



W.P.No.32801 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.03.2026

Pronounced on : .03.2026

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.32801 of 2012
and M.P.No.1 of 2012

J.Gunasekar
Formerly Selection Grade Assistant,
Director of Government Examination, Chennai- 600 006 ... Petitioner

vs

1. The Director Of Government
Examinations,
DPI Complex, Chennai- 600 006.

2.The Joint Director Of
Government Examination (Personnel),
O/o. Director of Government Examinations,
DPI Complex, Chennai 600 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for records relating to 2nd respondent's proceedings made in Na. Ka. 200723/ E1-1/2011 dated 26.10.2012 and quash the same.

For Petitioner : Mr.M.Muthappan



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For Respondents : Mrs.P.Raja Rajeswari
Government Advocate

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ORDER

Heard the learned counsel for the petitioner, learned Government Advocate for the respondents and perused the records.

2. The case of the petitioner in brief is that he was appointed as Junior Assistant in the year 1990 and promoted as Assistant in the year 1997; and was granted selection grade in the post of Assistant in the year 2007; that he was sent on deputation to work as a Ministerial Assistant to conduct the SSLC Examination in Mumbai under proceedings dated 11.03.2019; that alleging he was negligent in stopping the students from resorting to malpractice of copying in the SSLC Exam in the particular Examination Centre to which he was deputed, he was issued with a charge memo dated 10.08.2009 proposing to levy penalty under Rule 17(a) of [Tamil Nadu Civil Services \(Discipline and Appeal\) Rules, 1955](#) (in short “TNCS Rules”); that on submitting explanation to the said charge memo on 03.09.2009, the respondents have altered the charge to one under Rule 17(b) vide proceedings dated 06.10.2009 granting him 21 days time to submit his explanation; that even before expiring of 21 days time granted for submitting his explanation, had

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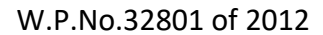


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appointed an Enquiry Officer on 15.10.2009; that he had submitted explanation to the proposed penalty under Rule 17(b) on 30.10.2009; and that the Enquiry Officer completed enquiry and submitted his report on 23.03.2010.

3. It is the further case of the petitioners that on completion of the enquiry, he had submitted a representation on 29.03.2010 claiming that enquiry was not conducted properly and certain documents which were sought for by him were not furnished and thus, the enquiry report is vitiated; that the respondents by considering the aforesaid representation of the petitioner had directed for further enquiry on 13.04.2010; and that he had submitted request for furnishing documents on 04.05.2010 and 17.06.2010; that the respondents did not furnish the documents sought for by him and only permitted him to inspect some of the documents and furnished some of the documents on 02.07.2010.

4. The petitioner further contended that thereafter the respondents appointed the new Enquiry Officer on 07.07.2010; that the petitioner submitted written submissions on 15.11.2010; and that the Enquiry Officer thereafter submitted his Report on 16.12.2010 stating that the charges against the petitioner



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7. The petitioner contended that on this Court setting aside the disciplinary authorities order, by which he was awarded punishment, the



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respondents allowed to retire from service on 30.06.2011, without reserving their right to proceed against him; and that thereafter the impugned order has been passed on 26.10.2012.

8. On behalf of the petitioner, it is further contended that the respondents before passing the impugned order though had issued a notice to him, had merely passed the same order which was passed earlier and therefore, the impugned order is vitiated.

9. It is also contended that as per Rule 9(b)(2)(a) of Tamilnadu Pension Rules, 1978 (for short "Pension Rules"), it is only the Government which is the competent authority to pass order of punishment and since, the impugned order has been passed by the 2nd respondent, the same is contrary to rules and is thus, vitiated.

10. On behalf of the petitioner, it is also contended that the punishment awarded by the impugned proceedings is not enforceable inasmuch as the petitioner had retired from service much prior to the second respondent passing the impugned order and for the said reason also, the impugned order is not enforceable.



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11. Contending as above, the petitioner seeks for quashing of the impugned proceedings.

