

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.11099 of 2012

M.S.Subburaman

... Petitioner

-Vs-

1.Government of Tamil Nadu,
Rep. by its Principal Secretary,
Agricultural Department,
Fort St. George,
Chennai-600 009.

2.The Director of Agricultural Marketing and
Agri Business,
Guindy, Chennai-600 032.

3.The Secretary,
Erode Market Committee,
Erode.

... Respondents

(R3 Impleaded as per order dated 17.01.2013 by
DHPJ in M.P.No.2/2012 in W.P.No.11099/2012)

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in G.O.(3D) No.147, Agriculture (Va.Ni.5) Department dated 19.07.2011, confirming the order of the second respondent in Semu.No.AaoNa.2/6098/03 dated 30.12.2006, quash the same, consequently direct the respondents to confer all consequential service and monetary benefits to the petitioner.

For Petitioner : Mr.R.N.Amarnath

For Respondents : Mr.J.Pothiraj,
Special Government Pleader for R1
M/s.V.Jayaprakash Narayanan for R2
Mr.G.Sankaran for R3

O R D E R

Heard Mr.R.N.Amarnath, the learned counsel for the petitioner and Mr.J.Pothiraj, the Special Government Pleader

appearing for the first respondent, M/s.V.Jayaprakash Narayanan appearing for the second respondent and Mr.G.Sankaran entered appearance for the third respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the first respondent in G.O.(3D) No.147, Agriculture (Va.Ni.5) Department dated 19.07.2011, confirming the order of the second respondent in Semu.No.AaoNa.2/6098/03 dated 30.12.2006, quash the same, consequently direct the respondents to confer all consequential service and monetary benefits to the petitioner."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Junior Assistant in the Erode Marketing Committee on 04.12.1986. He was promoted as Supervisor on 08.07.2002. He was further promoted to the post of Superintendent of Markets and he was working as such. The petitioner at the relevant point of time was posted to work at Erode District. While working at Erode District, the petitioner received an offer to purchase a small extent of a plot measuring 1275 sq.ft. in Survey No.101/06, Mettunasuvampalayam Village, Erode District, for a sale price of Rs.30,000/-. As the price offered to the petitioner was reasonable and within the affordability limit, the petitioner wanted to purchase the said plot out of his savings. In this regard, he addressed a letter to the second respondent on 07.02.2002, intimating about the details of purchase of the above piece of land. According to the petitioner, he had also submitted the details relating to the payment for purchase of the said land.

4. In response to the letter, there was no communication from the second respondent. Therefore, the petitioner has submitted another letter on 10.03.2002, intimating the authorities about the urgency in the matter in view of his vendor persisting for early conclusion of the sale. However, there was no prompt response and therefore, the petitioner was constrained to enter into the sale transaction and executed the sale deed dated 10.04.2002. On purchase of the property on 10.04.2002, it appears that the petitioner made an application on 11.04.2002 to the second respondent intimating the purchase of the land. Therefore, according to the petitioner, he had fulfilled his part of obligation in intimating the officials on the purchase of the land.

5. After purchasing the land, the petitioner wanted to put up house construction and for the said purpose, the petitioner

approached local Branch of Canara Bank for housing loan. In this regard, it appears that the petitioner once again submitted a representation to the second respondent on 30.12.2002, seeking permission for putting up construction and the necessary documents were also enclosed along with the letter. It appears that the petitioner also mentioned about the source of funds that would be available for putting up the house construction. However, in the mean while, the loan was sanctioned by the Canara Bank and the bank also started deducting equitable monthly instalments towards the loan along with interest. However, in spite of the petitioner approaching the authorities concerned for grant of earlier permission, the petitioner was directed to furnish more details and this was communicated to the petitioner on 24.01.2003. Even after receipt of the communication which was also complied with by the petitioner, no order was passed by the competent authority granting permission for putting up construction. Since the petitioner was unnecessarily burdened with the payment of interest for housing loan obtained from the Bank, he was forced to commence the construction work, without actual permission being granted.

6. The respondents on coming to know about the construction put up by the petitioner, had issued a charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, framing three articles of charges, vide charge memo, dated 18.06.2004. According to the charge memo, the petitioner had not obtained proper permission for purchase of the land and for putting up house construction in the land purchased by him and therefore, he violated the rules under Rule 7(1)(a), 7(1)(b) and 7(2) and 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. It is further stated that an enquiry was conducted into charges and the petitioner was allowed to participate in the enquiry. After conclusion of the enquiry, a report was submitted holding that the charges were proved against the petitioner on the basis of the enquiry report and after obtaining explanation from the petitioner, the disciplinary authority/second respondent herein imposed a punishment of stoppage of increment for the period of one year with cumulative effect which will have effect on his retirement benefits.

