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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2016

CORAM :

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr.JUSTICE G.CHOCKALINGAM

Writ Appeal (MD) No.747 of 2015
against
WP (MD) No.7296 of 2013

1. The State of Tamil Nadu rep.by
The Secretary to Government,
Home Department,
Secretariat, Fort St. George,
Chennai-9.
2. The Deputy Inspector General of Police,
Armed Police, Trichy.
3. The Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli District. ... Appellants/ Respondents

Vs.

S.Lakshmanan ... Respondent/ Petitioner

Writ Appeal under Clause 15 of the Letters Patent, against the order made in W.P.(MD)No.7296 of 2013, dated 03.01.2014.

Prayer in WP(MD). 7296/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 2nd Respondent dated 25.03.2013 in C.No. A2/Ap1.6/2008 confirming the order of punishment passed by the 3rd Respondent dated 17.02.2008 in PR No. 03/07 and quash the same and consequently direct the Respondents to reinstate the petitioner as Nayak in the police Department with all other consequential and attendant benefits.

For Appellants : Mr.M.Alagadevan,
Special Government Pleader

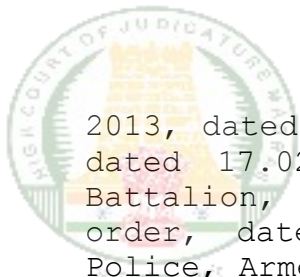
For Respondent : Mr.N.Dilip Kumar

JUDGMENT

(Judgement of this Court was made by S. MANIKUMAR, J.)

<https://hcservices.ecourts.gov.in/hcservices/>

Challenge in this appeal is to an order made in W.P.(MD)No.7296 of



2013, dated 03.01.2014, by which, the Writ Court has set aside the order, dated 17.02.2008 in P.R.No.03/07, passed by the Commandant, TSP IX Battalion, Manimuthar, Tirunelveli, 3rd appellant herein, and also the order, dated 25.03.2013, passed by the Deputy Inspector General of Police, Armed Police, Trichy, 2nd appellant herein.

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2. Facts of the case are that the respondent's father, died on 05.12.1996, in harness, while he was working as cook. The respondent signed his verification roll on 26.09.2000. He was appointed as Grade II Police Constable on 01.07.2002, on compassionate grounds. Thereafter, on 19.05.2006, he was promoted as Nayak. In the year 2007, a charge memo, dated 03.03.2007, was served on the respondent, on the grounds that he had suppressed the factum of employment of his brother, who was also appointed in the very same department, as cook. After enquiry, the respondent was found guilty of the charges and was dismissed. Appeal filed by him was also rejected. Thereafter, he filed W.P.(MD)No.7523 of 2008, which was dismissed on 01.03.2011. Being aggrieved by the same, W.A.(MD)No.599 of 2011 has been filed and a Hon'ble Division Bench of this Court, vide order, dated 02.01.2013, set aside the order of the 2nd appellant herein and directed the matter for fresh consideration. Once again, the 2nd appellant herein has passed the same order, confirming the order of dismissal. Hence, the present writ petition in W.P.No.7296 of 2013, has been filed.

3. Before the Writ Court, a contention has been raised that the conduct of the respondent/writ petitioner, in filling up the verification roll, as provided under Annexure III of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, cannot be put against him, as it lacks statutory backing. Further contention has been made that Annexure III of the abovesaid rules, has been omitted in the Government Order passed in G.O.Ms.No.68, Home Department, dated 19.03.1983. The respondent/writ petitioner has also contended that the family of the deceased was in penury, as his brother, who was employed as cook, had left the family and he did not extend any support. Reliance has also been made to a decision of this Court in G.Pattabiraman v. Secretary to Government reported in 2011 (3) MLJ 469.

