

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.31414 of 2017

P.Shanmugam

... Petitioner

Vs.

1.State of Tamil Nadu

Rep. By Secretary to Government,
Home Department
Fort St. George,
Chennai - 600 009.

2.The High Court of Judicature at Madras

Rep. By its Registrar General,
High Court,
Chennai - 600 104.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned G.O.No.185, Public (Special-A) Department, Government of Tamil Nadu, dated 06.03.2017 and quash the same as illegal and consequently direct the respondents to refund the deduction of pension Amount from petitioner within a stipulated time fixed by this Court.

For Petitioner : Mr.P.Manikannan

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate for R1

O R D E R

(Order of the Court was made by RAJIV SHAKDHER, J)

1. This writ petition is directed against G.O.No.185, Public (Special-A) Department, Government of Tamil Nadu, dated 06.03.2017.

1.1. By virtue of this order, the Government of Tamil Nadu (in short the "GOT"), has rejected the appeal submitted by the petitioner, laying a challenge to the punishment accorded to him by way of deduction in pension, amounting to Rs.2,000/- (Rupees two thousand only) per month for a period of three (3) years, in

respect of charges proved against him in an enquiry initiated by this Court.

1.2. The Enquiry Officer is a former Judge of this Court i.e., the Hon'ble Mr.Justice T.Sudanthiram. The report, generated by Mr.Justice T.Sudanthiram, is dated 26.11.2012. By virtue of this report, the writ petitioner has been found guilty of two (2) out of the six (6) charges framed against him. These being Charge Nos.5 and 6. Charge No.5 and 6 relate to the following:

".... Charge No.5: That you, Mr.P.Shanmugam, while functioning as District Judge, The Nilgiris at Udhagamandalam, had conducted a meeting on 10th January, 2005, at 3.30 p.m., with regard to the administration of M/s.Mahavir Plantation Pvt. Ltd., without any specific direction either by any superior court of law or by the Tamil Nadu State Legal Services Authority, though such power to conduct a meeting with regard to functioning of a private company is not vested with the District Judge or any judicial officer and the said allegation, if proved, will amount to conduct unbecoming of a judicial officer attracting Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973, and, thereby, rendered yourself to be proceeded against under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Charge No.6: That you, Mr.P.Shanmugam, while functioning as District Judge, The Nilgiris at Udhagamandalam, on 10th February, 2005, along with Mr.Ganesan, the then Sub Judge, Udhagamandalam and the District Collector, Udhagamandalam and others have trespassed into the estate of M/s.Mahvir Plantations Pvt., Ltd., and closed and sealed the office and two staff quarters despite objections raised by the Management and some loyal workers, though there was no such power vested with you under any law or by the order of any Superior Court or the Tamil Nadu State Legal Services Authority; the said allegation, if proved, will not only show your high-handedness in the matter but will amount to conduct unbecoming of a judicial officer attracting Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973, and thereby, rendered yourself to be proceeded against under Rule 17(b) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules.”

2. Admittedly, the petitioner participated in the enquiry and after the enquiry report was submitted, a copy of the same was given to him. In response to the same, the petitioner filed a reply dated 06.03.2013, whereupon, via G.O.Ms.No.361, Public (Special-A) Department, dated 16.05.2014, punishment was imposed on the petitioner, to which we have made a reference above. As alluded to above, an appeal was preferred by the petitioner. This appeal was filed on 23.07.2014. The appeal, as indicated above, was rejected by the GOT vide order dated 06.03.2017. Resultantly, the punishment stands confirmed.

3. Counsel for the petitioner assails the order confirming deduction in pension on the ground that the findings returned, vis-a-vis charge Nos.5 and 6 are flawed. It is submitted by the learned counsel for the petitioner that the impugned meeting, dated 10.01.2005, was called by the petitioner in his capacity as the Chairperson of the District Legal Service Authority and not in his capacity as the District Judge. It is further submitted, in support of this submission, that oral approval of the portfolio judge was taken in this behalf and that a report was filed with the Registrar General of this Court, after the meeting was convened.

3.1. For this purpose, learned counsel for the petitioner relied upon an office note generated by the petitioner and a report dated 24.03.2005 filed with the Registrar General of this Court.

3.2. To be noted, it is not disputed that the petitioner in his capacity as the District Judge had granted an interim stay in favour of M/s.Mahavir Plantations Pvt. Ltd.; a company, qua which the impugned meeting was held. This interim order was granted by the petitioner on 22.09.2003, in I.A.No.258 of 2003, filed in O.S.No.79 of 2002. The interim order was extended by him, till the disposal of C.M.A.No.57 of 2003. This CMA had been filed by the workmen of the said company. Against the interim order, a Civil Revision Petition No.1606 of 2003 was filed in this Court. Consequently, this Court, by an order, dated 24.11.2003, had directed the disposal of the appeal within thirty (30) days. The appeal was, resultantly, disposed of by the petitioner.

4. Before the Enquiry Officer, one of the defences taken, apart from the ones, which have been advanced before us, to which we have made a reference above, was that the workmen/appellants in C.M.A.No.57 of 2003 had requested that the matter be referred to the Mediation by the Legal Services Authority.

