

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2018

CORAM:

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

W.A.No.702 of 2018
and CMP No.6741 of 2018

1. The Transport Commissioner,
Chepauk,
Chennai 600 005.
 2. The Joint Transport Commissioner,
Chepauk,
Chennai 600 005.
 3. Regional Transport Officer,
Redhills, Nallur Village,
Chennai 600 067.
- ... Appellants

versus

D.Rajan Respondent

Appeal filed against the order passed by this Court dated 31.10.2017 passed in W.P.No.10444 of 2016.

W.P.No.10444 of 2016:-

Writ petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus Calling for the records pertaining to the order passed by the 1st Respondent in his proceedings R.No. 45322/VA1/2011 dated 05.02.2016 and quash the same and direct the Respondents to confer all the consequential benefits to the petitioner.

For Appellants : Mr.V.Anandhamoorthy
Additional Government Pleader

For Respondent : Mr.P.Ganesan
for M/s.C.S.Associates

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 31.10.2017 made in WP No.10444 of 2016 allowing the said Writ Petition and quashing the order of the 1st respondent dated 05.02.2016, in and by which, a punishment of stoppage of increment for a period of 3 years with cumulative effect was imposed upon the respondent for certain proved delinquencies committed by him.

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

The respondent was working as a Superintendent in the Transport Department was charge sheeted for certain delinquencies attributed to him during the year 2011 when he was working as an assistant. Charges came to be framed on 20.08.2013, based on inspection conducted by the Vigilance Flying Squad on 06.07.2011. Certain other officers were also charge sheeted for the irregularities found during the surprise check held on 06.07.2011.

3. An enquiry officer was appointed and after completion of the disciplinary enquiry proceedings, the Enquiry Officer filed a report stating that all the charges stood proved. A second show cause notice was also issued to the respondent and thereafter, the order imposing punishment came to be passed on 05.02.2016. The said order dated 05.02.2016 was impugned in the Writ Petition on several grounds. One of the grounds that was raised was that the Disciplinary Authority insofar as the respondent is concerned is the Deputy Commissioner and an appeal would lie to the 1st respondent against the orders of the Deputy Commissioner imposing punishment.

4. Based on the above, it was contended that the order imposing punishment having been passed by the 1st respondent, who is the Appellate Authority the same has to be set aside. The learned Single Judge, who heard the Writ Petition, accepted the said legal contention raised on behalf of the respondent and allowed the Writ Petition without going into the other factual issues, hence this Appeal.

5. We have heard Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants and

Mr.P.Ganesan, learned counsel appearing for M/s.C.S.Associates, for the respondent.

6. It is not in dispute that three other officials were also charge sheeted, along with the respondent and a common domestic enquiry was conducted. Out of the three officials, two viz. M/s.V.Elangovan and R.Panneerselvam, were in the rank of Motor Vehicle Inspectors, and Mr.K.Srinivasan was in the rank of Office Assistant. It is not in dispute that the 1st appellant viz. The Transport Commissioner is the Disciplinary Authority for Motor Vehicle Inspectors viz. M/s.V.Elangovan and R.Panneerselvam, whereas the Deputy Commissioner is the Disciplinary Authority for the other two viz. the respondent herein and Mr.K.Srinivasan.

7. Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants would rely upon Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and contend that where more than one Government Servant of the same Department are involved, the Authority competent to issue the disciplinary proceeding and impose any of the penalties specified in the Tamil Nadu Civil Services (Discipline and Appeal) Rules, shall be the Authority in the Department, in respect of the Government Servant, who holds the highest post. The said Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, also contemplates the Common Disciplinary Enquiry against all of them.

8. It is not in dispute that the two of the charge sheeted officials viz. M/s.V.Elangovan and R.Panneerselvam, who were Motor Vehicle Inspectors on the date of the occurrence, hold a higher post than that of the respondent. It is also not in dispute that the 1st appellant is the Disciplinary Authority for Motor Vehicle Inspectors. Therefore, the Authorities were justified in proceeding with Disciplinary Enquiry through the 1st respondent. Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, specifically covers such situation where officers holding different ranks in the same Department are charge sheeted. Apparently, the attention of the learned Single Judge was not drawn to the import of Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which resulted in, the Writ Petition being allowed on a technical point.

9. In view of Rule 9(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which enables a common

Disciplinary Enquiry by the highest official, the order of the learned Single Judge in quashing the Disciplinary proceedings and the order imposing punishment on the sole ground that the 1st appellant, who is the Appellate Authority had passed the order imposing punishment cannot be sustained and hence it is set aside.

10. The Writ Appeal is allowed, setting aside the order of the learned Single Judge dated 31.10.2017. As already observed the learned Single Judge has not gone into the merits of the other contentions raised on behalf of the respondent. Hence, we are constrained to remit the Writ Petition to the learned Single Judge for being heard on merits in accordance with law. In fine, the Writ Appeal is allowed, the order dated 31.10.2017 is set aside, the Writ Petition in WP No.10444 of 2016 will stand remitted to the learned Single Judge for being disposed of, in accordance with law on merits. It is made clear that the issue relating to the competency of the 1st appellant to impose the punishment on the respondent cannot be questioned by the respondent during the hearing of the Writ Petition. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Transport Commissioner,
Chepauk, Chennai 600 005.
2. The Joint Transport Commissioner,
Chepauk, Chennai 600 005.
3. Regional Transport Officer,
Redhills, Nallur Village, Chennai 600 067.

+1cc to M/s.C.S.Associates, Advocate, S.R.No.40550
+1cc to the Government Pleader, S.R.No.41424

W.A.No.702 of 2018
and CMP No.6741 of 2018

CS/03/07/18