4. Appellants before the Writ Court, have contended that there was suppression of the factum of employment of his brother and enquiry has been conducted in a fair manner. After considering the decision of this Court in W.A.(MD)No.599 of 2011, dated 02.01.2013 and the decision of the Hon'ble Apex Court in Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney reported in 2009 (4) SCC 240 and G.Pattabiraman's case (cited supra), the Writ Court, at Paragraphs 5 to 11, has passed the following orders:

"5. The Division Bench of this Court, in W.A.[MD].No.599 of 2011, dated 02.01.2013, while setting aside the order, has observed as follows:-

"7. A perusal of the affidavit filed by the appellant in the writ petition as well as a perusal of the grounds raised by the appellant in the appeal preferred before the second respondent reveals that the appellant has raised a specific plea to the effect that his brother was appointed as a temporary cook and he is living separately. It



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is pertinent to note that the appellate authority has specifically stated about this specific ground raised by the appellant to the effect that his brother was appointed as a temporary cook through employment exchange and he could not financially lend support to the family and he got married and went away separately. It is better to incorporate the said portion of the order of the appellate authority as hereunder:

"4. The delinquent has preferred an appeal petition dt.13.03.08. His appeal petition is within time. He has stated in his appeal that his brother was appointed as temporary cook on 25.09.98 through employment exchange and his brother could not financially lend support to the family and he got married and went away separately. He did not have any relationship with him. The delinquent has requested to consider his appeal petition and reinstate him into service."

In spite of mentioning the said specific ground and plea taken by the appellant in the appeal, the appellate authority had simply ignored and overlooked the same and has not at all discussed about the specific ground raised by the appellant and straight away stated in paragraph 5 that the appellate authority gone through the PR file, appeal petition and other connected records carefully and ultimately holding that the appellant has not raised any fresh point and rejected the appeal. In our considered view, the said order of the appellate authority is nothing but a cryptic and non-speaking order.

8. The Hon'ble Apex Court in Chariman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank V. Jagdish Sharan Varshney reported in 2009 (4) SCC 240 has held as follows :

"5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case (supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority."



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6. The view we are taking was also taken by this Court in Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide para 19), and in Madhya Pradesh Industries Ltd. Vs. Union of India, AIR 1966 SC 671, Siemens Engineering & Manufacturing Co. of India Ltd. vs. Union of India, AIR 1976 SC 1785 (vide para 6), etc.

7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee Vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

9.

10.

11. Hence, we agree with the High Court that reasons should have been contained in the appellate authority's order, but we cannot understand why the High Court has set aside the order of the disciplinary authority, in addition to setting aside the appellate order."

The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case as in this case also as we have already pointed out, the appellate authority has simply ignored and overlooked the grounds raised by the appellant in his appeal and without assigning any reason by merely stating that all the files, records and the order of the disciplinary authority have been perused carefully, rejected the appeal.

6. A reading of the Judgment of the Division Bench would show that what was directed to be considered is the plea taken by the petitioner that even assuming that his brother is employed as a Government Servant, the same cannot be a bar for considering him for appointment on compassionate ground, as the family continues to suffer due to the sudden demise of his father. The ground raised about his brother having left the family, in view of the inter-caste marriage has not been considered, in spite of a specific direction issued by the Division Bench.

7. There is no dispute, on fact, that the petitioner has signed the verification roll to the effect that none of his family members is employed in the Government. But, the



question for consideration is as to whether the petitioner is entitled for appointment on compassionate ground or not. Even the Appellate Authority, viz., the respondent No.2 did not give any specific finding regarding the condition of the family of the petitioner, under which his brother is stated to have left the family. On the contrary, it has been observed by the respondent No.2 that it may be true that the brother of the petitioner got inter-caste marriage and strained the relationship with him. The strained relationship will have to be seen not from the perspective of the petitioner, but from the perspective of his family.

8. As rightly contended by the learned counsel appearing for the petitioner, annexure III of the Rules has been omitted in G.O.Ms.No.6. Therefore, the said annexure III lacks statutory backing. On a consideration of the Government Order, passed in G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, this Court in G.Pattabiramam Vs. Secretary to Government reported in 2011 (3) MLJ 469 was pleased to hold as follows:-

"8. As per G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, the employment of legal heirs cannot be a bar for proving compassionate appointment to another legal heir, if the persons in employment are not supporting the family of the deceased Government Servant. Therefore, as per the said G.O.Ms.No.155, the first respondent has to see, whether the employed legal heir supports the family or not. The first respondent cannot come to the conclusion that the employed legal-heir supports the family, since his name is found in the Ration Card of the family. The first respondent should have directed his subordinate officials to conduct an enquiry and to submit a report, as to the indigent circumstances of the family of the deceased Government employee. Based on the said report, the first respondent should come to one conclusion or other.

