IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.06.2016	Pronounced on 20.06.2016

DATED : 20.06.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.192 of 2016
and C.M.P.No.2847 of 2016
and
Writ Appeal No.128 of 2016
and C.M.P.Nos.1765 and 7955 of 2016

1. The State of Tamil Nadu
rep. by its Secretary to Government,
Revenue Services Department,
Fort St. George, Chennai - 600 009.

2. The Special Commissioner and
Commissioner of Revenue Administration Department,
Ezhilagam, Chennai - 600 005.

3. The State of Tamil Nadu
rep. by its Secretary to Government,
Public (Special - A) Department,
Fort St. George, Chennai - 600 009.
... Appellants in both Appeals

Vs.

Selvi.Kavitha Ramu
Deputy Collector, Excise Supervisory Officer,
Empee Breweries,
Kuthambakkam,
Tiruvallur District. ... Respondent in both Appeals

Writ Appeals filed under Article 15 of Letters Patent against the order dated 08.12.2014 made in W.P.Nos.15985 and 15984 of 2008 respectively.

W.P.No.15984 of 2008 : Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records relating to the order of the 1st respondent in G.O.No.(D) No.132, Revenue Services Department dated 19.03.2008, confirming the order of the II nd Respondent in letter No.2(1)/ 109997/2005, dated 23.01.2007 and quash the same.

W.P.No.15985 of 2008 : Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records relating to the order of the 3rd respondent in G.O.Ms.No.12, Public (Special A) Department, dated 07.01.2008 and quash the same in so far as it fails to include the name of the petitioner in the temporary panel of District Revenue Officer for the year 2007 and consequently include the petitioner in the said panel with all consequential benefits.

For Appellants (in both Appeals) : Mr.P.H.Arvind Pandian
Additional Advocate General
Assisted by Mr.P.S.Sivashanmugasundaram
Special Government Pleader

For Respondent (in both Appeals) : Mr.K.Ravindranath
for Mr.U.Karunakaran

COMMON JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN,J.)

The instant intra Court Appeals are filed challenging the order passed by the learned Single Judge in W.P.No.15984 of 2008 and W.P.No.15985 of 2008 whereby the Writ Petitions were allowed.

2.Heard the submissions of Mr.P.H.Arvind Pandian, learned Additional Advocate General assisted by Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader for the Appellants and Mr.Ravindranath, learned counsel for Mr.U.Karunakaran, for the respondent.

3.The factual matrix leading to the present controversy revolves around a very narrow compass. The Respondent / Writ Petitioner was selected and appointed as Deputy Collector in the Tamil Nadu Civil Services for the vacancies of the year 1998-99 by direct recruitment through TNPSC vide G.O.(Ms)No.16 (Revenue SCR-1) Department dated 09.01.2002 along with ten others. While the respondent was posted and working as Revenue Divisional Officer at Chengalpet, there were reports that a Village

Administrative Officer K.Arumugam has unauthorisedly absented himself from duty and apart from this, there were other allegations also that were levelled against the said Village Administrative Officer and accordingly, he was suspended from service vide order dated 26.07.2004 passed by the respondent herein. However, it appears that the respondent has revoked the suspension on 08.09.2005 since the suspension was for more than 6 months and accordingly recommended that he shall be reinstated in service and posted at Tambaram Taluk.

4.Aggrieved by this conduct of the respondent, a charge memo was served under Rule 17-A under Tamil Nadu Civil Services (Discipline and Appeal) Rules wherein 5 charges were levelled against the respondent. The charges are follows:-

"Charge I
Ordering reinstatement of K.Arumugam, Village Administrative Officer, who was under suspension for grave charges and who was not having Tambaram as his native Village, in violation of the Orders issued in G.O.Ms.No.864 Revenue Department Dated 10.08.1992.

Charge II
Issuing appointment order arbitrarily in violation of Government Order during the period when general transfers are not permitted without prior permission from the District Collector as per G.O.Ms.No.864 Revenue Department Dated 10.08.1992.

Charge III
Ordering appointment of K.Arumugam, Village Administrative Officer without getting prior permission of the Election Commission while a ban issued by the Election Commission was in force.

Charge IV
Creating an irksome situation to the Government by giving appointment in violation of the Rules and Regulations when several petitions have been received requesting for appointment in Tambaram Taluk by candidates, who have Tambaram as their native place.

Charge V
Thus he has failed to maintain absolute integrity and devotion to duty and acted in violation of Rule 20(1) of the Tamil Nadu Government Servant's Conduct Rules 1973."

