IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.01.2018

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.19036 of 2012

M.Balasubramanian .. Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Secretary to Government,
Revenue Department,
Chennai-9.

2.The Special Commissioner and
Commissioner for Revenue Administration,
Chepauk,
Chennai-5.

3.The District Collector,
Erode District. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the first respondent vide G.O.[2D] No.72, Revenue [Ser.4[2]] Department, dated 6.3.12 and to quash the same and consequently direct the respondents to accord notional promotion as Tahsildar for the year 2008 of Erode District.

For Petitioner .. Mr.S.Vijayakumar

For Respondents.. Mr.K.Bhuvaneswari
Addl. Govt. Pleader

ORDER

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

> "To issue Writ of Certiorarified Mandamus calling for the records relating to the first respondent vide G.O.[2D] No.72, Revenue [Ser.4[2]] Department, dated 6.3.12 and to quash the same and consequently direct the respondents to accord

notional promotion as Tahsildar for the year 2008 of Erode District. ”

2.The petitioner joined the Revenue Department in the year 1968 and his service was regularised in 1978 and posted as Junior Assistant in the office of Taluk Office, Bhavani. He was promoted to the post of Assistant on 10.03.1983 and later promoted as Deputy Tahsildar on 18.02.2005 and on attaining the age of his superannuation, the petitioner retired from service on 30.09.2008.

3.On the eve of his retirement, a charge memo was issued under Rule 17 [b] of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, alleging certain acts of misconduct on the part of the petitioner. The charges were framed on the ground that he failed to properly supervise the subordinate official in regard to the reconciliation of Taluk Office collection data with the concerned Sub Treasury data, which was handled by the Village Administrative Officer. Failure to supervise and monitor the treasury account, resulting which, the Village Administrative Officer had misappropriated some amount due and payable to the Treasury. An enquiry was conducted by the authorities and in the enquiry on behalf of the petitioner, it was brought to the knowledge of the enquiry officer that the act of supervising and monitoring the reconciliation of account data by the Village Administrative Officer must be done at the level of Personal Assistant of the Collector and such duty does not come under the purview of the duties of the petitioner. However, in spite of the explanation, the enquiry report was submitted by holding that the charges proved and on the basis of which, the disciplinary authority had passed an order on 08.03.2012, imposing the punishment of Rs.50/- cut per month in pension for a period of two years. The said punishment is put to challenge in this writ petition.

4.Mr.S.Vijayakumar, the learned counsel for the petitioner would submit that the issuance of charge memo itself is illegal since it is not the job of the petitioner to supervise and monitor the acounts handled by the Village Administrative Officer and it was the job of the Personal Assistant to the Collector. The Revenue Department has issued a clear circular dated 14.11.2012, stating that the account transctions in respect of local Treasury is to be supervised and monitored by the Personal Assistant to the Collector and that being the situation, framing of the charges that too under 17 (b) of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, is abritrary and not valid. According to the learned counsel, the Disciplinary Authority has recognised the position when the impugned order passed. He would draw the attention of this Court that the findings of the Discipliarny Authority in para-5 of the impugned order stating that though it was not a duty of the petitioner to supervise and monitor the data of reconciliation of accounts handled by the Village Administative Officer, however, he failed to discharge his duties. Therefore, the petitioner cannot be beld responsble for any derliction of duty.

5.Upon notice, K.Bhuvaneswaran, the learned Additional Government Pleader entered appearance on behalf of the respondents, filed a counter affidavit and reiterated what is said in the impunged order passed by the disciplinary authority/the first respondent herein.

6.This Court has considered the rival submission of the learned counsels and perused the materials and pleadings placed on record.

7.It is to be noted that as per the circular dated 11.04.2012, the duty of supervising and monitoring the reconciliation of accounts pertaining to the Treasury is normally within the domain of the Personal Assistant to the Collector and therefore, the petitioner cannot be held responsible for lack of supervision as alleged in the charge memo. Therefore, this Court is in agreement with the submissions made by the learned counsel for the petitioner that failure to supervise the accounts handled by the Village Adminstative Officer on the part of the petitioner, cannot give rise to any charge memo that too under 17 [b] of Tamil Nadu Civil Service [Discipline & Appeal) Rules.

8.Though the punishment which has been ultimately imposed was minor penalty, however, it has to be seen whether such penalty can be imposed on the basis of charge, which cannot be construed as one of misconduct, which may give rise to any disciplinary action initiated in the present case. This Court is of the considered view that framing of charge was not on valid ground in view of the specific position, as pointed out by the learned counsel for the petitioner, vide, circular, dated 11.04.2012. In fact, this has been admitted by the Disciplinary Authority, despite the same, he has chosen to impose penalty on the petitioner.

9.In the light of the above, this Court has no hesitation in allowing the writ petition and therefore, the impugned order of the first respondent vide G.O.[2D] No.72, Revenue [Ser.4[2]] Department, dated 06.03.2012, is set aside. The first respondent is directed to refund the amount recovered from the petitioner. The petitioner is also entitled to any other further benefits that were admissible and payable to him on the basis of the present order. The first respondent is directed to refund the amount and pass further orders in compliance of the above order, in within a period of four weeks from the date of receipt of a copy of this order.

10.With the above direction, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kal

To

1.The Secretary to Government,
The Government of Tamil Nadu,
Revenue Department,
Chennai-9.

2.The Special Commissioner and
Commissioner for Revenue Adminsitration,
Chepauk,
Chennai-5.

3.The District Collector,
Erode District.

+1cc to Mr.Vijayakumar, Advocate Sr.No.2829

+1cc to Government Pleader SR.No.3312

MG(CO)
sm:9.2.2018