

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2018

CORAM:

The Hon'ble MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE S.S.SUNDAR

W.A. No. 1630 of 2018

A.Panneerselvam Appellant/Petitioner

Vs.

1. The Principal Secretary to Government
Revenue Department
Secretariat, Chennai - 600 009.
2. The Special Commissioner &
Commissioner for Revenue Administration
Chepauk, Chennai - 600 005.
3. The District Collector,
Krishnagiri. Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 28.02.2018 passed in W.P.No. 4489 of 2018.

Prayer in W.P.No.4489 of 2018:

Writ Petition filed to calling for the records pertaining to the impugned orders of show cause notice No.12244/2017/A1 dated 04.07.2017 of the 3rd respondent is concerned and the consequential orders of removal from service passed by the 3rd respondent herein and by proceedings No.12244/2017/A1 dated 07.08.2017 and to quash the same in so far as the show cause notice and the orders of removal from service are concerned and consequentially direct the respondents to restore all the service benefits and to allow the petitioner to retire from service consequent on attaining the age of superannuation as on 30.04.2011 forthwith along with all consequential benefits.

For appellant : Mr. R.S.Anandan

For Respondents : Mr. P.S.Sivashanmugasundaram
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by S.S.Sundar, J.)

The brief facts that are necessary for the disposal of this Appeal are as follows:-

The appellant was regularised in service in the post of Tahsildar in the year 2006. On 07.08.2008, a criminal complaint has been lodged against the appellant and based on the said complaint, the appellant has been arrested and thereafter, suspension order dated 08.08.2008 has been issued by the District Collector, Krishnagiri / third respondent against the appellant solely on the ground that the appellant was under the police custody for more than 48 hours.

2. Challenging the suspension order, dated 08.08.2008, the appellant has filed a Writ Petition in W.P.No. 27766 of 2008 before this Court. This Court, by order dated 21.11.2008, directed the second respondent therein, to consider the representation of the petitioner therein dated 20.08.2008 and pass appropriate orders for reviewing the order of suspension, on merits and in accordance with law, expeditiously, in any event within a period of four weeks from the date of receipt of copy of that order.

3. Again, the appellant has approached this Court by way of a Writ Petition in W.P.No. 10602 of 2009 seeking to quash the order of suspension passed by the second respondent therein dated 08.08.2008. This Court, by its order dated 09.06.2010, set aside the impugned suspension order, dated 08.08.2008. Pursuant to which, posting order was issued by the District Collector, Krishnagiri / third respondent to the petitioner on 26.11.2010. Meanwhile, the petitioner was charge sheeted for offence under Prevention of Corruption Act. Pending trial in C.C.No. 1 of 2008 before the learned Chief Judicial Magistrate, Krishnarigi, for offence under Sections 7, 13(2) read with 13(1) (d) of Prevention of Corruption Act 1988, once again the District Collector, Krishnagiri / third respondent placed the appellant under suspension under Rule 17(e) of TNCS (D&A) Rules, dated 29.04.2011. Though the petitioner has attained the age of superannuation on 30.04.2011, the District Collector, Krishnagiri / third respondent, has issued proceedings dated 03.04.2011, not permitting him to retire from service under Rule 56(1)(c) of the Fundamental Rules.

4. Later, the appellant was convicted for the offence under Section 7, 13(2) read with 13(1)(d) of Prevention of Corruption Act. Against conviction, an appeal has been preferred by the appellant in C.A.No. 201 of 2017 along with CrI.M.P.No. 4847 of 2017 before this Court to suspend the sentence of imprisonment. This Court, by its order, dated 07.04.2017, suspended the substantive sentence of imprisonment alone and the appellant was directed to be enlarged on bail on condition.

5. Pursuant to the conviction, a show cause notice was issued to the appellant on 04.07.2017 by the third respondent as to why an order of dismissal under Rule 17(c) (i) (1) of the TNCS (D&A) Rules should not be inflicted as a penalty, for which, the appellant has submitted his explanation on 17.07.2017.

