



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.1006 of 2017

and

C.M.P. (MD) No.6857 of 2017

1. The Principal Secretary to Government,
Public Works Department,
Secretariat,
Chennai - 600 009.

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

... Appellants

Vs.

P.Murthy Raajan

... Respondent

Prayer : This Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 30.11.2016 made in W.P.(MD) No.4631 of 2015 on the file of this Court

Prayer in WP(MD). 4631/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue 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 Appellant : Mr.T.S.Md.Mohideen, AGP

For Respondents : Mr.R.Suriyanarayanan

J U D G M E N T

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

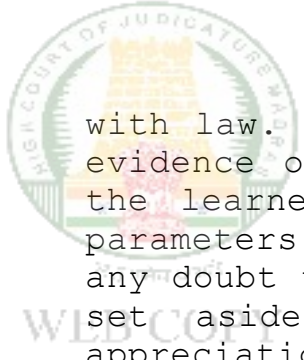
The State Government is on appeal challenging the order dated 30.11.2016 made in W.P.(MD) No.4631 of 2015 filed by the respondent herein.



2.The respondent herein was working as Assistant Executive Engineer, Public Works Department, when charges dated 04.05.2010 in T.D.P.Case No.17 of 2009 on the file of the Commissioner, Tribunal for Disciplinary Proceedings, Trichy were framed. The Tribunal submitted its enquiry report to the effect that Charge No.1 with regard to the possession of assets disproportionate to the known source of income of the respondent was not proved. However, as regards the obtaining of permission for purchases and payment of LIC policy premium in the name of the respondent and his wife, it was found that no permission was obtained. The Disciplinary Authority after receipt of the enquiry report, came to the conclusion that both charges were partly proved and called upon the respondent to submit his representation. The respondent submitted his representation on 27.04.2012. Thereafter, the first appellant herein issued G.O.(D) No.298 Public Works (E1) Department dated 05.08.2013 held that charges 1 and 2 were partly proved against the respondent herein and that it was decided to impose a punishment of withholding of increment for three years with cumulative effect. The matter was referred to the Tamil Nadu Public Service Commission. After obtaining its opinion, G.O.(D) No.28 Public Works Department (F2) Department dated 14.01.2015 was issued rejecting the review petition filed by the respondent herein against the punishment of withholding of increment for three years with cumulative effect. The said Government orders were challenged by the respondent in W.P.(MD) No.4631 of 2015. The appellants filed an elaborate counter affidavit denying the factual and legal contentions raised by the respondent in the affidavit filed in support of the writ petition. The learned Single Judge allowed the writ petition by order dated 30.11.2016. Aggrieved by the same, this intra Court appeal has been filed.

3.Heard the learned Additional Government Pleader appearing for the appellants and the learned counsel for the respondents. We went through the materials on record.

4.A specific finding has been given that the respondent herein had violated the Tamil Nadu Government Servants Conduct Rules, 1973 by not obtaining prior permission for the acquisition of assets in the name of his wife. The Disciplinary Authority has given a finding that both the charges framed against the respondent herein were partly proved. The learned Judge went into the factual matrix and after a re-appreciation of the material on record gave a finding that the conclusion of the Disciplinary Authority cannot be sustained. The Hon'ble Supreme court of India in the decision reported in **2015 (2) SCC 610 - Union of India Vs. P.Gunasekaran**, held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India shall not re-appreciate the evidence or interfere with the conclusions in the enquiry, in case the same has been conducted in accordance



with law. The High court cannot even go into the adequacy of the evidence or correct the error of fact. We are of the view that the learned Single Judge did not keep in view this prohibitory parameters when considering the writ petition. There cannot be any doubt that the orders impugned in the writ petition came to be set aside only because the learned Judge undertook a re-appreciation of the evidence on record. As already pointed out, such a course of action was clearly impermissible.

5. In that view of the matter, we set aside the order dated 30.11.2016 made in W.P.(MD) No.4631 of 2015. This writ appeal is thus allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Public Works Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner,
Tribunal for Disciplinary Proceedings,
Trichy.

+1cc to Mr.R.Suriyanarayanan, Advocate Sr.No.68792
+1cc to Spl.Government Pleader Sr.No.69000

SKM/ARUL

VB/KP/SAR2/18/09/2017/3P/5C

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and
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