



W.P(MD)No.8734 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8734 of 2023
and
W.M.P.(MD)Nos.8001 and 8002 of 2023

K.N.Surendran

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Registration and Commercial Taxes,
Secretariat, Chennai – 9.

2.The Inspector General of Registration,
Department of Registration,
No.100, Santhome High Road,
Chennai – 28.

3.The District Registrar,
O/o. The District Registrar,
Virudhunagar,
Virudhunagar District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus,



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calling for the records relating to the impugned punishment order passed by the 2nd respondent in his proceedings in No.32208/V2/2010 dated 25.01.2018 and the consequential impugned rejection order passed by the 1st respondent in G.O.(T).No.199 Commercial and Registration Department dated 25.10.2019 and quash the same as illegal and consequentially to direct the respondents to promote the petitioner as Sub Registrar notionally from the date of promotion of the petitioner's junior within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan, Senior Counsel,
For M/s.Ajmal Associates.

For Respondents : Mr.M.Prakash,
Addl. Government Pleader.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned Additional Government Pleader for the respondents.

2.The petitioner joined the Registration Department as Junior Assistant in the year 1994. He was promoted as Assistant in the year



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2000. He reached the age of superannuation on 31.03.2020. During his service, he was implicated in a vigilance case. The petitioner was found in possession of Rs.710/- when a surprise check was conducted on 14.06.2010. The proceedings culminated in TDP No.21 of 2012 before the Commissioner / Tribunal for Disciplinary Proceedings, Tirunelveli. The charge framed against the petitioner was found to have been established. Thereafter, the disciplinary authority imposed the punishment of stoppage of increment for a period of one year with cumulative effect. Questioning the same, the petitioner filed an appeal before the Government. The Government also confirmed the order passed by the disciplinary authority and dismissed the appeal vide G.O.(T)No.199, Commercial Taxes and Registration Department, dated 25.10.2019. Challenging the same, the present writ petition came to be filed.

3.The learned senior counsel for the petitioner raised primarily three grounds. (a) The government after having obtained the opinion of the service commission before passing order in the appeal ought to have supplied a copy of the same to the petitioner. In this case, it was not



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done. Relying on the decision of the Hon'ble Apex Court in **2011 (4)**

SCC 591 (S.N.Narula Vs. Union of India), he submitted that the order passed by the appellate authority deserves to be set aside. (b) He pointed out that though the petitioner has raised very many grounds, the orders passed by the disciplinary authority as well as the appellate authority are non-speaking. They have failed to deal with the points raised by the petitioner. (c) The petitioner was found in possession of Rs.710/- in his pocket. It is true that when he entered into the office in the morning, he had entered in the register that he was having only Rs.70/-. However, he has given convincing explanation as to how he came to be in possession of the extra amount. The petitioner had retired from service and therefore, it would be inequitable to make the petitioner to face the proceedings once again. The learned senior counsel on instructions submitted that even though the petitioner has also sought the consequential relief of promotion as Sub Registrar, he would not press the said prayer and he would be satisfied if the impugned orders are set aside and the matter is given quietus.



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4.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The stand of the respondents is that the Tribunal had gone into the entire issue and rendered a finding of fact. When the disciplinary authority is agreeing with the reasons assigned by the Tribunal, it is not necessary for the disciplinary authority to once again pass an elaborate order. He also would add that the copy of the service commission opinion was furnished to the petitioner along with the impugned order. According to him, the case against the writ petitioner had been adequately established and therefore, the matter does not call for interference. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. On 14.06.2010, there was a surprise check on the office of the Joint Sub Registrar – II, Virudhunagar. During surprise check, the Sub Registrar was found in possession of Rs.12,860/- and the Office Assistant was found in possession of Rs.4,490/-. The petitioner who was holding the rank of Assistant was found in possession of Rs.710/-. In the registration department, there is a practice of



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maintaining a register and the staff are expected to make an entry in the register as regards the cash possessed by them in their personal capacity.

On the fateful day, the petitioner had made an entry in the register that he was having Rs.70/- with him. But during surprise check, he was found in possession of Rs.710/- and that led to the institution of the disciplinary action.

