

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.23300 of 2011

Karimulla

...Petitioner

-Vs.-

1. The District Treasury Officer
Kanchaipuram.
2. The Director of Treasury and Accounts
Chennai-15.
3. The Secretary to Government
Treasury Accounts II Department
Fort St. George
Chennai-600 009.

...Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned order issued by the respondents 2 and 3 in Na.ka.No.47466/2008/Q3 dated 14 October 2009 and G.O.(2D) No.31, (Treasury Accounts-2) Department dated 15.3.2011 respectively and quash the same and further direct the respondents to reinstate the petitioner into service with all consequential service and monetary benefits.

For Petitioner

:

Mr.K. Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondents

:

Mr.M.S.Ramesh
Additional Government Pleader

ORDER

The suo motu power of revision exercised by the Head of the Department notwithstanding the statutory prohibition, made the petitioner to challenge the order dismissing him from service.

Facts in nutshell:

2. The petitioner was appointed on compassionate basis as Junior Assistant on 10 May 1999. While he was serving as Junior Assistant in District Treasury, Kanchipuram, the first respondent issued a charge memo containing three charges. The charges were all relating to acts of misappropriation. The petitioner admitted the charges. The disciplinary authority took a lenient view in the matter and imposed a punishment of stoppage of increment for a period of one year without cumulative effect. The said order was passed on 3 June 2008. The petitioner accepted the order of punishment served on him on 7 July 2008. The second respondent, who is the appellate authority issued a show cause notice dated 19 January 2009 to the petitioner as preliminary to the exercise of suo motu revisional power. The petitioner submitted his explanation. Thereafter an enquiry officer was appointed. Even before the enquiry officer the petitioner admitted the charges. The enquiry officer submitted a report to the second respondent. The second respondent agreed with the finding recorded by the enquiry officer and imposed a punishment of removal from service by enhancing the punishment of stoppage of increment for a period of one year without cumulative effect. The said order was unsuccessfully challenged before the third respondent. The petitioner is therefore before this Court.

3. The second respondent in his counter affidavit admitted the fact that the case of the petitioner was taken up by the Head of the Department/Appellate Authority under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as "the Rules"). The Appellate Authority having found the seriousness of the misconduct, rightly imposed the order of punishment of removal from service.

Rival Submissions:

4. The learned Senior Counsel appearing for the petitioner made the following submissions:

(a) The revisional proceedings initiated by the second respondent was barred by limitation as it was initiated after the statutory period of six months.

(b) The second respondent being the Head of the Department

initiated proceedings notwithstanding the prohibition as contained in the proviso appended to Rule 36 to the effect that no power of revision shall be exercised by the Head of the Department unless (i) the authority which made the order in appeal or (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(c) The second respondent in the notice issued to the petitioner very clearly stated that he would be dismissed from service. Therefore, it is very clear that a decision was taken to dismiss the petitioner from service even before calling upon him to show cause as to why punishment should not be enhanced.

5. The learned Additional Government Pleader further submitted that the second respondent initiated proceedings against the petitioner in his capacity as Head of the Department and as such limitation period is not attracted. The learned Additional Government Pleader submitted that the period of limitation is not applicable to the State Government or Head of the Department and as such proceedings were rightly initiated against the petitioner.

Factual Analysis:

6. The petitioner has taken up three substantial contentions in his effort to show that the second respondent erred in initiating revisional proceedings.

(i) The first contention relates to the period of limitation. The Statute has given the appellate authority six months' time to initiate suo motu revisional proceedings. However there is no limitation in case the proceedings are initiated by the State Government or Head of the Department. The second respondent in his counter affidavit very clearly stated that proceedings were initiated against the petitioner by the Director of Treasury and Accounts in his capacity as Head of the Department. Since revisional jurisdiction was invoked by the Head of the Department, the petitioner cannot be heard to say that proceedings were barred by limitation.

(ii) The second contention would go to the root of the matter. In fact, the said issue is no longer res integra in view of two decisions rendered by this Court.

(a) Proviso to Rule 36 prohibits Head of the Department from entertaining revision, in case the authority to which the appeal would lie, where no appeal has been preferred, is subordinate to him.

