



W.P.No.27090 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.27090 of 2021

and WMP.Nos.28563 of 2021 and 21656 of 2022

S.Ramachandran

... Petitioner

Vs.

1.The Director,
Department of Social Welfare,
No.300, Pursaiwalkkam High Road,
Vepary,
Chennai – 600 010.

2.The Deputy Director (Scheme),
Department of Social Welfare,
No.300, Pursaiwalkkam High Road,
Vepary,
Chennai – 600 010.

3.The Superintendent,
Government Children Home,
Royapuram,
Chennai – 600 013.

4.The Superintendent,
Government Children Home,
Villupuram.
(R4 Impleaded vide
order dated 03.02.2025 by NMJ)

... Respondents



W.P.No.27090 of 2021

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent pertaining to her proceedings No.2226/A3/2019 and quash the order dated 29.10.2021 and consequently direct the respondents to treat the period of suspension between 05.10.2017 to 14.06.2018 as duty period eligible for full salary and all other service benefits including his promotion etc.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.V.Manohar
Additional Government Pleader

* * * * *

ORDER

This Writ Petition is filed to call for the records of the 1st respondent pertaining to the proceedings No.2226/A3/2019 and quash the order dated 29.10.2021 and consequently direct the respondents to treat the period of suspension between 05.10.2017 to 14.06.2018 as duty period eligible for full salary and all other service benefits including promotion etc.

2.The petitioner is working as Guard in the 3rd respondent's office. The petitioner was issued with a charge memo by the 3rd respondent on 16.05.2018 for the following charges:

*"a.that on 03.10.2017 while he was on night duty,
at about 1.15 a.m. when the 3rd respondent was on his*



W.P.No.27090 of 2021

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round, he was found to be sleeping.

*b.when he was questioned of the same by the
Superintendent he had behaved indecently."*

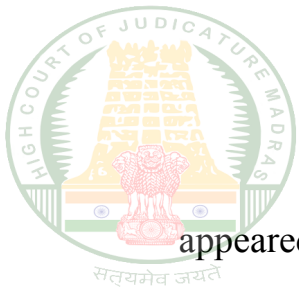
3.The petitioner states that even before the charge memo was issued on 16.05.2018, a memo was issued on 04.10.2017 to the petitioner, wherein the first charge alone was mentioned. The petitioner states that an elaborate explanation was given by the petitioner on the same day to the memo denying the charge. The petitioner was placed under suspension from 05.10.2017 without payment of subsistence allowance for over eight months. The petitioner repeatedly requested the third respondent to pay the subsistence allowance. On 10.05.2018, the petitioner requested the third respondent to pay the subsistence allowance, but instead of paying the same, the third respondent issued the charge memo dated 16.05.2018. Immediately, the petitioner submitted his explanation on 31.05.2018, stating that his earlier explanation dated 04.10.2017, to the charge memo be treated as explanation to the charge memo dated 16.05.2018. Thereafter, for more than 1 ½ years, there was no progress in the disciplinary enquiry. Only after the petitioner's representation, the first respondent appointed the second respondent as Enquiry Officer. The Enquiry Officer vide his proceedings dated 07.08.2019,



W.P.No.27090 of 2021

WEB COPY

directed the petitioner to appear before him on 22.08.2019, and the petitioner also participated in the enquiry proceedings. According to the petitioner, the respondent had neither examined any witness nor filed any documents in the enquiry proceedings. While so the Joint Director vide his letter dated 11.11.2020, in reply to the petitioner's representation communicated certain documents including the Enquiry Officer's report, findings of the Enquiry Officer and sought for the petitioner's explanation. The petitioner vide letter dated 14.12.2020, sent a reply stating that pages Nos.1 to 12 of the so called Enquiry Officer's report were missing and therefore requested that the entire set of findings of the Enquiry Officer be communicated to him to submit his further explanation. Thereafter, the Joint Director vide his proceedings dated 16.04.2021, communicated the entire set of documents. On receipt of the same, the petitioner submitted his further explanation on 31.05.2021, objecting to the Enquiry Officer's report. Meanwhile, the petitioner was transferred from the third respondent office to Government Children Home, Villupuram. The Superintendent, Government Children Home, Villupuram, vide his letter dated 14.09.2021, communicated the proceedings of the 1st respondent, whereby the petitioner was directed to appear before the first respondent on 16.09.2021, for an oral enquiry. Though the petitioner



W.P.No.27090 of 2021

WEB COPY

appeared for the enquiry on 16.09.2021, due to the pre-engagement of the first respondent, the petitioner was directed to appear on 17.09.2021. On 17.09.2021, a typed statement was produced before the petitioner and he was asked to sign on the same. The petitioner declined to sign the same, however, due to repeated pressure that too at the chamber of the first respondent, the petitioner was forced to sign the document. Thereafter the first respondent passed the impugned order concluding that the charges against the petitioner were proved and imposed the punishment of postponing the annual increment by three months without cumulative effect and also directed that the period of suspension from 05.10.2017 to 01.07.2018 to be treated as leave period. Aggrieved by the impugned order, the petitioner has filed the above writ petition.