5.The petitioner in the writ petition has given explanation as follows:-

"One Thiru.K.Arumugam, Village Administrative Officer of Chengalpattu Taluk has stayed away from duty, and the Villagers have given complaint petitions against the said VAO, hence he was placed under suspension on Public Interest. Since he was under suspension for more than one year, the application given by the VAO was examined and also due to the fact that the report of Tahsildar Chengalpattu for framing charges was not received, Charges couuld not be framed at that time, and hence because of his family circumstances and also due to pendency of Election related work and as there is no sufficient number of VAOs in Tambaram Taluk, as Electoral Registration Officer due to exigency of Official work he was posted as VAO Chitlapakkam in the vacant place. Hence there is no general transfer involved in these postings.

Regarding Charges 2 and 3 the petitioner stated that due to pendency and urgency Election related work, the prior permission of District Collector could not be obtained and hence no rules or guidelines has been violated and there is any intension in this postings.

Regarding charge No.4, the petitioner stated that during the General Transfer 2004 in Tambaram Taluk, the VAOs who have not completed one year service in the present village have requested transfer to Tambaram Taluk, since these VAOs have not completed one year service in other Taluks, it has been decided to consider their request during the next general transfer. Moreover, Thiru.Arumugam VAO was under suspension for one year and due to urgent Election work he was given postings in Tambaram Taluk. Hence no rules or guidelines has been violated and this postings has not been effected with intention to bring disrepute to the District Administration."

6.After considering the explanation of the respondent, the Special Commissioner and Commissioner of Revenue Administration by order dated 23.01.2007 has held that all the charges against the respondent are proved and accordingly imposed the punishment of censure. An appeal was preferred before the Government against this order and the Government vide G.O.(D)No.132, Revenue (SCR2) (2) Department dated 19.03.2008 confirmed the punishment thereby dismissing the Appeal of the respondent.

7.Aggrieved by the same, the respondent has preferred W.P.No.15984 of 2008 before this Court and the learned Single Judge by order dated 08.12.2014 after considering the matter in detail has concluded that the charges levelled against the respondent cannot be sustained and accordingly quashed the order of punishment of censure imposed on the respondent and the consequential order passed by the appellate authority confirming the punishment. Aggrieved by the same, W.A.No.128 of 2016 has been filed and challenging the order passed by the learned Single Judge in W.P.No.15985 of 2008, W.A.No.192 of 2016 has been preferred.

8.The learned Single Judge in W.P.No.15985 of 2008 has directed the Appellant to include the name of the petitioner in the panel of District Revenue Officer for the year 2007 in G.O.Ms.No.12, Public (Special A) Department dated 07.01.2008 with all the consequential benefits with retrospective effect on par with 49 Deputy Collectors in the temporary panel of District Revenue Officers for the year 2007 since in the previous writ petition all the charges against the respondent has been quashed.

9.Mr.P.H.Arvind Pandian, learned Additional Advocate General would vehemently contend that the order passed by the learned Single Judge in both the writ petitions warrants interference since the learned Single Judge has failed to consider certain important and crucial aspects which ought to have been necessarily considered. The learned Additional Advocate General has also filed common written submissions and refering to the same has contended that there were several allegations that were levelled against Thiru.Arumugam, Village Administrative Officer, Sengundram Village, Changalpet Taluk and the Tahsildar in his enquiry has found that there were some serious lapses on part of him but however without considering these aspects, the respondent has ordered for his reinstatement and not stopping there, has posted him in Tambaram Taluk in dereliction of the mandate prescribed in G.O.No.864, Revenue (E.Spl.) (1) Department dated 10.08.1992 wherein strict conditions have been imposed for transfer of Village Administrative Officers. It has further been pointed out that the said Thiru.Arumugam ought not to be posted in Chitlapakkam Village, Tambaram Taluk since there were natives of Tambaram Taluk who were waiting to be posted there.

10.The learned Additional Advocate General would also submit that the reinstatement of the said Village Administrative Officer is not appropriate since he has adopted dilatory tactics and not appeared for the enquiry and as a result of which only, the suspension was extended for almost a year. It has also been pointed out that the word 'reinstate' means to restore to a state or position from which the object or person had been removed and the word reinstatement means establishing in former condition, position or authority and to canvass the point as to what reinstatement could be mean, Mr.Arvind Pandian has relied upon the judgment of the Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. Accordingly, it has been submitted that the respondent has failed to follow the mandate imposed in the Government Order and also the instructions of the Election Commission while reinstating the said Arumugam. On this basis, it was contended that the Writ Appeals have to be allowed since the charges against the respondents were sustainable and the non-consideration of the respondent for promotion is also backed by justifiable reasons.