9. On the other hand, the mere fact that the name of the brother of the petitioner who was employed in Central Government service is found in the Ration Card, could not be the ground to deny compassionate appointment. Even according to the first respondent, the brother of the petitioner got married in the year 1992, while the father of the petitioner died in 1996 and lived separately."

9. Applying the ratio laid down by this Court to the facts of the present case and in the light of the discussion made above, this Court is of the view that the orders impugned are liable to be set aside. Furthermore, the petitioner was appointed in the year 2002. Thereafter, he was promoted in the year 2006. The proceedings have been initiated in the year 2007. There is no explanation for the delay caused, as the petitioner has been working all along. However, this Court is of the view that the petitioner is not entitled for a complete relief.



10. The learned counsel appearing for the petitioner has fairly submitted that the petitioner is not pressing for monetary benefits from the date of dismissal till the date of reinstatement in service.

11. Considering the same, this Court, while setting aside the orders impugned, is of the view that the petitioner is not entitled for any salary from the date of dismissal till the date of reinstatement in service. However, the petitioner is entitled to count the said period for all other purposes, including seniority, promotion and the retirement benefits. Accordingly, the orders impugned are set aside and consequently the respondents are directed to reinstate the petitioner in service within a period of eight weeks from the date of receipt of a copy of this order, in the light of the discussion made above."

5. Though Mr.M.Alagadevan, learned Special Government Pleader assailed the correctness of the order made in W.P.(MD)No.7296 of 2013, dated 03.01.2014, on the grounds that prior to the appointment of the respondent, as Grade II Police Constable, on compassionate grounds, his elder brother, S.Ramamoorthy, had already been appointed as cook in TSP X Battalion, Ulundurpettai, on 25.09.1998 and as per the orders issued in G.O.Ms.No.155, Labour & Employment Department, dated 16.02.1993, only one of the dependants would be entitled for appointment on compassionate grounds and that the respondent had concealed the fact of his brother's employment, while furnishing an undertaking that none of his family members were employed in Government service and that therefore, the penalty imposed ought not to have been interfered with, this Court is not inclined to accept the same, as the Writ Court has considered the above objections, with reference to the rules and decisions, stated supra.

6. Further, the respondent/writ petitioner was appointed in the year 2002 and promoted in 2006. Disciplinary proceedings have been initiated in the year 2007. As rightly contended that there is no explanation for the delay of four years, in initiating the disciplinary proceedings. Proceedings stated to have been initiated in the year 2007, have culminated in the order of removal, in the year 2008, which has been interfered with, by the Writ Court. Now more than 14 years have been passed, since the date of appointment. For the reasons considered by the Writ Court and discussed supra, this Court is not inclined to interfere with the order impugned.

7. In the result, Writ Appeal is dismissed. No costs.

Sd/

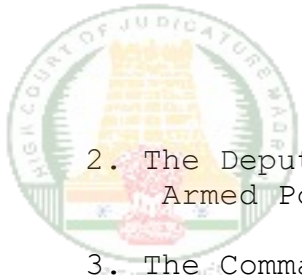
Assistant Registrar(AS)

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Sub Assistant Registrar.

To

1. The State of Tamil Nadu rep.by
The Secretary to Government,
Home Department,
Secretariat, Fort St. George,
Chennai-9.



2. The Deputy Inspector General of Police,
Armed Police, Trichy.

3. The Commandant,
TSP IX Battalion,
Manimuthar, Tirunelveli District.

+1CC to M/S.N.Dilip Kumar, Advocate, SR.No. 38070

+1CC to the Special Government Pleader, SR.No. 38641

W.A (MD) No.747 of 2015
against
WP (MD) No.7296 of 2013

SKM

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