IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.07.2018	Delivered on 07.08.2018

CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1184 of 2015
and MP No.1 of 2015

1. The Government of Tamilnadu
Rep. by its Secretary to Government,
Commercial Taxes & Registration Department,
Secretariat, Chennai 600 009.

2. The Inspector General of Registration,
Chennai 600 028. ... Appellants

versus

P.Sundar ... Respondent

Appeal filed against the order passed by this Court dated 18.03.2014 passed in W.P.No.25226 of 2011.

W.P.No.25226 of 2011:

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorified Mandamus to call for the records relating to the orders in (1) G.O.(D) No.353, Commercial Taxes and Registration (H) Department, dated 9.9.2010 of the first respondent and (2) Charge Memo No.15142/ B2/2007-2 dated 8.5.2007 of the second respondent and to quash the same and to consequently direct the second respondent herein to include the name of the petitioner in the appropriate place in the panel of Sub-Registrar-Grade I for the year 2005-2006 and promote him as such with retrospective effect from the date of such promotion of his immediate junior with all consequential service and monetary benefits.

For appellants : Mr.T.M.Pappiah
Special Government Pleader

For Respondent : Mr.M.Ravi

J U D G M E N T

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

The challenge in this intra-court appeal is to the order of the learned single judge dated 18-03-2014 made in WP No: 25226 of 2011 in and by which the learned single judge, while rejecting the challenge to the punishment imposed on the respondent, had directed the appellants to consider his claim for promotion to the post of Sub Registrar Grade I on par with his juniors if he is otherwise found eligible.

2. The case of the respondent before the writ court was that while he was functioning as Sub Registrar Grade II a charge memo dated 08-05-2007 was issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules containing four articles of charges namely:

> (i)that the petitioner registered Document No: 10879 of 2006 without the signature of the person who drafted the document contrary to rule 3(4) of the Tamil Nadu Document Writers' License Rules, 1982;
>
> (ii) that in respect of documents registered by the petitioner between 01-06-2006 and 15-12-2006, site inspection was not conducted and having violated the circular issued by the Inspector General of registration dated 23-11-2001;
>
> (iii) that after completion of the spot inspection of the buildings, which are subject matter of registration, steps were not taken to refer the documents to the District Revenue Officer (stamps), under Section 47A (1) of the Stamp Act;
>
> (iv) that the petitioner did not properly maintain the documents in the G register without properly tabulating the same and retained it as a single bundle and violated the Rule 20 (1) of the rules.

3. Upon service of the charge memo the appellant had submitted his explanation. Not satisfied with the explanation the disciplinary authority appointed an enquiry officer and an enquiry was conducted. The enquiry officer had found the respondent guilty of the charges and the disciplinary authority namely the first appellant by his order dated 09-09-2010 imposed a punishment of stoppage of increment for six months without cumulative effect. The respondent had challenged the order imposing punishment dated 09-09-2010 as well as the charge memo dated 08-05-2007 in the writ petition.

4. As regards the punishment imposed the claim of the respondent was that the disciplinary authority namely the first appellant should have accepted his explanation for the charges and in view of the fact that all the charges related only to procedural irregularities coupled with the fact that there was no monitory loss to the Department should not have imposed the punishment of stoppage of increment. Insofar as the challenge to the charge memo is concerned the respondent contended before the writ court that the very framing of charges under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is irregular inasmuch as the authorities have not taken note of the guidelines issued by the government in respect of framing of charges. It is the further contention of the respondent that the charges being procedural in nature, not involving any allegation as to corruption or financial irregularities or misappropriation on the part of the respondent, the authorities ought not to have invoked Rule 17 (b) of the Rules instead the charges must have been framed under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The respondent would also plead that because of the framing of charges under Rule 17 (b) instead of Rule 17 (a) he had been deprived of chances of promotion citing the pendency of the charge memo as well as the disciplinary enquiry even though the punishment imposed was a minor penalty of stoppage of increment for a period of six months without cumulative effect. According to the respondent the authorities by framing the charges, which are not very serious, under Rule 17 (b) had deprived him of the chances of promotion which amounts to a larger punishment than what has been actually imposed on him for the proved delinquencies. On the above contentions the respondent had prayed for issuance of a writ of certiorarified mandamus as aforesaid.

5. The said writ petition was resisted by the appellants contending that the charges were framed as per the rules and the respondent namely the delinquent official cannot contend that charge should be framed under a particular rule and not otherwise. The appellants would also contend that the panel for promotion as Grade I Sub Registrar was drawn at a time when the disciplinary proceedings were pending against the respondent, his name was not considered for promotion as Sub Registrar Grade I for the year 2005-2006. It was also claimed that the respondent had admitted his guilt before the enquiry officer and hence he cannot challenge the punishment imposed on him for the proved delinquencies.

