

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.06.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.13403 of 2011

and

M.P.No. 1 of 2011

M.P. No 1 of 2013

N. Raju

.. Petitioner

Versus

The District Collector
Kancheepuram
Kancheepuram District

.. Respondent

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the respondent in Na.Ka.No.65903/2005/Paa2 dated 12.05.2011, quash the same and consequently direct the respondent to continue the petitioner as Deputy Block Development Officer with all consequential service and monetary benefits.

For Petitioner	:	Mr. M. Ravi
For Respondents	:	Mr. S.Gunasekaran Government Advocate

O R D E R

This Writ Petition has been filed challenging the order passed by the respondent in Na.Ka.No.65903/2005/Paa2 dated 12.05.2011, quash the same and consequently direct the respondent to permit the petitioner to continue as Deputy Block Development Officer with all consequential service and monetary benefits. By the said order dated 12.05.2011, the respondent imposed the punishment of compulsory retirement from service on the petitioner.

2. The grievance of the petitioner is that earlier he was issued with a show cause notice dated 21.03.2007, for which he submitted his explanation on 17.08.2007. Not satisfied with the same, an enquiry officer was appointed, who conducted an enquiry and submitted his report stating that the charges levelled against the petitioner are not proved. On receipt of the report

of the enquiry officer, the respondent, being the disciplinary authority, on consideration of the nature of charges and the findings of the enquiry officer, issued a notice dated 24.03.2010 calling upon the petitioner to submit his explanation as to why major punishment such as compulsory retirement, dismissal or removal from service be not imposed against him. Challenging the same, the petitioner filed WP No. 18330 of 2010 before this Court. This Court, by an order dated 11.08.2010 dismissed the writ petition. However, it was made clear that the respondent shall bear in mind that it is not necessary for him to impose only the penalties of compulsory retirement, removal from service or dismissal. The discretion of the disciplinary authority to impose any of the penalties specified in Rule 8 is wide and it is upto the respondent to exercise the same in accordance with law.

3. Pursuant to the order passed by this Court, the respondent has issued a show cause notice dated 24.03.2011 calling upon the petitioner to submit his explanation regarding the proposed major penalty for the enquiry conducted under Rule 17 (b) before 06.04.2011. Challenging the same, the petitioner has filed WP No. 8377 of 2011. By order dated 31.03.2011, this Court set aside the notice dated 24.03.2011 issued by the respondent and remitted the matter back to the respondent to record his reasons for differing with the view of the enquiry officer in respect of each charge and communicate it to the petitioner. Further, after receipt of explanation, a definite finding was directed to be recorded by the respondent to give a finding with regard to punishment, if any, to be imposed. Thereafter, the respondent has passed the impugned order dated 12.05.2011 imposing the punishment of compulsory retirement from service. Challenging the same, the petitioner has filed the present writ petition.

4. The learned counsel appearing for the petitioner would mainly contend that before proposing to impose the major punishment, the petitioner was not put on notice. Therefore, according to the learned counsel for the petitioner, the impugned order has been passed in violation of principles of natural justice. It is further submitted that the petitioner is retiring from service on 30.06.2016. Earlier, the respondent has issued a second show cause notice dated 24.03.2011 in which he has not specified as to how and why he is disagreeing with the findings of the enquiry officer. Challenging the same, petitioner filed WP No. 8377 of 2011 and it was allowed by this Court on 31.03.2011 specifically directing the respondent to record his reasons for disagreement in respect of each and every one of the charges and communicate it to the petitioner. However, the respondent has straightaway passed the impugned order in which he has given his disagreement with each and every charges without seeking explanation from the petitioner. In any

event, when the impugned order has been passed in violation of principles of Natural justice, the same is liable to be set aside.

5. The learned Government Advocate would contend that the petitioner has repeatedly filed writ petitions, one after the other and dragged on the conclusion of the disciplinary proceedings. In any event, the impugned order has been passed in accordance with the directions issued by this Court in the order dated 31.03.2011 in WP No. 8377 of 2011 filed by the petitioner. The respondent has passed an elaborate order narrating as to how the report of the enquiry officer is perverse and what prompted the disciplinary authority to differ with the findings for each and every charge. Therefore, the learned Government Advocate would justify the passing of the impugned order and he prayed for dismissal of the writ petition.

6. I heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondent. Even though the respondent has compulsorily retired the petitioner from service, by virtue of the interim order granted by this Court, the petitioner is continuing in service as on date. It is stated that the petitioner is due for retirement on 30.06.2016.