11.Per contra, Mr.Ravindranath, learned counsel appearing for the respondent would submit that the orders of the learned Single Judge is very well considered and does not warrant any interference since the charges that have been levelled against the respondent does not have any legs to stand upon and she has been discriminated for being considered for the next promotional post and in fact, ought to have been conferred I.A.S. (Indian Administrative Service) a long time back. It has been pointed out by the learned counsel appearing for the respondent that the charges have been levelled against the respondent primarily revolves around the reinstatement of K.Arumugam, Village Administrative Officer on the primary ground of it being in contravention of G.O.Ms.No.864, Revenue Department dated 10.08.1992. It is the contention that the reinstatement was done only because the said Village Administrative Officer was under prolonged suspension and there was insufficiency of Village Administrative Officer in the said Taluk and this act cannot be described as a dereliction or creating an irksome situation to the Government.

12.It has further been submitted that the revocation of suspension and reposting is not an usual or normal transfer and the same would not in any manner attract the mandate prescribed in the Government Order referred to by the learned Additional Advocate General and further the reinstatement was sought to be ratified by the District Collector and hence, the reinstatement cannot in any manner be described as improper and as such, this cannot be the ground to punish the petitioner by imposition of censure as a punishment which has affected her prospects very seriously.

13.While looking at the issue at hand, it could be seen that the said Arumugam was only reinstated into service considering the fact that he was into prolonged suspension and that there were urgent need of hands. In the event the appellants were of the view that the dereliction committed by him was of serious nature, they necessarily ought to have expedited the disciplinary proceedings against him which would have ultimately brought the issue to a logical end. Merely because a person is temporarily reinstated, that cannot be the basis to categorise the person ordering reinstatement to be reckless and bereft of integrity and devotion to duty. The learned Single Judge has also elaborately considered these allegations against the respondent and the 5 charges that were levelled against the respondent and has come to an unassailable conclusion that these charges are unsustainable in law. Though G.O.Ms.No.864 dated 10.08.1992 prescribes stringent conditions for transfer of Village Administrative Officer, in the instant case, the reinstatement cannot be in its strict tense considered as transfer because the respondent has posted the said Village Administrative Officer in Tambaram Taluk only because there was some dire need of hands. It should not be forgotten that when disciplinary proceedings are initiated, the same has to be based on charges that are backed by sufficient reasons.

14.Here the crux of the entire allegation against the respondent is only with regard to alleged improper reinstatement of the said Arumugam. We have perused the entire record and unable to find any convincing material to substantiate that the respondent has voluntarily or deliberately reinstated the said individual against the mandate prescribed by law. The reinstatement ordered cannot per se be termed to be malafide or ill motivated.

15.Though it has been contended by the learned Additional Advocate General that reinstatement shall only mean restoring the individual to the original position and that the respondent has not just reinstated the said Village Administrative Officer but has virtually transferred him to a different place, it cannot be considered as proper. This cannot be so technically interpreted because the respondent has posted the person in a different place since there was some dire need of hands and that cannot be found fault with. At this juncture it ought to also be pointed out that the respondent has not exonerated the delinquent of all charges, but has merely reinstated him.

16.Hence, the charges that have been levelled against the petitioner ought to have been reconsidered atleast at the time when a detailed reply was given to the charges and the same was also not done. Even the appellate authority has passed a cryptic order accepting the findings and the same also cannot be termed to be sustainable in law. It also has to be taken note that the respondent has virtually been passed by more than 40 juniors in the next promotional post and her dream to become an I.A.S. Officer has suffered a big blow due to the imposition of punishment of censure on her.

17.The reasoning given by the learned Single Judge for allowing the Writ Petitions does not suffer from any infirmity and we are in agreement with the same. Thus, the Writ Appeals are dismissed and the Appellants are directed to implement the order of the learned Single Judge in both the Writ Petitions within a period of 4 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
   State of Tamil Nadu
   Revenue Services Department,
   Fort St. George, Chennai - 600 009.

2. The Special Commissioner and
   Commissioner of Revenue Administration Department,
   Ezhilagam, Chennai - 600 005.

3. The Secretary to Government,
   State of Tamil Nadu
   Public (Special - A) Department,
   Fort St. George, Chennai - 600 009.

+1cc to Mr.U.Karunakaran, Advocate, S.R.No.34351(22.06.2016)
+5cc's to Mr.U.Karunakaran, Advocate, S.R.No.33647
+1cc to the Government Pleader, S.R.No.33922

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SNS(CO)
CA(21/06/2016)