12. Counter affidavit on behalf of the respondents is filed.

13. On behalf of the respondents, it is contended that the petitioner and other officers were involved in a grave act of malpractice of SSLC exam by students in a School to which they have deputed to supervise, due to which, the entire examination held in the said centre had been cancelled; that since, the petitioner was negligent in his duties and failed to stop the said act of committing of malpractice in the SSLC examination held at Mumbai, the respondents authority had initiated disciplinary action in the year 2009, while the petitioner was in service; that the second respondent is the disciplinary authority as the petitioner was in service on the day when disciplinary proceedings have been initiated against him; and that as per Rule 9(b)(2)(a) of Pension Rules, the proceeding initiated while in service would continue even after retirement, as if the employee is in service and as such, the impugned order though is passed after the petitioner



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was allowed to retire from service, the same would relate back to the period when the initial disciplinary order was passed against him, which was set aside by this Court on technical ground and remitted back for fresh consideration.

14. On behalf of the respondents, it is also contended that as the second respondent authority had issued notice to the petitioner disagreeing with the Report of the Enquiry Officer and by considering the explanation submitted by the petitioner had imposed the order of punishment, even though the punishment awarded was same as awarded earlier, the same would amount to the 2nd respondent/concurring/reiteration of the penalty awarded and cannot be considered as mere passing of the same order by the authority without considering the explanation submitted by the petitioner.

15. On behalf of the respondents, it is also contended that though the petitioner had retired from service, as the punishment/penalty awarded would have a bearing on the consequential relief sought for in the event of writ petition being allowed, the contention of the petitioner that the order is not enforceable, is not correct. Further, it is also contended that if the contention of the petitioner that the



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order is not enforceable is accepted, no prejudice is caused to the petitioner and petitioner should not feel aggrieved for him to approach this Court by filing present writ petition. Contending as above respondents seek for dismissal of the writ petition.

16. I have taken note of the respective contentions urged by the learned counsel on either side.

17. Admittedly, on account of the actions of the petitioner in preventing the students from resorting to usual practice of copying in SSLC Exam at Mumbai centre whereat the petitioner along with others are deputed to work, resulted in cancellation of examination of the centre, thereby, affecting large number of genuine students. It is on the basis of the complaint that has been received along with the material evidence of how the concerned officials who are deputed to oversee the conduct of examination had failed to discharge their duties properly, disciplinary proceedings have been initiated. Though initially the respondents intended to take action under Rule 17(a) of TNCS Rules, having regard to the nature of the incident, the second respondent thereafter decided to alter the said



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proceedings into one under Rule 17(b) of TNCS Rules.

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18. The petitioner apart from seeking for various documents to submit in his defence and the respondents having granted the petitioner permission to inspect the documents and also furnishing some of the documents and also changing the Enquiry Officer when petitioner had made an allegation of Enquiry Officer not conducting proceedings properly, having taken part in the said disciplinary proceedings by submitting explanation and the enquiry officer thereafter having submitted his report holding the charges against the petitioner as not proved, which report was not variance with the Enquiry Report submitted by the first enquiry officer, wherein it was held the charges are proved, the disciplinary authority disagreeing with the said report had passed order dated 09.02.2011 awarding punishment.

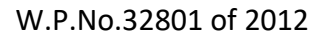
19. However, the said order could not stand the scrutiny of this Court, as the disciplinary authority was required to issue the disagreement note and put the petitioner on notice before passing the order visiting him with punishment. It is for the said reason, this Court had set aside the order, by which, the petitioner was



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visited with penalty and remitted the matter back to the second respondent to pass orders afresh after issuing notice to the petitioner on the disagreement with the findings of the Enquiry Officer seek his explanation and to pass order thereafter. This Court, while disposing of the aforesaid writ petition also noted the fact of petitioner having retired from service and to consider the said fact while passing the orders afresh.

