



WP NO. 4184 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-04-2025

CORAM

THE HONOURABLE MRS JUSTICE N. MALA

W.P No. 4184 of 2022

and

WMP.Nos.4326 & 4328 of 2022

M.P.Rajakumari
...Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Home Department, Secretariat,
Chennai-09.

2. The State of Tamil Nadu,
Rep. by its Additional Secretary to Government,
Home Department, Secretariat,
Chennai-09.

...Respondents

Prayer : Writ Petition is filed under Article 226 of Constitution of India for issuance of writ of certiorari, calling for the records relating to the impugned orders issued by the 1st respondent in office proceedings No.532 Home (OP-I) Department dated 07.06.2018 and the subsequent impugned order in G.O. (D) No.1212 Home (OP-I) Department dated 15.10.2019 as well as consequential impugned order in G.O(D) No.1462 Home (OP-I) Department dated 16.12.2021 and to quash the same.

For Petitioner: Mr.G.Sankaran, Sr.Adv.
For Mr.G.R.Ramesh Prabbhu

For Respondents: Mr.L.S.M.Hasan Fazil, AGP



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ORDER

Writ Petition is filed for writ of certiorari to call for the records relating to the to the impugned orders dated 07.06.2018, 15.10.2019 and 16.12.2021 and to quash the same.

2. The petitioner was initially appointed as Assistant Section Officer in the Secretariat Service through direct recruitment by the TNPSC and was posted to the Home Department, in the year 2009. She joined duty on 29.12.2009. The petitioner applied for maternity leave for the period from 15.09.2014 to 13.03.2015. After the expiry of the said maternity leave, on the advice of her doctor, the petitioner continued on leave and joined duty on 24.07.2015. After joining duty on 24.07.2015, the petitioner again availed leave, claiming Extraordinary Leave Without Allowance (ELWA) from 27.07.2015 to 30.09.2016. Whiles, the 2nd respondent issued a notice on 17.06.2016, to the petitioner, calling for an explanation as to why she remained on ELWA for over six months, that too without valid reasons. In response, the petitioner submitted her explanation on 27.06.2016, citing pressing family circumstances, for her continuance of ELWA until 30.03.2017. She subsequently rejoined duty on 31.03.2017 FN and continued to work. For a



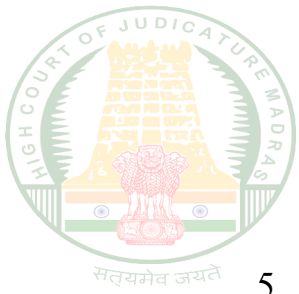
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period of 8 months there was a full and so the petitioner believed that her explanation was accepted by the respondents.

3. However, after a period of eight months, the 1st respondent issued a charge memo to the petitioner on 01.12.2017, under Rule 17(b) of the TNCS (D&A) Rules. The petitioner was charged with violating Rule 18(3) of the Fundamental Rules for failing to maintain absolute integrity, and devotion to service by availing extraordinary leave without pay and allowances for 432 days, without submitting medical certificate. The petitioner submitted a detailed explanation to the said charge memo on 19.12.2017. After due enquiry, the Enquiry Officer submitted his report on 19.03.2018, finding that the charges were not proved.

4. The 1st respondent disagreed with the said report of enquiry officer and issued proceedings on 06.04.2018, calling upon the petitioner to submit her further explanation, which she submitted on 25.04.2018. However, the 1st respondent passed final orders on 07.06.2018, imposing the punishment of stoppage of increment for a period of two years without cumulative effect on the ground that the petitioner failed to provide any valid reasons.



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5. Aggrieved by the said punishment order, the petitioner preferred an appeal on 24.07.2018, to the 1st respondent. The appeal was considered and rejected by the 1st respondent on 15.10.2019, after a delay of 1½ years. Aggrieved by the said order, the petitioner filed a review petition before the 1st respondent on 29.08.2020. The said review petition was also dismissed by the 1st respondent on 16.12.2021. Aggrieved by the above orders, the petitioner filed the present writ petition.

6. The respondents filed a detailed counter stating inter alia that the 1st respondent after due compliance of the procedures laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules, passed the final orders rejecting the appeal dated 24.07.2018 (vide G.O.(D) No. 1212 dated 15.10.2019) and the review application dated 29.08.2020 (vide G.O.(D) No. 1462 dated 16.12.2021). According to the respondents the punishment imposed was valid in law and therefore there were no merits in the writ petition, and the same deserved to be dismissed.

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



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8. Although the learned senior counsel for the petitioner raised several grounds, his main contention was with regard to the illegality and invalidity of the charge memo. The learned senior counsel fairly submitted that, although the issue regarding the competence of the authority in issuing the charge memo was not raised by the petitioner in the disciplinary proceedings, the same being a question of law could be validly raised in the writ petition.

9. The learned senior counsel in elaboration of his above said contentions submitted that as the petitioner was serving as an Assistant Section Officer, in the Secretariat Service, as per the TNCS (D&A) Rules, the competent authority to issue the charge memo was the Joint Secretary to Government or the Deputy Secretary to Government. As the charge memo dated 01.12.2017, was issued by the 1st respondent, who was only an appellate authority, the charge memo was illegal and the consequential punishment order based on such illegal charge memo was unsustainable.

10. In the interest of brevity and efficiency, I am of the view that this court need not traverse the substantive merits of the case. Further, I will



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confine the determination to the preliminary objection, advanced by the learned senior counsel, which alone is sufficient for the disposal of the writ petition. It is evident that the charge memo dated 01.12.2017, was issued by the Additional Chief Secretary to Government, who, under the relevant service rules, is only an appellate authority and as such not competent to issue the charge memo for the post of Assistant Section Officer, held by the petitioner. As per the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the competent disciplinary authority, for the said post is either the Joint Secretary or the Deputy Secretary to the Government.

11. Therefore, the issuance of the charge memo by an authority who is not legally competent to initiate disciplinary proceedings renders the charge memo illegal and invalid. Consequentially, the entire disciplinary proceedings founded on an illegal charge memo stand vitiated. Hence, the punishment order dated 07.06.2018, the appellate order dated 15.10.2019, and the review order dated 16.12.2021, are all unsustainable and hence set aside.



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12. In the result, the writ petition is allowed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition are closed.

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Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

ak/dsn

To

1. The Additional Chief Secretary to Government
Home Department, Secretariat,
Chennai-09.

2. The Additional Secretary to Government,
Home Department, Secretariat,
Chennai-09.



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N.MALA, J.

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