



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 30.11.2016

C O R A M

THE HONOURABLE DR.JUSTICE S.VIMALA

Writ Petition (MD) No.4631 of 2015

and

M.P. (MD) No.2 of 2015

P.Murthy Raajan

.. Petitioner

Vs.

1.The Principal Secretary to the Government,
Public Works Department,
Secretariat, Chennai.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Trichy.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records pertaining to the proceedings of the 2nd respondent vide T.D.P.No.17 of 2009 dated 30.08.2011 as well as the consequential orders passed by the 1st respondent vide his proceedings in G.O.(D) NO.298 Public Works (E1) Department dated 05.08.2013 and G.O.(D) NO.28 Public Works (F2) department dated 14.1.2015 and quash the same.

For Petitioner

... Mr.S.Saravanakumar

For Respondents

... Mr.V.R.Shanmuganathan

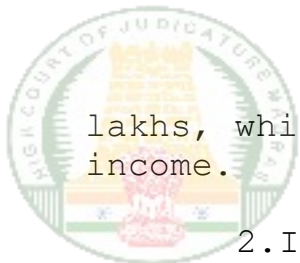
Special Government Pleader

O R D E R

There are two charge memos issued to the petitioner. One on 26.02.2009 and another one on 04.05.2010. The punishment of stoppage of increment for three years with cumulative effect has been imposed on the petitioner in respect of charge issued on 04.05.2010. The two charges are:

(i) Between the period from 01.01.1998 to 31.12.2003, the petitioner by receiving illegal gratification got wealth to the tune of Rs.8,51,893/-, not only in his name but also in the name of his wife / father, allegedly disproportionate to his known source of income, in violation of Rule 20(1) of the Tamil Nadu Government Servants Conduct

(ii) The petitioner built three houses for his wife, father and sister and purchased car, totally worth about Rs.40



lakhs, which were also disproportionate to his known source of income.

2. In respect of charge No.1, there was a finding that the petitioner did not get previous sanction for the purchase of the plot in the name of wife. But from the perusal of the records, it is evident that no charge has been framed with reference to the misconduct alleged in not getting prior permission before the purchase of the property, in the name of his wife.

3. So far as the charge with regard to owning disproportionate asset is concerned, the finding of the Enquiry Officer is that the charges are not proved.

3.1. So far as the allegation regarding not getting permission from the Government before purchasing the property is concerned, the arguments of the learned counsel for the petitioner is on two folds:-

(i) The first contention is that without framing charges, there cannot be a finding; and

(ii) The second contention is that long before, i.e. during 2007, the same charge had been framed, in respect of which, there had been an enquiry and consequently, the petitioner was put on censure, on 03.12.2010 and therefore, there cannot be a double jeopardy in respect of that charge.

4. The claim of the petitioner has been contested by the respondents by filing counter affidavit. The contention taken in the counter affidavit is that the disciplinary authority is entitled to draw his own conclusion and the decision taken by the Enquiry Authority is not binding on him.

5. The learned counsel for the petitioner relies upon the decision of the Hon'ble Supreme Court in *SURATH CHANDRA CHAKRABARTY v. STATE OF WEST BENGAL* reported in AIR 1971 SC 752, wherein it has been held as follows:-

"7.

Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason that Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the

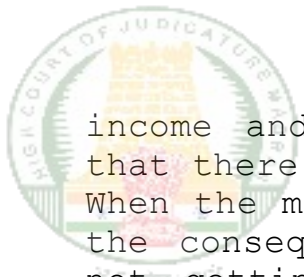


statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges. Even if the Enquiry officer had made a report against him the appellant could have been given a further opportunity at the stage of the second show cause notice to adduce any further evidence if he so desired after he had been given the necessary particulars and material in the form of a statement of allegations which had never been supplied to him before. This could undoubtedly be done in view of the provisions of Article 311 (2) of the Constitution as Rule 55 in so far as it lays down in almost mandatory terms that the **charges must be accompanied by a statement of allegations**. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations current findings against the respondent on that point.

6. Considering the facts of the case and in the light of the Judgement reported in **AIR 1971 SC 752 (stated supra)** and also in the light of the counter affidavit filed by the Government, it is clear that the finding with regard to the charge that the petitioner did not obtain prior permission is not maintainable, without even framing the charge. Therefore, that finding has to be set aside.

7. The contention of the learned Special Government Pleader is that the disciplinary authority is entitled to come to a different conclusion and he need not be accepted the finding of the enquiry officer.

8. As a matter of principle, the contention of the respondents is correct, but the only question is, whether there are materials for the disciplinary authority to come to a different conclusion. The first respondent / disciplinary authority, while accepting the report of the enquiry officer, has given a punishment based on his own conclusion and those conclusions are not supported by any material available in the enquiry report and therefore, the order passed by the enquiry authority without any basic reason or without any basic material and the decision to give a different finding that of the enquiry officer is not supported by material and therefore, the order passed by the first respondent, cannot be sustained. It would suffice if one observation of the Disciplinary Authority is considered. There is a finding by the Disciplinary Authority that the wife of the delinquent had been doing self business, that there had been sufficient



income and therefore, there is no material to substantiate that there had been disproportionate income to the delinquent. When the main finding is such that, i.e., one of exoneration, the consequential finding that the delinquent is guilty for not getting permission from the Government, in respect of purchase of the property by his wife, of which there is no charge at all, cannot be sustained. In fact, when the property belongs to the wife, as it is purchased from out of her own income and when there is no contribution from the husband, there is no necessity to obtain permission from the Government and the mere intimation / information is sufficient. Therefore, the impugned orders are liable to be set aside.

9.The comparison of the order passed on 05.08.2013 in G.O.(D)No.298, Public Works (F2) Department, is no way different from the order dated 14.01.2015 passed in G.O.(D) No.28, Public Works (F2) Department. The ground for review taken by the petitioner has not been considered in the final order passed by the Government, dated 14.01.2015. On this ground also, the impugned orders are liable to be set-aside.

10.In the result, this writ petition is allowed. The impugned order dated 30.08.2011 is set aside and the order passed dated 05.08.2013 followed by the order dated 14.01.2015 are also hereby set aside. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The Principal Secretary to the Government,
Public Works Department,
Secretariat, Chennai.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Trichy.

+1cc to S.Saravanakumar, Advocate, SR.74586

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30.11.2016

RJ2

KK-PN-SAR1-10.02.2017-4P-4C