the Tribunal submitted its report, stating that the charges No.2, 3, 4, 5, 7 and 8 were not proved, that the charge No.6 was dropped by the Government vide G.O. 2(d) No. 184, Home (Transport-II) Department dated 30.05.2014 and that charge No.9 against the petitioner was proved as she failed to maintain absolute integrity and devotion to duty as contemplated under Rule 20 of the Tamil Nadu Government Servant Conduct, Rules. The second show cause notice was served on the petitioner, on 18.01.2019, calling for her explanation. The petitioner submitted her explanation on 20.02.2019, refuting the charge that she violated Rule 20 of the Tamil Nadu Government Servant Conduct, Rules. In spite of the petitioner's explanation, the respondent Corporation, imposed the punishment of stoppage of increment for a



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period of three years without cumulative effect. Hence, aggrieved by the order dated 01.12.2021 of the respondent, the petitioner filed the above writ petition.

3.The Respondent filed a detailed counter affidavit questioning the maintainability of the writ petition on the ground of non-exhaustion of the statutory remedy of review under Rule 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The respondent stated that since the writ petitioner failed to discharge her duties, the respondent imposed the punishment of stoppage of three increments without cumulative effect. The respondent further stated that the allegation against the petitioner was that she engaged a private individual P.W.24, to act as an agent for collecting illegal gratification on her behalf, from the general public. The respondent further stated that the engagement of the private individual reflected dereliction of duty and lack of devotion to duty and therefore, the impugned order could not be faulted. The respondent hence prayed that the writ petition had no merits and the same was liable to be dismissed.

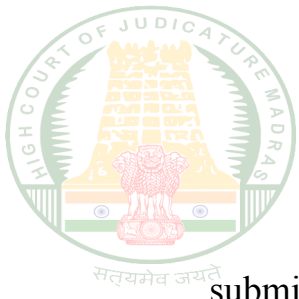


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4.The learned counsel for the petitioner submitted that as the collection of illegal gratification was not proved in the Enquiry, the Enquiry Officer was not justified in assuming that the petitioner had failed to discharge her official duty with full devotion. The learned counsel submitted that the enquiry report was vitiated in as much as the Enquiry Officer merely on the basis of preponderance of probability concluded that charge No.9 against the petitioner was proved. The learned counsel submitted that the 1st respondent erred in imposing the punishment of stoppage of three years increments without cumulative effect, by merely accepting the report of the Enquiry Officer, without even considering the petitioner's reply.

5.Further, the learned counsel submitted that as the enquiry officer based his report merely on circumstantial evidence and scale of preponderance without any substantial evidence against the petitioner in proof of the charge, the respondent ought to have rejected the report and exonerated the petitioner of all the charges. Learned counsel therefore



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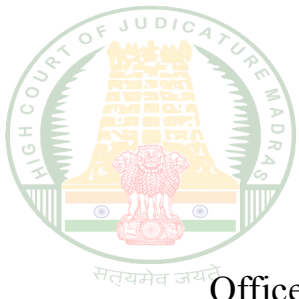
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submitted that the impugned order was unsustainable and deserved to be set aside.

6.The learned Additional Government Pleader for the respondent reiterated that the submissions made in the counter affidavit. The learned counsel for the respondent further submitted that in the light of the findings of the Tribunal, the impugned order could not be faulted and hence there were no merits in this writ petition.

7.Heard both sides and perused the materials available on record.

8.It is indisputable, that the petitioner joined the post of Assistant on 10.12.2012, that she was transferred and posted as Assistant in the office of the Regional Transport Officer, Salem on 07.12.2013, that the petitioner joined duty on 11.02.2013, that though she was allotted the seat B4, she was however, not assigned any work. On 15.12.2013, at about 4.30 p.m. a raid was conducted by the Vigilance and Anti Corruption sleuths in the office premises of the Regional Transport