7. In this case, the respondent has filed a petition to vacate the interim order. It is needless to state that this writ petition is pending from 2011. By virtue of interim order the petitioner is continuing in service. However, the respondent has filed the petition to vacate the interim stay during 2013 and kept it pending till 2016. In the affidavit filed in support of the vacate stay petition it is stated that the petitioner has not produced any documents to show he has obtained divorce from a competent judicial Forum before contracting the second marriage and it is in violation of Rule 19 (1) (ii) of Tamil Nadu Government Servants Conduct Rules, 1973. It is further stated even though the Enquiry Officer has reported that the charges not proved, the authority has disagreed and concluded based on materials placed before the respondent that the petitioner has violated the Rule 19 of Tamil Nadu Government Servants' Conduct Rules, 1973 and charges are held proved. Therefore, the respondent would justify the passing of the impugned order awarding the punishment of compulsory retirement from service.

8. As regards the merits of the case, while the petitioner was working as Deputy Block Development Officer, the respondent issued a charge memo dated 21.03.2007. The crux of the charge is that the petitioner has contracted a second marriage when the first marriage with his wife is subsisting and it is contrary to Rule 20 (i) of the Tamil Nadu Government

Servant Conduct Act. The petitioner submitted his explanation on 17.08.2007 stating that after getting appropriate legal advice, he contracted the second marriage after obtaining consent with his first wife. Not satisfied with such explanation, the respondent appointed an enquiry officer who, after conducting enquiry, held that the charges levelled against the petitioner are not proved. On receipt of such report, the disciplinary authority disagreed with the findings of the enquiry officer. Therefore on 24.03.2011, the respondent issued a notice to impose the punishments as contemplated under 19 (i) and (ii) of the Tamil Nadu Government Servant Conduct Rules. Challenging the same, the petitioner filed the first writ petition being WP No. 18330 of 2010 and it was dismissed by this Court with an observation that the disciplinary authority shall bear in mind that it is not necessary only to impose major punishments but also the one specified in Rule 8 of the Tamil Nadu Government Servant Conduct Rules. Thereafter, a show cause notice dated 24.03.2011 was issued by the respondent which was again challenged by the petitioner by filing WP No. 8377 of 2011. This Court, by order dated 31.03.2011 passed an order setting aside the show cause notice dated 24.03.2011 of the respondent and remanded the matter back to the respondent for fresh consideration. It was specifically directed that the respondent shall record his reasons for differing the views of the enquiry officer with respect to each of the charges and communicate it to the petitioner, meaning thereby, the respondent ought to have issued a show cause notice in which he has to disagree with the findings of the enquiry officer with respect to each of the charges and sought the explanation of the petitioner. The respondent, without doing so, passed the impugned order of compulsory retirement from service without first issuing a notice to the petitioner by disagreeing with the findings of the enquiry officer with respect to each of the charges. In other words, before passing the impugned order, the respondent ought to have issued a notice to the petitioner to submit his explanation in which he ought to have expressed his conclusion for disagreement of the findings of the enquiry officer. Therefore, I find force in the submission of the counsel for the petitioner that the impugned order is in violation of the principles of natural justice.

9. It is also seen from the impugned order that the respondent has not referred to the order dated 31.03.2011 passed by this Court in WP No. 8377 of 2011. As mentioned above, in the order dated 31.03.2011, the respondent shall record his reasons for differing the views of the Enquiry Officer in respect of each of charges and communicate the same to the petitioner and after receiving his explanation/ remarks, a definite finding should be recorded. Such direction issued by this Court has not been followed by the respondent. In such circumstances, I am of the view that the impugned order is in

violation of principles of natural justice and in contravention of the order dated 31.03.2011 in WP No. 8377 of 2011.

10. It is to be pointed out that the petitioner is continuing in service by reason of the interim order granted by this Court. Even though this Court is inclined to set aside the impugned order of the respondent awarding the punishment of compulsory retirement from service on technicalities viz., it was passed in violation of the principles of natural justice, it will not be ground for the petitioner to retire from service. Rather, the service of the petitioner has to be retained by the respondent till the conclusion of the disciplinary proceedings initiated against him.

11. With the above observation, the impugned order is set aside. The matter is remitted back to the respondent for fresh consideration. The respondent is directed to comply with the direction issued by this Court in the order dated 31.03.2011 passed in WP No. 8377 of 2011 and proceed further in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
The District Collector
Kancheepuram
Kancheepuram District

+1 cc to Government pleader sr.36347
+1 cc to Mr.M.Ravi Advocate sr.36044

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