(b) The second respondent in his counter affidavit very clearly stated that the case of the petitioner was taken up by Head of the Department, who is also an appellate authority under Rule 36. Therefore, it is very clear that it was only the Head of the Department, who initiated suo motu revisional proceedings.

(c) The very same proviso was interpreted by a Division Bench of this Court in P. Sabesan v. The State of Tamil Nadu (1984) WLR (125) 557. The Division Bench having found that the power of the Head of the Department and the Appellate Authority vested in the same person, opined that the exercise of power of review was without jurisdiction. The observation reads thus:

"3. The power of review under the above rules can be exercised by four authorities (1) The State Government, (2) The Head of the Departments; (3) the appellate authority, and (4) any other authority specified in this behalf by the State Government by a general or special order. But the power of review given to the Head of the Department is, however, subject to a restriction under the proviso to the rule. The proviso says that no power of review shall be exercised by the Head of the Department unless the appellate authority, which had passed the appellate order or the authority to which an appeal would be preferred against the original order is subordinate to him. The second respondent herein is the Head of the Department and he also happened to be the appellate authority. As the appellate authority in this case is not subordinate to the Head of the Department the former cannot exercise the power of review under the said proviso.

4. According to the learned Government Pleader, the said proviso can apply only when the Head of the Department and the appellate authority are different. But we do not see any decision to limit the operation of the proviso as suggested by the learned Government Pleader. The proviso is specific and it says that if the authority to which an appeal would lie is not

subordinate to the Head of the Department, then the latter cannot exercise the power of review. Admittedly any order passed by the D.I.G. (Food cell) is appealable to the second respondent, who happens to be the Head of the Department. Thus the appellate authority is not subordinate to the Head of the Department, both the powers, that is, the power of the Head of the Department and the appellate authority having vested in the same person. In such a case, the proviso prohibits the Head of the Department from exercising the power of suo motu review. Thus, the proviso to R 15-A stands in the way of the second respondent exercising his suo motu review power under that rule as he happens to be the appellate authority, in the case in which he proposes to exercise the power of suo motu review. Thus the show cause notice issued by the second respondent proposing to exercise the power of review under R 15-A of the Rules should be taken to be without jurisdiction. It is significant to note that the learned Judge while passing the order under appeal has not considered the scope and ambit of R.15-A under which the second respondent proposed to exercise his power of review. It appears that this point was not urged before the learned Judge and the same was urged for the first time before us. However having regard to the fact that the point urged is purely a legal point arising out of an interpretation of a statutory provision, we heard both the learned counsel for the appellant and the learned Government Pleader for the respondents on this point."

(d) The very same proviso came up for consideration before a Division Bench of this Court in Kausalya v. The District Health Officer, Vellore and others (order dated 19 June 2003 in W.P.No.4348 of 1998). The Division Bench after extracting the Rule 36(1) (which is now Rule 37 after amendment) very clearly held that action taken by the Head of the Department, who is also the appellate authority is bad in law. The Division Bench held:

" 9. In this case, there is no problem regarding the fact that the Head

of Department and the appellate authority were one and the same person. It is also not disputed that after the penalty of warning was given to the petitioner by the District Health Officer, the petitioner did not file any appeal. The question is, however, whether the action was rightly initiated. The second proviso, however, creates two fetters. It suggests in a very positive language that the power of review cannot be exercised unless the authority which made the order in appeal or the authority to which the appeal could be made are subordinate to such Head of Department. Now it is clear and an admitted position that in this case, there was no appeal made. So, the question of the application of first clause after proviso does not apply. The second clause, however, applies with all its force. It suggests that where no appeal has been preferred the authority to which ordinarily the appeal could have been preferred should also be subordinate to the Head of Department and that is where precisely the defect has set in. The Head of Department who has initiated the action is himself an appellate authority. As per the second clause of the proviso, the Head of Department could never have exercised the power unless the appellate authority to whom the appeal could be filed but has actually not been made was subordinate to such a Head of Department. Now, unfortunately for the Government, the Head of Department as well as the appellate authority are one and the same officers and it can never be said, therefore, that the appellate authority, i.e. the Director is subordinate to himself. In that view, the action of review could not have even been initiated let apart proceeded further and precisely that aspect which has been missed by the Tribunal. The Tribunal has gone, unfortunately, only on the broad reading of the rule and has held that since the action of review has been taken by the Head of Department, there would be no question of any

limitation of six months. It is perfectly alright and there can be no dispute that the Head of Department has the power to initiate the action even after the six months. Even the learned counsel for the petitioner does not dispute that. However, the second aspect of the appellate authority being required to be a subordinate officer of the Director of the Head of Department is obviously breached in this case and, therefore, it will have to be held that the action initiating the review is bad and without any jurisdiction. "