4.The respondents filed a detailed counter stating that the petitioner was found sleeping during duty hours on 12.09.2017 and 03.10.2017, which amounted to dereliction of duty. The petitioner was therefore issued the charge memo. The petitioner submitted his explanation on 04.10.2017 and denied the charges levelled in the charge memo. According to the respondents, the charges were proved, based on the CCTV Footages and



W.P.No.27090 of 2021

witness's statements recorded during the inquiry. On the petitioner's contention on subsistence allowance the respondents stated that the petitioner was placed under suspension vide proceedings dated 05.10.2017, for the period from 05.10.2017 to 01.07.2018 and the petitioner resumed duty on 02.07.2018 after revocation of the same vide proceedings dated 14.06.2018. During the suspension period every employee had to submit the non-employment certificate every month for claiming subsistence allowance and further he should stay at Head Quarters. But the petitioner claimed subsistence allowance only on 08.06.2018, without specifying the period. Hence subsistence allowance bill for the month of 6/18 was submitted to the Pay and Accounts Officer (North), Chennai – 01. On audit of the PAO (North), Chennai, it was found that complete documents were not submitted and so subsistence allowance was not paid to the petitioner. When the petitioner joined duty on 02.07.2018 after revocation, he was paid salary for the month's 07/2018, 08/2018 and 09/2018. The respondent therefore submitted that the writ petition was not maintainable and the same deserved to be dismissed.

5.The learned counsel for the petitioner submitted that the first



W.P.No.27090 of 2021

respondent being the disciplinary authority committed a grave error in

conducting the enquiry herself that too after the conclusion of the enquiry

and after receipt of the further explanation of the petitioner to the enquiry

report dated 29.09.2020. The learned counsel for the petitioner further

submitted that in the counter there was no denial that the petitioner's

statement dated 17.09.2021, was obtained under pressure. The learned

counsel further submitted that there was absolutely no discussion of the

petitioner's explanation to the enquiry report except, the extract of the report

and the statement made by the petitioner. The learned counsel submitted that

the first respondent failed to consider the specific plea of the petitioner that

in the enquiry held on 22.08.2019, the respondents neither examined any

witness nor marked any documents in a manner known to law, that the

statement of the Enquiry Officer that 4 witnesses were examined on

22.08.2019, was explicitly false by his own recordings in pages Nos.4 to 10

of the enquiry report dated 29.09.2020, and that the finding of the enquiry

officer that the charge No.1 was proved on the basis of CCTV Footage dated

12.09.2017 and 03.10.2017 was unsustainable because the so called CCTV

Footage was not marked as a document in the enquiry proceedings and

further no witness had spoken about the same. According to the learned



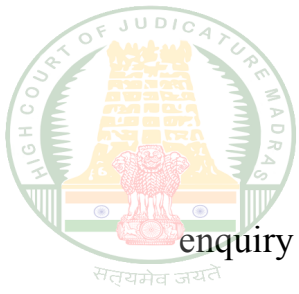
W.P.No.27090 of 2021

WEB COUNSEL the Enquiry Officer had not perused the so called CCTV Footage on 22.08.2019, when the enquiry was held. The learned counsel therefore submitted that the materials relied upon by the Enquiry Officer, obtained behind the back of the petitioner that too, without producing a copy of the same to the petitioner were illegal and violative of principles of natural justice. The learned counsel therefore prayed that the impugned order be set aside.

6.The learned Additional Government Pleader appearing for the respondents on the other hand submitted that the charges against the petitioner were duly proved in the enquiry and the punishment imposed was as per Rules and there was no illegality or irregularity in the impugned order and hence it did not call for any interference.

7.I have heard both the learned counsels and I have perused the materials placed on record.

8.From a reading of the descriptive portion of the impugned order it is very clear that the first respondent being the disciplinary authority conducted



W.P.No.27090 of 2021

enquiry on 17.09.2021, and obtained statement from the petitioner. The first

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respondent in the impugned order merely extracted the enquiry proceedings petitioner's explanation to the charge memo, report of the enquiry officer, explanation of the petitioner to the enquiry report and the statement of witnesses and the oral enquiry conducted by him for the charges levelled against the petitioner and concluded that the charges were proved and imposed the punishment of postponing the petitioner's annual increment by three months with cumulative effect and directing the period of suspension from 05.10.2017 to 01.07.2018 to be treated as leave period. In my view the procedure adopted by the first respondent, the disciplinary authority in conducting oral enquiry, the failure to consider independently the materials available on record like the charge sheet, explanation to the charge sheet, Enquiry Officer's report and the explanation of the petitioner to the Enquiry report vitiates the impugned order. Obtaining of a statement from the petitioner in the oral enquiry and the failure to deny the petitioner's contention that it was obtained under pressure also raises a cloud on the disciplinary authority's proceedings. I am therefore of the view that the impugned order cannot be sustained and hence the same is set aside. The matter is remitted to the first respondent for fresh consideration. It is



W.P.No.27090 of 2021

needless to state that the first respondent while considering the matter afresh, will consider the explanation of the petitioner to the Enquiry Officer's report, apply his mind independently to the materials placed before him and thereafter pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

9. Accordingly, this writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

03.02.2025

2/2

Index : Yes / No
Internet : Yes / No
Speaking order/Non-speaking order
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To

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No.300, Pursaiwalkkam High Road,
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Chennai – 600 010.

10/12



W.P.No.27090 of 2021

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N.MALA, J.
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W.P.No.27090 of 2021



WEB COPY



W.P.No.27090 of 2021

03.02.2025

2/2