IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.07.2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.33911 of 2013
& M.P.No.2 of 2013

P.M.Anandan .. Petitioner

versus

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

2. The Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai-600 005. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the G.O.(2D) No. 172 Revenue (ser.7-2) Department dated 9.4.2013 on the file of the 1st respondent in pursuance of the dismissal order of the petitioner from service in proceedings No.Ser V (3)/58079/2011 dt 30.5.2012 by the 2nd respondent herein and to quash the same and further direct the respondents to settle the monetary benefits including salary retirement benefits etc. as entitled by the petitioner.

For petitioner : Mr.D.Veerasekaran

For respondents: Mr.R.A.S.Senthilvel, AGP

ORDER

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The petitioner has approached this Court, seeking the following relief:

> "to issue Writ of Certiorarified Mandamus, to call for the records relating to the G.O.(2D) No. 172 Revenue (ser.7-2) Department dated 9.4.2013 on the file of the 1st respondent in pursuance of the dismissal order of the petitioner from service in proceedings No.Ser V (3)/58079/2011 dt 30.5.2012 by the 2nd respondent herein and to quash the same and further direct the respondents to settle the monetary benefits

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including salary retirement benefits etc. as entitled by the petitioner."

2. The petitioner, while working as Village Administrative Officer, was charge sheeted based on certain alleged acts of misconduct in relation to demand and acceptance of illegal gratification in relation to discharge of his duties as Village Administrative Officer. The matter was referred to the Tribunal for Disciplinary Enquiry. In the enquiry, 18 witnesses have been examined on behalf of the department and after completion of enquiry, a report was submitted on 12.4.2011 holding some of the charges of demand and acceptance of illegal gratification were proved and some of them were not proved. On the basis of enquiry report, the Disciplinary Authority sought for explanation from the petitioner. In response to the same, the petitioner had submitted a very detailed explanation on 30.01.2012, stating that there was no evidence in establishing the charges against him and moreover, there was no complaint of demand and acceptance of illegal gratification from any person. The entire action has been initiated at the instance of one Manoharan, who had a personal grudge against the petitioner since the petitioner was involved along with other revenue officials for evicting Manoharan from his illegal occupation of some government land in the village. In the said circumstances, he requested the Disciplinary Authority to drop further action. However, notwithstanding the explanation, the Disciplinary Authority passed an order dated 30.05.2012, dismissing the petitioner from service.

3. As against the same, an appeal was preferred under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. In the said appeal, the petitioner seemed to have raised several issues, pointing out infirmities in framing charges and conducting the disciplinary proceedings. However, the appellate authority has passed the order, rejecting the appeal filed by the petitioner, vide proceedings dated 9.4.2012.

4. The learned counsel appearing for the petitioner attempted to draw the attention of this Court to several lacunae in the evidence let in the enquiry and also attempted to impress upon this Court that there was no evidence at all in establishing the charges against the petitioner.

5. However, while adverting to the various submissions, this Court has taken note of the fact that the order passed by the appellate authority/first respondent dated 9.4.2013 is a cryptic order without considering any of the infirmities pointed out by the petitioner in his appeal.

6. In this connection, Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules which provides filing of statutory, is extracted as under:

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"23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders- -

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;

Provided that-

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)* , (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit."

7. As per the above provision, it is incumbent upon the appellate authority to pass a very detailed order after consideration of all the materials and the grounds stated in the appeal. In the instant case, no such consideration has taken place at the hands of the appellate authority and to say the least, the order is fairly non-speaking and does not satisfy the mandatory parameters as laid down in Rule 23.

8. The learned counsel appearing for the petitioner further attempted to cite a few decisions, stating that the disciplinary action cannot be initiated at the interest of a third party. However, in view of the findings of this Court that the order passed by the appellate authority impugned in the writ petition suffers from grave infirmity since it was passed without going into the merits and de-merits of the case in terms of the Rule 23, the matter is remanded back to the first respondent for fresh consideration. The appellate authority, namely, the first respondent is directed to pass a well considered and detailed order on the basis of lacunae and infirmities pointed out by the petitioner in his appeal dated 23.6.2012. The appellate authority is also directed to consider the quantum of punishment imposed on the petitioner on the basis of the evidence that was

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made available in the enquiry by the Tribunal. It is needless to mention that the appellate authority shall consider all the circumstances of the case including the motive attributed by the petitioner for initiating the disciplinary action against him. The appellate authority/first respondent is directed to pass orders in the appeal, within a period of one month from the date of receipt of a copy of this order, after affording a personal hearing to the petitioner.

With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

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

2. The Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai-600 005.

+1cc to M/s.D.Veeraseharan,Advocate sr.50555

W.P.NO.33911 OF 2013

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