7. Aggrieved by the order passed by the disciplinary authority, an appeal was preferred before the first respondent on 27.03.2007 within the stipulated time. However, the appeal was kept pending for several years and finally, the first respondent has passed an order in G.O.(3D). No.147, Agriculture Department dated 19.07.2011, rejecting the appeal and confirming the order passed by the disciplinary authority on the basis of the opinion given by the Tamil Nadu Public Service Commission. The order passed by the first respondent as well as the

disciplinary authority are put to challenge in the present writ petition.

8. Mr.R.N.Amarnath, the learned counsel appearing for the petitioner would submit that the charges framed cannot be countenanced in law for the simple reason that as per Rule 7 of the Conduct Rules, no permission is required for purchasing the immovable property and mere notice to the authority is sufficient. He would draw the attention of this Court to the relevant provisions of the rules of the Tamil Nadu Servants Conduct Rules, 1973. Rule - 7 of the Tamil Nadu Government Servant's Conduct Rules, 1973, which is extracted hereinunder:

"7. Movable, immovable and valuable property -, (1) (a) No Government servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member his family. Such a notice will be necessary even where any immovable property is acquired by any member of the family of the Government servant out of the resources of the Government servant: Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with the Government servant.

Provided further that the previous sanction of the prescribed authority shall not be necessary for the acquisition of immovable property in respect of house-site assigned by the Government to the Government servant.

* Explanation - A Government servant is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under clause (a), if the immovable property in question is not acquired from the resources of the Government servant concerned.

* Added in G.O.Ms.No.409, P&AR dated 24.12.92.

(b) Every Government Servant, for the construction or extension or acquisition of a house, shall report to the prescribed authority in the following manner:-

(i) before starting the construction or extension or entering into transaction for acquisition of a house either from out of loan or advance from the Government or others or part-final withdrawal from the Provident Fund, he shall obtain previous sanction of the prescribed authority in Form VI or VI-A, as the case may be, in Schedule I appended to these rules;

(ii) after completing the construction or extension, he shall report to the prescribed authority in Form VII in Schedule I appended to these rules. The details in Forms VI and VII in Schedule I appended to these rules shall be furnished wherever it is possible to do so. Where, however, it is not possible to furnish details, the Government servant shall mention the covered area on which the building is erected or proposed to be erected and the estimated cost of the building."

9. Therefore, the first charge cannot be sustained for the fact that the petitioner had informed the authority concerned about his intention to purchase the land. As far as the second charge is concerned, the learned counsel for the petitioner would submit that the petitioner had in fact informed the authority about his intention to commence house construction and he had also submitted all the required particulars and source of funds for putting up such construction. In the mean while, the petitioner was made to suffer loss towards payment of interest for the housing loan obtained from the nationalised bank. Therefore, the petitioner was forced to commence the construction in the said land. However, the factum is that the authorities were put on notice about the intention of the petitioner for commencing the construction and therefore, the second charge cannot said to be sustainable in the eye of law.

10. The learned counsel for the petitioner would also submit that without taking into consideration of these factors, the disciplinary authority as well as the appellate authority have mechanically accepted the enquiry report and imposed the impugned punishment and the same was also confirmed by the first respondent.

11. The learned counsel for the petitioner would also submit that in similar circumstances, on the basis of the opinion obtained from the Tamil Nadu Public Service Commission, a lenient view is taken and the punishment contemplated therein was recalled. In this case alone the petitioner had been imposed with the major penalty of stoppage of increment for the period of one year with cumulative effect. Therefore, the second respondent as well as the first respondent have exercised their power arbitrarily and with a mala fide intention to impose the punishment on the petitioner and therefore, he would pray for quashing the impugned orders of punishment by second and first respondents.

12. Upon notice, Mr.J.Pothiraj, the Special Government Pleader entered appearance for the first respondent and Mr.V.Jayaprakash Narayanan entered appearance for the second respondent and filed a detailed counter.