6.Before I go into the merits of the matter, I must straightaway endorse the contention of the learned senior counsel that the impugned order passed by the Government is liable to be set aside. The Government had obtained opinion of the service commission before passing the impugned government order. Having obtained the opinion of the service commission, it ought to have furnished the same to the petitioner and obtained his further explanation. Without doing so, the impugned government order had been straightaway passed. The question is whether the order passed by the Government is vitiated in such circumstances is no longer *res integra*. The Hon'ble Apex Court in the decision reported in **2011 (4) SCC 591 (S.N.Narula Vs. Union of India)** had held as follows:-



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“6.We heard the learned counsel for the appellant and the learned counsel for the respondent. It is submitted by the counsel for the appellant that the report of the Union Public Service Commission was not communicated to the appellant before the final order was passed. Therefore, the appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7.We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter.”

Therefore, on this sole ground, the impugned government order is liable to be set aside. It is accordingly set aside. As pointed out by the learned senior counsel, the impugned government order is vitiated on yet another ground. Questioning the order passed by the disciplinary authority, the petitioner had raised a host of grounds. Paragraph No.5 of the impugned government order is as follows:-



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“5.மேற்கண்ட சூழலில், பதிவுத்துறைத் தலைவரால் வழங்கப்பட்ட “ஊதிய உயர்வு ஒரு வருட காலம் திரண்ட பயனுடன் நிறுத்தம்” எனும் தண்டனையை எதிர்த்து திரு.K.N.கரேந்திரன், உதவியாளர் அரசுக்குச் செய்துள்ள மேல்முறையீட்டை உரிய ஆவணங்களுடனும், தமிழ்நாடு அரசுப் பணியாளர் தேர்வாணையத்தின் கருத்துக்களுடனும், அரசு கவனமாகவும், சுயமாகவும் ஆய்வு செய்தது. ஆய்வுக்குப்பின், தனியர் தனது மேல்முறையீட்டில் ஏற்றுக்கொள்ளத்தக்க வகையில் காரணங்கள் ஏதும் தெரிவிக்காத காரணத்தினால், அவர் அரசுக்குச் செய்துள்ள மேல்முறையீட்டை தேர்வாணையத்தின் கருத்தினை ஏற்று, சாரமற்றதாகக் கருதி நிராகரித்து அவருக்கு வழங்கப்பட்ட தண்டனையை உறுதி செய்யலாம் என்று அரசு முடிவு செய்து, அவ்வாறே ஆணையிடுகிறது.”

7.Except making a formal statement that the record has been carefully gone through and that the contentions advanced by the delinquent official are not satisfactory, there is absolutely no other reason. There is nothing on record to show that there has been due application of mind on the contentions advanced by the petitioner. Therefore, I have to necessarily come to the conclusion that the impugned government order is non-speaking in nature. On these twin grounds, the impugned order is set aside.



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8.The question that arises for consideration is whether the matter has to be remitted to the file of the first respondent to give an opportunity to the petitioner and pass a fresh order.

9.As rightly pointed out by the learned senior counsel for the petitioner, the petitioner is aged about 61 years. The issue dates back to the year 2010. During the surprise check, three officials were found in possession of sums which were not reflected in the office register. The Sub-Registrar was found in possession of Rs.12,860/-. The Office Assistant who occupies the lowest grade was found in possession of Rs.4,490/-. The petitioner who is holding the middle rank was found in possession of Rs.710/-. The explanation given by the petitioner deserves acceptance. The petitioner states that he suddenly felt giddy when he went out in the evening for having tea. He called his relative by name Gopikrishnan for assistance. The said Gopikrishnan was also examined during enquiry and he deposed that he had given the balance amount to the petitioner herein to by medicines. There is nothing improbable about the version given by the petitioner. The petitioner has also given up his claim on promotion. The petitioner had joined the department way back



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in the year 1994. He became an Assistant in the year 2000. His juniors had been promoted as Sub Registrars. Because the petitioner was involved in the vigilance case in the year 2010, he had to retire as Assistant on 31.03.2020. The failure of the petitioner to get promotion as Sub Registrar itself in my view is sufficient punishment for the petitioner. Considering the aforesaid circumstances, the issue need not be kept pending further. The orders impugned in this writ petition are set aside and the writ petition is allowed accordingly. The respondents shall re-fix the petitioner's pension and also pay the arrears to the petitioner. This exercise shall be done within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Principal Secretary,

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Department of Registration and Commercial Taxes,
Secretariat, Chennai – 9.

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2.The Inspector General of Registration,
Department of Registration,
No.100, Santhome High Road,
Chennai – 28.

3.The District Registrar,
O/o. The District Registrar,
Virudhungar,
Virudhunagar District.



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G.R.SWAMINATHAN, J.

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