



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition (MD) No.10772 of 2016
and
W.M.P (MD) No.8358 of 2016

S.Messiah

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its Secretary to
Government, Revenue Department,
Secretariat, Chennai 600 009.

2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating with the order of the 1st respondent made in G.O. (1D) No.198 dt. 11.05.2015 and quash the same as illegal and in consequence direct him to dispose the petitioner's review petition dated 09.02.2015 as accordance with law and on merits as under Rule 37 of Tamil Nadu Civil Service (Discipline & Appeal) Rules within a time to be fixed by this Court.

For Petitioner : Mr.R.Suriya Narayanan
For Respondents : Mr.M.Murugan,
Government Advocate.

ORDER

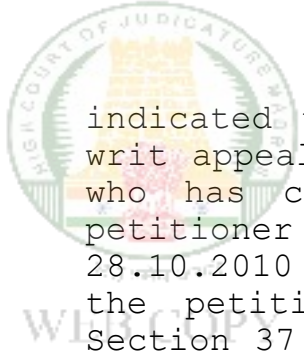
Mr.S.Messiah, who suffered an order of removal for a serious charge of grave official misconduct and misdemeanor and thereby failed to maintain absolute integrity and devotion to duty for demanding an illegal gratification of Rs.100/- from one Mr.N.Maruthupandian. He was subjected to disciplinary proceeding before the Tribunal for Disciplinary Proceedings and finally, he was found guilty for which he suffered punishment of removal from service by order dated 31.01.1997. Aggrieved by the order of punishment of removal, the petitioner went before the learned Administrative Tribunal by filing O.A.No.6336 of 1997 which stood transferred to this Court and renumbered and finally, the writ petition was also dismissed by a well reasoned orW.P.No.26730 of 2006 der dated 09.06.2009. The relevant portion of the finding and



conclusion reached in paragraph 8 is given as under:-

"8.It is seen from the records that a minor penalty was given to the petitioner for not adhering to the office procedure in issuing the jamin certificate and it has got nothing to do with the receiving of bribe for issuance of the certificate. A separate enquiry was conducted before the Deputy Commissioner for Disciplinary Proceedings, Chennai. In that enquiry, 13 witnesses were examined including the Inspector of Vigilance and Anti-Corruption one Kalyanam, who was P.W.13. Apart from that, there were 16 documents filed on the side of the department and excepting filing of the charge memo, the petitioner did not give any evidence. Since the competent authority in that matter is the first respondent, the Government has forwarded the file for the decision by the first respondent. The first respondent on the basis of the materials held that the petitioner was caught red-handed for demanding and accepting bribe and the findings recorded by the Tribunal supported by legal evidence. The punishment of removal was fully justified in view of the gravity of the offence committed by the petitioner".

2.A perusal of the above reasons would show that the petitioner did not give any evidence whatsoever, however, a detailed enquiry was conducted by the Deputy Commissioner for disciplinary proceeding, Chennai examining 13 witnesses including the Inspector of Vigilance and Anti-Corruption one Kalyanam who was examined as P.W.13 along with 16 documents filed on the side of the Department. Thereafter, the Government have forwarded the file for decision to be taken by the Principal Commissioner and Commissioner for Revenue Administration, Chennai. On receipt of the same, the Principal Commissioner and Commissioner for Revenue Administration on the basis of the materials made available and the findings recorded by the Tribunal supported by legal evidence, held that the petitioner was guilty of the proven charges which indicated that he was caught red-handed for demanding and accepting the bribe, therefore, this Court also agreeing with the findings of fact reached by the Tribunal for disciplinary proceedings was not inclined to interfere with the same. However, aggrieved by the same, the petitioner took up the matter to the Hon'ble Division Bench of this Court by filing writ appeal in W.A.No.1779 of 2009. This Court, in its long order, has also held that the star witness one Mr.Maruthupandian speaking about the demand of bribe had deposed that A-1 and A-2 had demanded money for countersigning the signature and therefore, he went next day and on the next day when the other witness Muthuramalingam was present, A-1 got from him Ex.Ps.1 to 6 and also material objects 1 to 3 namely, bribe amount of Rs.100/- and handed over the same to the A-3, the petitioner herein. In view of the above evidence, the Hon'ble Division Bench has further held that all the witnesses said that A-1 handed over money to A-3 in their presence and on receipt of that, A-3 had countersigned the signature and as such, the Hon'ble Division Bench had come to the conclusion that the evidence



indicated that A-1 to A-3 involved together, hence, dismissed the writ appeal confirming the order passed by the learned single Judge who has confirmed the order of removal. As against that the petitioner again relentlessly filed the review application on 28.10.2010 which was also dismissed on 09.10.2015. Even thereafter, the petitioner has filed a review before the Government under Section 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3.The learned counsel appearing for the petitioner would submit that the State Government may, at any time, either on their own motion or otherwise, review any order passed by them under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to their notice. However, the first respondent has also rejected the said review petition. As against that he has filed this writ petition stating that no speaking order has been passed and therefore, he pleaded for a direction be given to the first respondent to reconsider the petitioner's case in the light of the Rule 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

4.This Court is not able to find any iota of merit in the arguments advanced by the learned counsel appearing for the petitioner. The reason is that when the petitioner has invited the order from this Court confirming the order of removal in W.P.No.26730 of 2006, dated 09.06.2009 which is also confirmed by the Hon'ble Division Bench in W.A.No.1779 of 2009, dated 15.04.2010 and again when it was confirmed in review application on 09.10.2015, the petitioner cannot once again resort to Section 37 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5.Inasmuch as Rule 37 contemplates that the State Government may, at any time, either on their own motion or otherwise, review any order passed by them under these rules, but it has to be mentioned herein that the order passed by the Department has been confirmed by this Court, as I mentioned above. Therefore, after the order of removal passed by the Department has received the seal of approval by this Court in a judicial proceeding initiated under Article 226 of the Constitution of India which also finally came to be confirmed in the writ appeal and in review application, the contention made by the petitioner that still he is entitled to go before the first respondent is wholly misconceived and therefore, the writ petition fails and it is dismissed. No costs. Consequently, W.M.P(MD)No.8358 of 2016 is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/



To

1. The Secretary to Government,
State of Tamil Nadu,
Revenue Department,
Secretariat, Chennai 600 009.

2. The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai.

+ 1 CC TO MR.R/SURIANARAYANAN, ADVOCATE IN SR No. 31391

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 31699

SMS

TE/AAL-MPA/ : 22/07/2016 : 4P/5C

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