6. The grievance of the appellant is that the third respondent has not considered the explanation submitted by the appellant to the show cause notice and has imposed the penalty of removal from service. Aggrieved by the order of removal from service, dated 07.08.2017, the appellant has preferred an Appeal before the second respondent herein.

7. Pending Appeal preferred by the Appellant before the second respondent herein, he has filed the Writ Petition in W.P.No. 4489 of 2018 challenging the impugned order of show cause notice dated 04.07.2017 and consequential orders of removal from service dated 07.08.2017.

8. First of all, the appellant has admitted that he has filed an Appeal as against the order of District Collector and the same is pending. In such circumstances, the Writ Petition seeking parallel remedy is not even maintainable.

9. The main ground on which the appellant challenges the order of dismissal is that the District Collector has expressed his conclusion in the show cause notice itself, which is the basis for passing order of dismissal and hence it is unsustainable. As a consequence, the appellant states that the punishment of dismissal from service inflicted on him is bad in law.

10. Apart from the reason stated above, the appellant has also challenged the order of dismissal on other ground of suspension of sentence as against him in the appeal preferred against the conviction order.

11. The only point raised by the appellant before the learned Single Judge in W.P.No. 4489 of 2018 was relying upon the interim order of suspension of sentence in the Appeal.

Holding that there is no impediment for the disciplinary authority, namely, the District Collector, to impose the punishment under Rule 17(c) (i) (1) (2) of the TNCS (D&A) Rules, the Writ Petition was dismissed by the learned Single Judge of this Court by order dated 28.02.2018. Aggrieved by the same, the appellant has preferred the above Appeal.

12. The learned counsel appearing for the appellant submitted that the show cause notice issued by the disciplinary authority, namely, the third respondent, clearly shows that the District Collector has predetermined and provisionally came to the conclusion to impose the punishment of dismissal from service and the same is not appropriate at that stage for the third respondent to conclude as to the punishment. Since the show cause notice is defective for indicating the nature of punishment to be imposed at that stage, it is further contended by the learned counsel for the appellant that the show cause notice and the consequential order of dismissal are not sustainable as it has been held in several precedents.

13. In support of his contention, the learned counsel has relied upon the Judgement of Hon'ble Supreme Court in the case of K.I. Shephard and others Vs., Union of India reported in AIR 1998 SC 686. The facts in the above said Judgement relied on by the learned counsel for the appellant is entirely different and it was the case where the Writ Petition was filed by some of the excluded employees of Kochin Bank, who filed the Writ Petition before the Kerala High Court. In a different context, the Hon'ble Court has observed that it is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

14. Since the employees of the Bank were dealt with contrary to the directives to prepare a scheme by the Reserve Bank of India and for the reconstruction of the Banking Company, several issues were considered by the Hon'ble Supreme Court. Ultimately, the order of removal of those employees were held to be in violation of principles of natural justice.

15. The learned counsel appearing for the appellant has also relied upon the another Judgement of the Hon'ble Supreme Court in the case of Siemens Ltd., Vs. State of Maharashtra and Others reported in (2006) 12 SCC 33; wherein the Hon'ble Supreme Court has held in paragraph No. 9 as follows:-

"Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter

alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh v. Brahm Datt Sharma and Anr. AIR 1987 SC 943, Special Director and Another v. Mohd. Ghulam Ghouse and Another, (2004) 3 SCC 440 and Union of India and Another v. Kunisetty Satyanarayana, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See K.I. Shephard and Others v. Union of India and Others (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

16. The Judgement in the case of Siemens Ltd., which has been relied on by the learned counsel for the appellant, is not applicable to the facts in the present case, wherein the show cause notice is not challenged as in the case before Hon'ble Supreme Court. Ultimately, the Hon'ble Supreme Court remitted the matter to the Commissioner on the ground that the authorities have not only expressed a firm opinion regarding the liability of delinquent employee in the show cause notice, but also filed a counter affidavit supporting the stand taken in the show cause notice. Hence, it was held that the show cause notice will not remain a show cause in a case where it is found that the disciplinary authority has made up his mind to impose the punishment and the post decision hearing was only illusory.

