

IN THE COUR OF HIGH COURT JUDICATURE AT MADRAS

DATED:10.11.2016

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THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.12514 of 2010

and

M.P.No.1 of 2010

S.Sankaran

..Petitioner

/vs/

1.The State of Tamil Nadu,
Rep.by its Principal Secretary,
Department of Registration,
Fort St. George, Chennai 600 009.

2.The Director of Department of Registration,
Chennai 600 028.

...Respondents

Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st respondent in G.O.(T) No.12, dated 07.04.2010 passed on appeal against the order of the 2nd respondent in E.Aa.Pa.No.37761/R3/02 dated 24.08.2007 and quash the same and further direct the respondents to regularize the scale of pay of the petitioner.

For Petitioner :Mr.M.Musthafa Khan for Mr.v.Anand
For Respondents :Mr.P.Sanjay Gandhi, AGP

ORDER

The prayer in the writ petition is a writ of Certiorarified Mandamus calling for the records of the first respondent in G.O. (T) No.12, dated 07.04.2010 passed on appeal against the order of the 2nd respondent in E.Aa.Pa.No.37761/R3/02, dated 24.08.2007 and quash the same and further direct the respondents to regularise the scale of pay of the petitioner.

2. The case of the petitioner is that after serving at various places, the petitioner was posted as Assistant in the Sub-Registrar Office at Radhapuram. Thereafter, when he was working in Nanguneri as Assistant between 1999 and 2000, he was deputed twice to act as Sub Registrar of Radhapuram. While so, on 16.09.2002, the 2nd respondent issued a charge memo against the petitioner wherein, two charges were framed against him. According to the charges, when the petitioner was working as Sub Registrar (in-charge) at Radhapuram Sub Registrar Office, in

respect of two documents of birth and death registers some tampering was made and after having tampered, some copies were extracted, taken and given to the public. Therefore, the first limb of the charge is that he has tampered the record and the second one, the copy of the tampered record was given.

3. Explanation was called for from the petitioner as against the charges. Thereafter, enquiry was conducted. The enquiry officer has found that with regard to the charge of tampering of record, it was not proved. In spite of the said findings of the enquiry officer, the Disciplinary Authority had sought for explanation from the petitioner in respect of the second limb of charge viz., giving copies of the tampered record. After getting the explanation from the petitioner, a punishment was inflicted on the petitioner by the order of the 2nd respondent dated 24.08.2007, whereby the 2nd respondent has imposed a punishment of stoppage of increment for one year without cumulative effect.

4. As against the said order of punishment dated 24.08.2007, the petitioner filed an appeal to the 1st respondent on 27.11.2007 and the 1st respondent, considering the said appeal and after getting opinion from the Tamil Nadu Public Service Commission, has rejected the appeal by accepting the opinion of the Tamil Nadu Public Service Commission, by order dated 07.04.2010 in G.O.(T).No.112, Commercial Tax and Registration Department. Against the said order dated 07.04.2010, which is impugned herein, the petitioner has come out with the present writ petition for the aforesaid prayer.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would contend that the enquiry officer, on due enquiry has found that the first charge viz., the tampering of records in birth and death register, was not proved against the petitioner. The reason being that the petitioner had been working there as Sub Registrar (in-charge) at Radhapuram Sub Registrar Office only for few days, therefore, the question of tampering of evidence at the behest of the petitioner would not arise. This was properly appreciated by the enquiry officer and found that the charge was not proved against the petitioner. Though the charge of tampering of records was not proved against the petitioner, further conclusion reached by the Disciplinary Authority to inflict the punishment on the petitioner on the 2nd limb of charge viz., issuance of copies of the tampered record, has absolutely no basis and therefore, both the orders of the 2nd respondent as well as the 1st respondent, which are impugned herein, are liable to be set aside.

7. Per contra, the learned Additional Government Pleader

appearing for the respondents would contend that the petitioner himself in his explanation, after enquiry report, had submitted that copies of the tampered records were of course given, after his signature and he has signed the same, believing the signatory, who has already put in and submitted to him by his subordinates. The petitioner had also given explanation stating that this is the procedure being adopted in the offices, generally and based on which, he had signed it and therefore, he could not be penalised for the said Act, as he has not done anything contrary to the Rule. This defence taken by the petitioner, according to the learned Additional Government Pleader, would be fatal to the case of the petitioner for the reason that he himself has accepted that he only signed in the copy of the document, which was actually tampered and he should have been vigilant before signing on the documents. The punishment inflicted on the petitioner could be justifiable one. Therefore, the learned Additional Government Pleader wants the writ petition to be dismissed.

8. This Court has considered the rival submissions made by the learned respective counsels. As stated above, the crux of the charge imposed against the petitioner that he had tampered two records of the birth and death registers. After that, the copies of the said records were signed and given it to needy. Further, after enquiry, it was found in favour of the petitioner that the charge of tampering was not proved. When that being so, the mere giving copies as extracted taken from the said records, which was said to be tampered, cannot be treated as a flaw on the part of the petitioner for the reason that the document No.157 of 1982 year birth register and document No.159 of 1990 year birth register are the two documents, which have been tampered, according to the respondents. Only the copies of these documents were given to the person, who requests the document. Since the tampering itself is not proved, the mere giving of copies of the document by the petitioner of course as placed before him by his subordinates, cannot be said to be a flaw on the part of the petitioner.

9. In this regard, even as per the reasoning given by the Tamil Nadu Public Service Commission, as has been extracted in the appellate order passed by the 1st respondent, which is impugned herein, it is stated that when the documents such as birth and death are given by the official concerned i.e. the petitioner, he should have compared the details in the copy as well as in the original. Without doing so and believing the attestation or signature given by his subordinates, the petitioner should not have signed in the copies and therefore, on that ground alone, it was recommended by the Tamil Nadu Public Service Commission to fix the petitioner for the 2nd limb of charge and the same have been accepted by the Appellate Authority viz., the 1st respondent and ultimately, the appeal of

the petitioner was rejected.

10. In this regard, this Court finds that once a document itself was not tampered by the petitioner, the petitioner had no knowledge about the veracity of the contents made in the document, when that being so, even the original and the copies have been compared by the petitioner, there would not have been any difference between the two. Therefore, when no occasion for the petitioner to find that the document had been tampered as what was the original entry and what was the tampered, were not known to the petitioner as the document was of the year 1982-1990 i.e., prior to the petitioner worked in the said Sub Registrar Office, the blame made against the petitioner for giving copies of the said alleged tampered records cannot be justifiable. Therefore, this Court is of the view that the impugned orders are warranting for interference of this Court.

11. In the result, the impugned orders are set aside and the writ petition is allowed. The petitioner shall be entitled to the monetary benefits, such as increment as per the Service Rules governing the service of the petitioner. No costs. Consequently, connected Miscellaneous Petition is also closed.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Principal Secretary
Government of Tamil Nadu,
Department of Registration,
Fort St. George, Chennai 600 009.

2.The Director of Department of Registration,
Chennai 600 028.

C.C. to M/S. V.ANAND Advocate SR.NO.64828

C.C. to The Government Pleader SR.NO.64968

W.P.No.12514 of 2010

ACA (CO)
VS 30.12.2016