6. The learned single judge who heard the writ petition concluded that the domestic enquiry was fair and proper and

the minor punishment of stoppage of increment for a period of six months without cumulative effect was justified considering the proved delinquencies on the part of the respondent. While considering the plea relating to the framing of charges the learned single judge had found that going by the nature of charges the authorities were not justified in framing the charges under Rule 17 (b) which contemplates charges for which a major punishment could be imposed. The attention of the learned single judge was also drawn to the judgments of the Division Bench of this court wherein the guidelines issued by the government with regard to framing of charges were considered and this court had held that unless the delinquent official is charged with a corrupt practice or possession of disproportionate assets or misappropriation of the government property money or shares or obtaining or attempting to obtain any valuable things or pecuniary advantage without consideration or for inadequate consideration or falsification of government records or irregularity or negligence in discharge of official duties with the dishonest motive, framing of charges under Rule 17 (b) should be avoided. The learned single judge also found that if the charges had been framed under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules the pendency of such charge memo or the disciplinary enquiry based on such charge memo would not have had the effect of denying promotion to the respondent. On such conclusion the learned single judge while rejecting the challenge to the punishment allowed the writ petition in part directing the authorities to consider the case of the respondent for promotion on par with his juniors if he is found otherwise eligible.

7. Aggrieved by the second part of the order directing the appellants to consider promoting the respondent on par with his juniors de hors the pendency of the charges the appellants have come forward with the above intra-court appeal. We have heard Mr.T.M.Pappiah learned special government pleader for the appellants and Mr.M.Ravi learned counsel appearing for the respondent.

8. Mr.T.M.Pappiah learned counsel appearing for the appellant would contend that the guidelines issued by the government or only directory and not mandatory. Therefore it is for the disciplinary authority to decide as to whether the charges should be framed under Rule 17(a) or Rule 17(b) depending upon the facts and circumstances of each case. Arguing further the learned Special Government Pleader would submit that the respondent has been found guilty of the charges and therefore he cannot claim a vested right to promotion on par with his juniors.

9. Per contra Mr.M.Ravi learned counsel for the respondent drawing our attention to the judgment of the Division Bench in WP No: 3558 of 2004 would contend that when the government has issued guidelines as to the framing of charges depending upon the nature of the delinquencies alleged, the disciplinary authority in this case was not justified in framing, the admittedly minor, charges under Rule 17 (b) which will have the effect of denial of promotion to the delinquent official even if he is found not guilty at a later point of time.

10. We have considered the rival submissions. The guidelines framed by the government of Tamil Nadu for deciding whether charges may be framed under Rule 17 (b) are as follows:

> "1. Cases in which there is a reasonable ground to believe that the penal offence has been committed by a government servant but the evidence forthcoming is not sufficient for prosecution in a court of law, e.g.,
>
> (a) possession of assets disproportionate to known sources of income;
>
> (b) obtaining or attempting to obtain illegal gratification;
>
> (c) misappropriation of government property, money or shares;
>
> (d) obtaining or attempting to obtain any valuable thing on pecuniary advantage without consideration or for a consideration which is not adequate,etc.,
>
> (2) falsification of government records.
>
> (3) irregularity or negligence in discharge of official duties with dishonest motive."

It is the above guidelines which were considered by the Division Bench in WP No: 3558 of 2004. Considering the guidelines issued by the Government with reference to framing of charges against its employees the Division Bench has observed as follows:

> "Therefore, as per the above guidelines also, as stated earlier, the charges framed against the petitioner will not come under Rule 17 (b), but only under Rule 17 (a) however since the petitioner was imposed punishment on framing charges under rule 17 (b) which is a bar for consideration of promotion, he has been deprived of the promotion to the next cadre. We are therefore of the view that the charges should have been framed under rule 17 (a) and not in rule 17 (b)."

In Kannan -Vs- State of Tamil Nadu reported in 2009 (8) MLJ 217 the learned single judge of this court had followed and reiterated the above dictum of the Division Bench.

11. Adverting to the facts of the present case we find that none of the charges framed against the respondent would fall within the parameters laid down in the guidelines issued by the Government. This being so we do not think that the appellants were justified in framing charges under Rule 17(b) even for minor delinquencies and thereby denying promotion to the respondent. We must point out that even though the Disciplinary Authority has found the respondent guilty of the charges imposed only a minor punishment of stoppage of increment that too without cumulative effect. The said punishment by itself does not operate as a bar for promotion. If so the appellants cannot by framing charges for trivial derelictions under Rule 17 (b) deprive promotion to the respondent.

12. The learned single judge had taken note of the settled position of law and has concluded that even though the punishment imposed on the respondent cannot be set aside the denial of promotion on the ground that the enquiry into grave charges were pending against him cannot be sustained. We are of the considered opinion that the conclusions of the single judge do not warrant interference at our hands.

13. For the foregoing reasons this intra-court appeal is dismissed confirming the judgment of the learned single judge directing the appellants to consider the claim of the respondent for promotion to the post of Sub Registrar Grade I on par with his juniors if he is otherwise found eligible. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of the order. However in the circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jv

To
1. The Secretary to Government,
Government of Tamilnadu
Commercial Taxes & Registration Department,
Secretariat, Chennai 600 009.

2. The Inspector General of Registration,
Chennai 600 028.

+1 CC TO MR.M.RAVI Advocate SR.NO. 54337

Pre Delivery Judgment in

W.A.No.1184 of 2015
and MP No.1 of 2015

VSN II(CO)
ASK(30/08/2018)