17. The learned counsel has also relied upon the unreported Judgement, dated 19.12.2009 delivered by a learned Single Judge of this Court, made in W.P.No. 21785 of 2009, in the case of S.Kalaiyarasu Vs. the Revenue Divisional Officer; wherein this Court has held in paragraph Nos. 9 to 12 as follows:-

"9. Therefore, the question raised herein has to be considered in a different angle. When notice is issued with pre-meditation, a writ petition would be maintainable even in case, wherein a show cause notice has been challenged. In such event, if the court

directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose, since it is evident that in the instant case, the respondent has clearly made up his mind and it is explicitly said so both in the counter affidavit as well as in the show cause notice. Once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose.

10. In this case, when the statutory authority has already applied his mind and has formed an opinion as regards the liability or otherwise of the petitioner, the only question which remains for consideration is the quantification thereof, and the same does not remain in the realm of a show cause notice.

11. The above principle has been laid down by the Supreme Court in a decision reported in 2006 (12) SCC 33 in the case of Siemens Ltd. vs. State of Maharashtra and others. Relevant portions of the said judgment are extracted thus :

"10. Although ordinarily a Writ Court may not exercise its discretionary jurisdiction in entertaining a Writ Petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of Uttar Pradesh vs. Brahm Datt Sharma and Anr., AIR 1987 SC 943, Special Director and Another vs. Mohd. Ghulam Ghouse and another, 2004 (3) SCC 440 and Union of India and another vs. Kunisetty Satyanarayana, 2006 (12) SCALE 262, but the question herein has to be considered from a different angle, viz, when a notice is issued with pre-meditation, a Writ Petition would be maintainable. In such an event, even if the Courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. See K.I.Shephard and others vs. Union of India and others, 1987 (4) SCC 431 : AIR 1988 SC 686. It

is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause."

12. In view of the said legal position, it is crystal clear that if any show cause notice is issued with pre-meditation and pre-determination, with an opinion formed as regards the liability or otherwise of the petitioner, then it is the common experience that once a decision is taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose. Therefore, when the respondent has made up his mind to pass the order of dismissal against the petitioner, as it could be seen from the purported show cause notice dated 18.09.2009, the same cannot be sustained and it is liable to be quashed."

18. We are unable to subscribe to the view expressed by the learned Single Judge of this Court in the case above referred to, as the Judgement of the Hon'ble Supreme Court has been followed by the learned Single Judge, without considering the facts and issues that were considered by the Hon'ble Supreme Court.

19. First of all, this is not a case where the show cause notice is challenged in the present Writ Petition. The appellant has given his explanation to the show cause notice and after considering the same, an order has been passed on merits. The show cause notice was issued indicating the proposed punishment based on the facts admitted. It is not in dispute that the appellant has been convicted for the offence under the provisions of Prevention of Corruption Act. The punishment proposed was not on the basis of any incident but only because of on the conviction in a criminal case. In such circumstances, no prejudice is likely to be caused to the appellant by mentioning the punishment, which was proposed by the disciplinary authority. In a case of this nature, no other punishment than dismissal of service could be and hence, inflicted the contention of the learned counsel for the appellant has no merits.

20. The legal issue now raised before this Court has not been argued before the learned Single Judge. The point, which was not argued by the learned counsel for the appellant, cannot be agitated in an appeal. However, this Court has now considered the legal issue also raised before this Court by the appellant. No other point was argued before this Court. Hence, this Appeal is liable to be dismissed.

21. The Writ Appeal is, therefore, dismissed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vsg
To

1. The Principal Secretary to Government
Revenue Department
Secretariat, Chennai - 600 009.
2. The Special Commissioner &
Commissioner for Revenue Administration
Chepauk, Chennai - 600 005.
3. The District Collector,
Krishnagiri.

+1cc to the Government Pleader Sr.55346
+1cc to Mr.S.P.Patel, Advocate Sr.54583

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