(iii) I consider it not necessary to deal with the third issue raised by the petitioner in view of my finding that the second respondent erred in entertaining the revisional jurisdiction in his dual capacity as Head of the Department and Appellate Authority.

7. The two decisions rendered by the Division Bench of this Court cited supra would apply in full force to the case on hand. The petitioner is therefore perfectly correct in his contention that the second respondent has no authority to exercise suo motu revisional jurisdiction. The petitioner is therefore entitled to succeed.

Disposition:

8. In the result, the impugned order dismissing the petitioner from service is set aside. The respondents are directed to re-instate the petitioner into service without backwages. However, he should be given other attendant benefits for the purpose of counting his earlier service. In short, the petitioner is not entitled for monetary benefits. The respondents are directed to pass consequential orders as expeditiously as possible and in any case within a period of four weeks from the date of receipt of a copy of this order.

9. In the upshot, I allow the writ petition. No costs.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

Tr/

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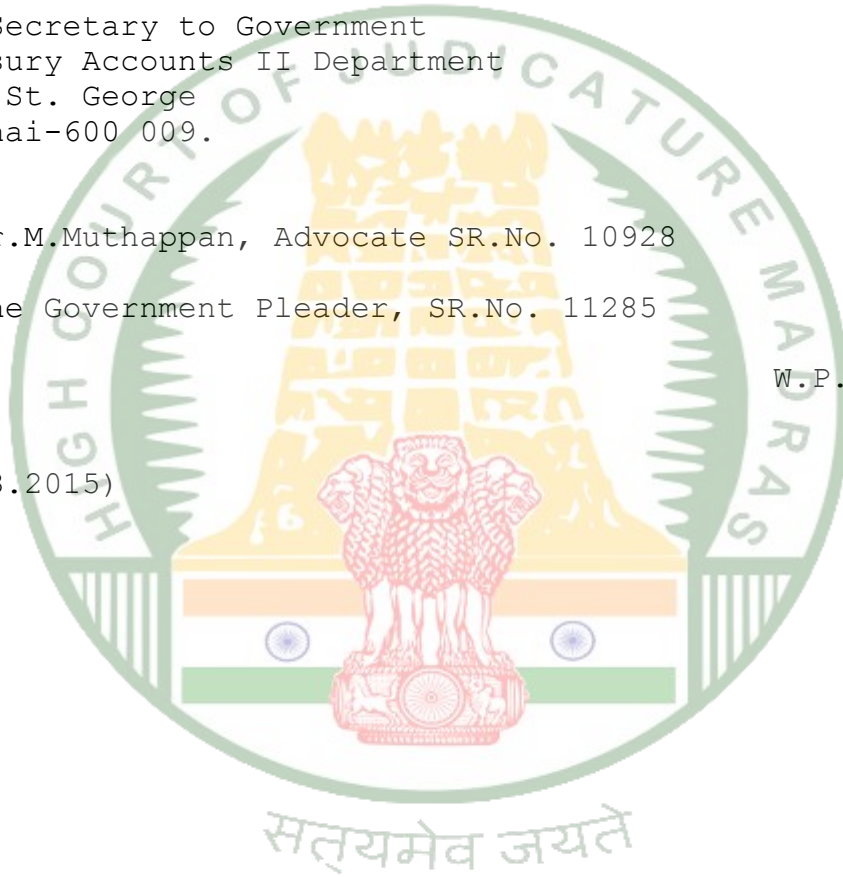
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1 CC to Mr.M.Muthappan, Advocate SR.No. 10928

1 CC to the Government Pleader, SR.No. 11285

W.P.No.23300 of 2011

MSM (CO)
PSI (10.03.2015)



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