13. The learned Special Government Pleader would submit that as per the relevant provision of the rule, the petitioner had to obtain prior permission before putting up construction for his house. Such permission has not been granted in this case and therefore, he was rightly proceeded with by way of departmental action and imposed the penalty of stoppage of increment for one year with cumulative effect. According to the learned Special Government Pleader, the petitioner was offered ample opportunity to participate in the enquiry and the findings rendered by the enquiry officer were very clear and therefore, the same did not call for any interference by this Court.

14. This Court has considered the rival submissions of the learned counsels. As rightly contended by the learned counsel for the petitioner that as far as the first charge is concerned, intimation to the authority is sufficient as per the Tamil Nadu Government Servant Conduct Rules and therefore, the Charge - 1 cannot be legally sustained and therefore, there is merit in the contention put forth by the learned counsel for the petitioner. As far as the second charge is concerned, it has to be seen that the petitioner thought fit to inform the official well in advance about the intention for putting up construction in the land and he had also submitted the necessary particulars about the loan obtained by him from the nationalised bank. In fact, when further details were asked from the petitioner, the same were also complied with by the petitioner. That being the case, how is that the petitioner be blamed for not waiting for actual permission from the Government. When the fact of the matter was that the petitioner was also made to pay substantial interest for house loan obtained by him from the Bank. Therefore, by the force of circumstances, the petitioner had to commence the construction. Needless to mention that by passage of time, the

cost of construction materials would also escalate and therefore, the petitioner cannot be made to wait for indefinite period for the permission to be granted by the official concerned.

15. As far as the objection by the respondent that no Government Servant should resort to purchase the property or put up construction without knowledge of the official concerned, in the present case on hand, the petitioner had promptly informed his intention to purchase the land well in advance to the authorities concerned and only when there was no prompt action forth coming from the respondent side, he had to purchase the property and thereafter, he had immediately chosen to inform the officials about his intention for construction of the plot purchased by him. Therefore, the intention of the petitioner to inform the authority cannot be disputed and therefore, this Court is of the considered view that the objection of the respondent also has been fulfilled in this case.

16. Further, the order passed by the Government/the first respondent herein also cannot be sustained in this case for the simple reason that the first respondent seems to have followed the advice given by the Tamil Nadu Public Service Commission and taken a decision in the matter. This Court has held in several decisions that the appellate authority has to exercise his mind independently in dealing with the disciplinary appeals. The appellate authority cannot abdicate its statutory responsibility to any outside agency like Tamil Nadu Public Service Commission and reject the appeal dutifully and mechanically on the basis of the advice given by the Tamil Nadu Public Service Commission. On this ground alone, the order passed by the appellate authority has to be set aside.

17. Be that as it may, in the totality of the facts and circumstances of the case, it should be seen that the petitioner has taken much efforts to inform his intention to the officials well in advance both in regard to the decision to purchase the property and also the construction to be put up in the land purchased by him. Such conduct of the petitioner cannot be faulted with and the same cannot invite the charge memo like the one issued against him. More over, the punishment imposed on the petitioner is also rather disproportionate which will continuously have adverse effect on the entire life time of the petitioner. In any event, as rightly contended by the learned counsel for the petitioner that in respect of similar cases, on the basis of advice given by the Tamil Nadu Public Service Commission, the disciplinary action was dropped as against those persons.

18. For the above said reasons, this Court has no hesitation in allowing the writ petition and the impugned order passed by the first respondent in G.O.(3D) No.147, Agriculture (Va.Ni.5) Department dated 19.07.2011, confirming the order of the second respondent in Semu.No.AaoNa.2/6098/03 dated 30.12.2006, are hereby set aside. There shall be a consequential direction to the respondents to restore the pay of the petitioner as it stood before the penalty was imposed on the petitioner with all monetary benefits. The said direction shall be complied with by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

19. With the above direction, this Writ petition is allowed.
No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Agricultural Department,
Fort St. George,
Chennai-600 009.
- 2.The Director of Agricultural Marketing and
Agri Business,
Guindy, Chennai-600 032.
- 3.The Secretary,
Erode Market Committee,
Erode.

+1cc to Mr.R.N.Amarnath, Advocate SR.No.28507
+1cc to Mr.G.Sankaran, Advocate SR.No.28604
+1cc to Mr.V.Jaya Prakash, Advocate SR.No. 28392
+1cc to Government Pleader SR.No.28837

W.P.No.11099 of 2012

KJ(CO)
GN(26/04/2018)