20. It is not in dispute that pursuant to the aforesaid direction of this Court, the second respondent had issued notice to the petitioner indicating the reasons of disagreement and the petitioner having submitted explanation thereto. The second respondent by considering the explanation submitted by the petitioner to the notice issued, had passed the impugned order on 26.10.2012 holding that no acceptable new information is available in the explanation submitted by the petitioner and accordingly, imposed the penalty of reduction to lower rank in the seniority by Ten numbers. Though it is contended on behalf of the petitioner that since, the earlier order of punishment being set aside by this Court, there is no order that could have been confirmed, it is to be noted that whatever was being confirmed in the order earlier passed by which the petitioner was visited with penalty, which however was set aside by this Court on technical ground of



21. Further, usage of the word “confirmed” in the impugned order would only indicate that the second respondent concurring/reiterating the punishment awarded to the petitioner vide proceedings dated 09.02.2011. Thus, the contention of the petitioner that the impugned proceedings is only a reaffirmation of the earlier proceedings is without any basis and accordingly, the said contention as pleaded is rejected.

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dated 12.08.2013. Since, the impugned order has been passed on 26.10.2012 and also that the disciplinary proceedings are initiated in the year 2009, the proviso which was in vague at the relevant point of time would have to be applied and not the substituted proviso.

23. Further, a reading of the substituted proviso requires the disciplinary authority to submit a report to the Government with his findings, while the main Sub Rule provides for continuation of the disciplinary proceedings even after retirement of Government servant from service by considering him as in service. Thus, the jurisdiction of the disciplinary authority who had initiated proceedings against delinquent officer is not ousted of his jurisdiction. Thus, the contention of the petitioner on this ground is also without merit and is rejected.

24. Since, the disciplinary proceedings initiated against the petitioner while in service are continued against him even after his retirement by treating him as in service, the petitioner, if is aggrieved by the aforesaid order ought to have availed the remedy of appeal. The petitioner instead of availing the remedy of appeal, claiming that there is no effective remedy against the impugned order had approached this Court, which claim of the petitioner in the considered view of this



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Court is also not correct.

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25. Further, it is also a settled position of law that a Writ Court while considering the challenge to the order of disciplinary authority or appellate authority does not substitute its views with that of the disciplinary authority who had arrived at the conclusion by considering the material on record; and that Court cannot normally substitute its own conclusion on penalty deferring with the conclusions arrived at by the disciplinary authority to impose some other penalty.

(See B.C.Chaturvedi vs. Union of India reported in (1995) 6 SCC 749.)

26. The said view of the Hon'ble Apex Court has been reiterated again in the case of ***Union Territory of Dadra and Nagar Haveli vs. Gulabhia M. Lad reported in (2010) 5 SCC 775.***

27. Thus, the contention of the petitioner on this ground is also without merit and is accordingly rejected.

28. In so far as, the contention of the petitioner that the punishment



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awarded to him cannot be given effect to as he had retired from service, firstly, it is to be noted that the punishment awarded under the impugned order is on account of the setting aside of the earlier order, dated 09.02.2011 by which, the petitioner was visited with penalty. Therefore, the impugned order though is passed after the petitioner had retired from service, would revert to the the date of original punishment i.e., 09.02.2011 while the petitioner was in service and having retired only thereafter on 30.06.2011. Thus, the claim of the petitioner that the impugned order is not enforceable is also without any merit. (*See Union of India vs. P.Gunasekaran reported in (2015) 2 SCC 610 and S.Durai vs. The Superintendent of Police, Villupuram in W.P.No.646 and 647 of 2016 dated 07.02.2022*).

29. In view of the above, considered from any angle, the present writ petition as filed is devoid of merits and dismissed. Consequently, connected Miscellaneous Petition is closed. No order as to costs.

.03.2026

msv

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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- To
1. The Director Of Government Examinations,
DPI Complex, Chennai- 600 006.
 - 2.The Joint Director Of Government Examination (Personnel),
O/o. Director of Government Examinations,
DPI Complex, Chennai 600 006.



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T. VINOD KUMAR, J.

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Pre-delivery order made in
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and M.P.No.1 of 2012

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