BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATED : 27.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No.1031 of 2013

S.Senguttuvan .. Petitioner

Vs.

1. The Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai - 9.

2. The Inspector General of Registration,
   No.100, Santhome High Road,
   Chennai - 28. .. Respondents

Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus to call for the records relating to the impugned order passed by the first respondent in G.O.Ms.(D) No.197, Commercial Tax and Registration (K) Department, dated 18.05.2012, confirming the order passed by the second respondent in his proceedings in No.12431/A1/2002, dated 16.10.2009, to quash the same as illegal and consequently to direct the respondents to consider the petitioner for promotion to the post of District Registrar on par with the petitioner's junior within a stipulated period.

For Petitioner	:	Mr.A.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For Respondents	:	Mr.Aayiram K.Selva Kumar Government Advocate for respondents 1 and 2

ORDER

The petitioner has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order passed by the first respondent in G.O.Ms.(D) No.197, Commercial Tax and Registration (K) Department, dated 18.05.2012, confirming the order passed by the second respondent in his proceedings in No.12431/A1/2002, dated 16.10.2009, to quash the same as illegal and consequently to direct the respondents to consider the petitioner for promotion to the post of District Registrar on a par with the petitioner's junior within a stipulated period.

2. The facts in a nutshell are as under: It is the case of the petitioner that while he was working as Sub Registrar (Grade I), he was issued with a charge memo on 20.02.2003 purportedly under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, framing 11 charges. The petitioner refuted the allegations. The enquiry officer appointed, after enquiry, submitted a report on 11.02.2005 holding that charges 3, 5 and 9 were not proved and charges 4, 6 and 7 were not taken into consideration as qua the said charges already punishment was inflicted on the petitioner and the remaining five charges were held proved.

3. The second respondent thereafter issued a second show cause notice, enclosing a copy of the enquiry report, and on consideration of the explanation of the petitioner, by proceedings dated 16.10.2009, imposed a punishment of stoppage of increment for a period of five years with cumulative effect.

4. Assailing the said order, the petitioner preferred an appeal before the first respondent, who, by proceedings dated 18.05.2012, rejected the appeal confirming the order passed by the second respondent.

5. Assailing the said orders, the present writ petition is filed for the relief stated supra.

6. The learned Senior Counsel appearing on behalf of the petitioner submits that when the petitioner has not accepted the charges levelled against him and had refuted the same tooth and nail, the finding rendered by the second respondent as if the petitioner has admitted the charges, more particularly charges 1 and 2, is perverse and contrary to the facts.

7. He submitted that qua charge No.10 no departmental enquiry can be initiated against the petitioner as the same has been done in exercise of the petitioner's quasi judicial functions and if the same is found to be not acceptable, there is an appellate remedy available and, therefore, charge No.10 is unsustainable.

8. He further submitted that the first respondent, who is the appellate authority, did not pass a reasoned order and did not apply his mind independently, and, therefore, the order passed by the first respondent appellate authority stands vitiated for violation of Rule 23 of the Rules.

9. He pointed out that in respect of charge 11, two charge memos were issued and in the first enquiry, the said charge was not proved and in the second enquiry, the charge was proved and contended that anent single delinquency, two charge memos were issued and two enquiries were conducted and the same is impermissible and, therefore, charge 11 is also vitiated by mala fide.

10. Per contra, the learned Government Advocate appearing on behalf of the respondents reiterated the reasons that weighed with the respondent authorities and prayed for dismissal of the writ petition.

11. I heard Mr.A.Ajmal Khan, learned Senior Counsel for M/s.Ajmal Associates for the petitioner and Mr.Aayiram K.Selvakumar, learned Government Advocate for the respondents and perused the documents available on record.

12. Rule 23 casts upon the appellate authority to consider the following parameters, viz., (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.