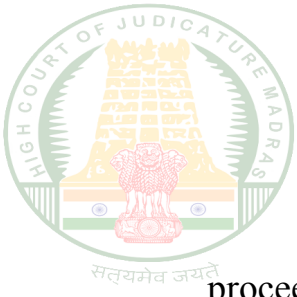


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Officer, Salem. A case was registered in T.D.P. Case No.5 of 2024, against the petitioner and other officers on 02.09.2014, and a charge was framed against the petitioner, stating that she unauthorizedly engaged a private individual Thiru. Thulasiraman, to act as a middle man to collect illegal gratification on her behalf from the general public. The enquiry was conducted by the Tribunal and after considering the petitioner's explanation, the Tribunal concluded that the said allegation against the petitioner was not proved. In any event, the Tribunal found that the petitioner had failed to discharge her duty with devotion and therefore, the Tribunal concluded the charge against the petitioner and other accused officer's was proved on the scale of preponderance of probability. The findings of the Tribunal were accepted by the 1st respondent and the impugned order was passed on 01.02.2021, imposing the punishment of stoppage of three years increments without cumulative effect. Aggrieved by the impugned order, the petitioner filed the present writ petition.

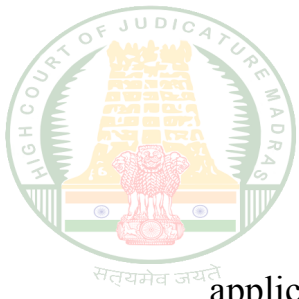
9. The impugned proceedings pertain to the disciplinary



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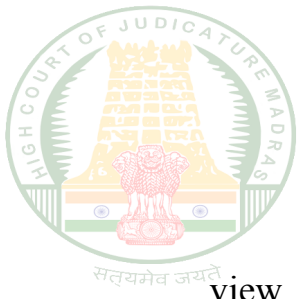
proceedings initiated against the petitioner for the misconduct of accepting illegal gratification and the imposition of Punishment of stoppage of 3 annual increments without cumulative effect. The aforesaid disciplinary proceedings were conducted in TDP Case No.5/2014. The Tribunal in its report, explicitly recorded that allegation No.7, concerning the petitioner was not substantiated by any oral or documentary evidence. It was further noted that while certain amount of money was recovered from another delinquent officer, no amount was recovered from the petitioner, nor was there any evidence indicating the receipt of funds from her. Even in the report of the Deputy Superintendent of Police, the only amount found in the petitioner's possession was Rs. 200/-, which was identified as her personal money. In the Tribunal's report, the Tribunal found that there was no material evidence implicating the petitioner. Nevertheless the Tribunal merely on the principles of preponderance of probability without any proof of misconduct, concluded that the petitioner failed to perform her duties with devotion, thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules. The respondent without independent



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application of mind to the report of the Tribunal, accepted the same and imposed the punishment of stoppage of 3 annual increments without cumulative effect. It is seen that from the findings of fact recorded by the Tribunal, that no amount was recovered from the petitioner and the meagre amount of Rs.200/- in her possession was only her personal money. When the tribunal categorically found that there was no material evidence, both oral and documentary in support of allegation 7 levelled against the petitioner, in my opinion, the tribunal ought to have held that the charges against the petitioner were not proved. The conclusion of partial proof of charge against the petitioner on the basis of preponderance of probability, in the absence of proof of misconduct is erroneous and unsustainable. When the respondents failed to prove by cogent evidence that the petitioner indulged in the misconduct of accepting illegal gratification, in my view, the punishment of stoppage of three years increment without cumulative effect cannot be sustained. Though it is settled in law that in disciplinary enquiry it is only preponderance of probability that is required and the strict proof of facts like in civil or criminal proceedings is not mandated, nevertheless in my



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view, to apply the principles of preponderance of probability there should be some evidence. In my view, in the absence of any material evidence, either oral or documentary to prove the misconduct levelled against the delinquent, the principles of preponderance of probability are not attracted and therefore the punishment imposed on the basis of the said principle cannot be sustained.

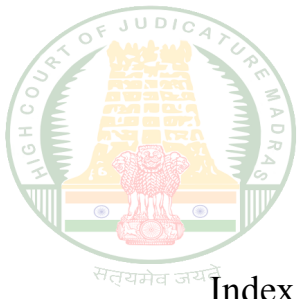
10. In view of the foregoing discussion, the Impugned order of punishment cannot be sustained and hence, the same is set aside. Consequentially, the respondent is directed to restore all consequential service and monetary benefits to the petitioner and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order.

11. Accordingly, the writ petition stands allowed. No costs.

17.03.2025

vsn/ah

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Home(Transport-II) Department, Fort St. George
Chennai-600 009.

N.MALA,J.

vsn



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