4.1. The Enquiry Officer, however, has returned a finding of fact that no such memo was available on record. When we put this as a query to the counsel for the petitioner, he referred to us a memo filed on behalf of the appellants by their

advocate. This memo is dated 13.10.2003. We queried the counsel for the petitioner as to whether this memo formed a part of the record before the Enquiry Officer. Counsel for the petitioner submitted that it was not filed with the Enquiry Officer.

4.2. We are surprised as to how, for the first time, in the writ petition, this memo has been filed before us. Therefore, the finding of the learned Single Judge that there was no request made by the workmen/appellants for referring the matter to the Mediation is unassailable. Besides this, as noted above, the justification given by the petitioner for convening the meeting is that oral approval for the said purpose was accorded by the portfolio judge in a meeting held on 11.12.2004. The said note, according to us, is a self-serving document. Ordinarily, all such approvals are given by a portfolio judge in writing. Furthermore, the contents of the office note, make it clear that the meeting held between the petitioner and the portfolio judge was in the nature of a courtesy visit. There was no functional formality attached to the meeting.

4.3. Also, as noted by the Enquiry Officer, the record shows that even before the petitioner met the portfolio judge, proceedings had been initiated in that behalf in a Lok Adalat meeting was held, concerning the subject company on 17.10.2003. Therefore, the stand of the petitioner on this count is unbelievable as held by the Enquiry Officer.

5. Insofar the petitioner seeks to place reliance on the report dated 24.03.2005, we are of the view that by itself cannot have any impact, the reason being that this report, in any event, was filed after the impugned meeting was held.

6. Taking into account the various factors, the learned Enquiry Officer has, according to us, correctly returned the findings of facts, in respect of charge No.5. For the sake of convenience, the same is extracted hereafter:

".....51. In my considered opinion, it is hard to believe that the portfolio Judge had given such an oral instruction to the delinquent officer to conduct any such meeting on 10.01.2005. No such oral instruction would give jurisdiction to the District Legal Services Authority to organize a Lok Adalath for mediation, outside the purview of the Act.

52. Under Chapter VI-A of the Act, pre-litigation conciliation and settlement is provided for. In the instant matter, it is not at all the case of the delinquent officer that the meeting held on 10.01.2005 relates to any pre-litigation conciliation and settlement. Here, in this case, as I have already pointed out, there was a litigation pending before the District Munsif as well as before the District Court by way of civil

suit and Civil Miscellaneous Appeal respectively. If at all there was any chance for settlement, by means of Lok Adalath, appropriate orders should have been passed by the delinquent officer in C.M.A.No.57 of 2003, referring the dispute before the Lok Adalath. But the delinquent officer had not done so. As I have pointed out already, he has simply conducted the meeting on 10.01.2005, for which he had no jurisdiction at all.

53. In view of the above, I have no hesitation to hold that the proceedings before the Legal Service Authority was initiated and meeting was held on 10.01.2005 by the delinquent officer without any authority. This act of delinquent officer is high-handed and it is surely an unbecoming conduct, attracting Rule 20(1) of the Tamil Nadu Government Servant's Conduct Rules, 1973. In such view of the matter, I hold that the charge No.5 stands proved."

7. As regards Charge No.6, the only defence offered by the petitioner is that as soon as he became aware that a stay had been granted by this Court in respect of the proceedings concerning the subject company, he returned without making further inspection. According to the petitioner, the Office and two (2) staff quarters of the subject company were sealed by the District Collector, on his own, without any direction being issued in that behalf by the petitioner.

7.1. The difficulty with this arguments advanced on behalf of the petitioner is that both P.W.5, i.e., the Sub Inspector and P.W.4, i.e., the then Manager of the subject company have indicated that the District Collector acted on the direction of the petitioner. The preponderance of probability, thus, is that the impugned action was taken by the District Collector at the say so of the petitioner. The petitioner has not been able to dislodge the testimony of P.W.5 and P.W.4 made in this behalf. The finding returned by the Enquiry Officer in this connection, for the sake of convenience, are extracted hereafter:

"... The question is on whose direction the District Collector sealed the same. From the evidence of PW5, it has been very clearly established that only on the direction of the delinquent officer, it was closed. PW4, the then Manager of the Company in his evidence has also stated that in his presence the delinquent officer directed the officials to seal the office and the staff quarters. The evidence of PW4 is duly corroborated by PW5, yet another eyewitness to the incident. Further there is no official record from the District Collector's Office produced in

respect of the sealing of the office and the staff quarters. Admittedly, it was the delinquent officer, who took the District District Collector and other officials to the Office for the purpose of inspection. The proceedings were pending only before him. When that be so, it is highly unbelievable that without his authority and knowledge, the District Collector would have sealed the Office and staff quarters. As I have already pointed out, applying the test of preponderance of probabilities, if the evidences are analysed, it clearly emerges that the Office and staff quarters were sealed by the District Collector only on the directions of the delinquent officer, as spoken to by P.Ws.4 & 5."

(emphasis is ours)

8. Having regard to the foregoing aspects, we are not inclined to interfere with the impugned order. The writ petition is, accordingly, dismissed. There shall, however, be no order as to costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vsm

To

1.The Secretary to Government,
Home Department
Fort St. George,
Chennai - 600 009.

2.The Registrar General,
High Court,
Chennai - 600 104.

+1 cc to Mr.P.Manikannan Advocate sr 85981

+1 cc to Govt Pleader sr 86869

nm(co)

aa30/01/2018

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