13. In the case on hand, the petitioner had been afforded an opportunity of hearing by the appellate authority. The petitioner has taken a specific stand that he had never admitted charges 1 and 2 and the second respondent had erroneously recorded as such in the order dated 16.10.2009. When such objection is raised by the petitioner, the first respondent appellate authority ought to have applied his mind independently and arrived at a just and reasonable conclusion after due consideration of the facts and circumstances.

14. In Apparel Export Promotion Council v. A.K. Chopra, (1991) 1 SCC 759, the Hon'ble Supreme Court held that:

> "In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, <u>the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities</u>."
>
> (emphasis supplied)

15. In Narinder Mohan Arya v. United India Insurance Co Ltd., & Ors., AIR 2006 SC 1748, the Hon'ble Supreme Court observed as under:

> "36. The order of the appellate authority demonstrates total non-application of mind. <u>The appellate authority, when the rules require application of mind on several factors and serious contentions have been raised, was bound to assign reasons so as enable the writ court to ascertain as to whether he had applied his mind to the relevant factors which the statute requires him to do</u>. The expression 'consider' is of some significance. In the context of the rules, the appellate authority was required to see as to whether (i) the procedure laid down in the rules was complied with; (ii) the Enquiry Officer was justified in arriving at the finding that the delinquent officer was guilty of the misconduct

alleged against him; and (iii) whether penalty imposed by the disciplinary authority was excessive.”

(emphasis supplied)

16. However, in the case on hand, the first respondent had merely endorsed the views of the second respondent, without any independent application of mind and assigning any reasons whatsoever.

17. Qua charge 10, it is the plea of the petitioner that the allegation relates to exercise of his quasi judicial function. The Hon'ble Supreme Court as well as this Court time and again disapproved the practice of initiation of disciplinary proceedings against officers merely because the orders passed by them, exercising quasi judicial functions, are wrong, as appellate and revision remedies are always available against such orders passed.

18. While taking disciplinary action based on quasi judicial orders, the authorities must take extra care and caution. In Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409, the Hon'ble Surpeme Court held that wrong exercise of jurisdiction by a quasi judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the Officer exercising such quasi judicial function conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the authorities may exercise their supervisory jurisdiction.

19. In the case on hand, it is not the case of the respondent authorities that the petitioner had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive. Therefore, initiation of disciplinary action in respect of exercise of quasi judicial function is, in my considered opinion, vitiated. The aforesaid view of this Court is fortified by a decision of a learned Single Judge of this Court in V.Selvakumari v The Inspector General of Registration and others, [Order dated 23.8.2016 in W.P. (MD) No.3853 of 2016].

20. It is further seen that in respect of single misconduct alleged, two charge memos were issued and two enquiries were conducted against the petitioner. On the first occasion, the charge was held to be not proved, whereas on the later occasion, the charge was held proved. However, it is not disputed that the charge is one and the same.

21. For the foregoing reasons, this Court is the firm view that the impugned orders passed by the respondent authorities are not sustainable.

22. In the result,
(a) the writ petition is allowed by setting aside the order in G.O.Ms.(D)No.197, Commercial Tax and Registration (K) Department passed by the first respondent dated 18.05.2012, confirming the order in his proceedings in No.12431/A1/2002, passed by the second respondent dated 16.10.2009;
(b) the petitioner is hereby directed to give fresh representation with all particulars to respondents 1 and 2 within a period of 15 days from the date of receipt of a copy of this order; and
(c) On receipt of the said representation from the petitioner for promoting the petitioner as District Registrar, the respondents are directed to consider the petitioner's representation and pass orders within a period of two months, by giving fair opportunity to the petitioner.
(d) No costs.

Sd/-
Assistant Registrar(AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Commercial Taxes and Registration Department,
Secretariat, Chennai - 9.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 28.

+1cc to M/S.Ajmal Associates, Advocate SR.No. 11429

order made in
W.P. (MD) No.1031 of 2013
27.02.2017

vs
JM/SV MMS/SAR 4/20.04.2018/5P/4C