

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2018

CORAM:

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

W.A.No.487 of 2018
and CMP No.4575 of 2018

A.Punniyamurthy

... Appellant

versus

The Secretary to Government,
Revenue Department,
Secretariat, Chennai 9.

... Respondent

Appeal filed against the order passed by this Court dated 27.11.2017 passed in W.P.No.30629 of 2017. Petition under Article 226 of the constitution of India, praying for the issue of a writ of certiorarified Mandamus, calling for the records relating to the respondent vide G.O.(2D) No.344 Revenue (Service-2(3) Department dated 29.11.2016 and to quash the same and consequently direct the respondent to settle the retirement benefits of the petitioner.

For appellant : Mr.S.Vijayakumar

For Respondent : Mr.V.Anandhamoorthy
Additional Government Pleader

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 27.11.2017 made in WP No.30629 of 2017, in and by which, the Writ Petition filed by the appellant challenging the order of the respondent dated 29.11.2016, imposing a punishment of recovery of Rs.500/- from his pension for a period of one year and also directing recovery a sum of Rs.14,000/- from the gratuity of the appellant.

2. The brief facts that led to the filing of the Writ Petition are as follows:

The appellant was working as a Revenue Inspector in Villupuram District. Claiming that the appellant had committed certain delinquencies during distribution of compensation for

loss of cattle, during the 1996 floods certain charges were framed against the appellant under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The charges were that the appellant along with two other officers had claimed a sum of Rs.31,000/- as compensation for death of one cow and 56 goats in Paranoor Village and by creating false documents had misappropriated the said sum of Rs.31,000/- in collusion with the Village Administrative officer.

3. The second charge was that the appellant had aided disbursement of compensation for loss of cattle without arranging for postmortem and without obtaining proper certificates from the Veterinarians. The third charge was that the appellant had created false documents and without obtaining proper guidance from the Superiors had cheated the Government by recommending compensation without proper documents. The fourth charge is that the appellant did not send prompt reports regarding loss of cattle in his operational area, during the floods in 1996. The fifth charge relates to breach of trust.

4. Though the charges were framed as early as 10.05.1999 no enquiry was conducted till the retirement of the appellant. This forced the appellant to approach this Court in WP No.31527 of 2016 seeking a Writ of Certiorarified Mandamus to quash the charge memo dated 10.05.1999. The said Writ Petition was disposed of by this Court, by an order dated 25.10.2016, with the following directions:

"4. In view of the submission made by the learned counsel for the petitioner, this Court directs the respondents to pass final order in the proceedings No.N.K.Service.2(1)/12725/99 dated 10.05.1999 before the end of November 2016, failing which the disciplinary proceedings initiated against the petitioner shall stand lapsed. No costs. Consequently connection miscellaneous petition is closed."

5. Apart from the appellant, two other officers viz. one Mr.R.Prakash, the Village Administrative Officer of Paranoor and Mr.D.Vijayakumar, Revenue Inspector of Villupuram District were also charge sheeted under the very same charge memo dated 10.05.1999. Those two officials also approached this Court by way of Writ Petitions in WP No.11709 of 2012 and WP No.29134 of 2013, this Court had issued similar directions, as stated above, in those Writ Petitions also. Pursuant to the said directions issued by this Court in the above Writ Petitions, the respondent dropped the further proceedings against the two officials viz. R.Prakash and D.Vijayakumar who were also charge sheeted along with appellant vide G.O.2D No.497 dated 30.08.2013 and G.O.2D No.376 dated 27.05.2014 respectively. However, when it came to the appellant, the respondent passed the impugned Government

Order in G.O.(2D) No. 344 dated 29.11.2016 imposing the punishment of recovery as stated supra. The said G.O. dated 29.11.2016 imposing the punishment was challenged by the appellant in WP No.30629 of 2017.

6. The said Writ Petition came to be dismissed at the admission stage itself by an order dated 27.11.2017. While disposing of the Writ Petition, the learned Single Judge found that once the Authorities had concluded that the charges were proved and had imposed the punishment the same cannot be interfered with. The learned Single Judge also concluded that dropping of proceedings in respect of the other two officials, cannot be a justification for dropping of proceedings against the appellant also. Aggrieved the appellant is before us by way of this intra Court Appeal.

7. We have heard Mr.S.Vijayakumar, learned counsel appearing for the appellant and Mr.V.Anandhamoorthy, learned Additional Government pleader appearing for the respondents.

8. It is not in dispute that all the three officials were charge sheeted by common order dated 10.05.1999 for the very same charges and in respect of the two officials viz. Mr.R.Prakash and Mr.D.Vijayakumar, the Government had dropped further proceedings, by the Government Orders dated 30.08.2013 and 27.05.2014 respectively. In fact, while dropping the proceedings against D.Vijayakumar, the Government had taken note of the observations made in WP No.29134 of 2013, wherein, this Court had specifically referred to the judgment of the Hon'ble Supreme court in Rajendra Yadav v. State of Madhya Pradesh and others, reported in 2013 (3) MLJ 101 (SC). In Rajendra Yadav's case, referred to supra, the Hon'ble Supreme Court had held the officials who are equally placed should be treated equally and the Doctrine of Equality applies to all persons who are equally placed even among persons who are found guilty. The Hon'ble Supreme Court, in the said Judgment, observed as follows:

"12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser

punishment for serious offences and stringent punishment for lesser offences."

9. In the case on hand, there is no dispute that all the three officers were charge sheeted for the same incidents and charges were also the same. While the Government had chosen to drop the charges against two of the delinquents had chosen to proceed against the appellant alone, this action of the Government in our considered opinion is directly against the dictum of the Hon'ble Supreme Court, referred to supra. The observation of the learned Single Judge to the effect that the Doctrine of equality cannot be applied to a person who has been found guilty, runs counter to the observation of the Hon'ble Supreme Court.

10. We are therefore of the considered view that the decision of the learned Single Judge dismissing the Writ Petition needs to be interfered with and the same is accordingly set aside. The Writ Appeal is allowed, consequentially in Writ Petition in WP No.30629 of 2017 will stand allowed and the order in G.O.(2D) No.344 dated 29.11.2016 will stand quashed. There will be a direction to the respondents to disburse the retirement benefits of the appellant forthwith. The said exercise shall however be completed within a period of 12 weeks from the date of receipt of copy of this order. Considering the facts and circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv
To

The Secretary to Government,
Revenue Department,
Secretariat, Chennai 9.

+ 1 cc to M/s. S. Vijayakumar, Advocate Sr.37057
+ 1 cc to the Government Pleader Sr.37895

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CP(CO)
EU(27/06/2018)