

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19992 of 2007

K.Ramesh

... Petitioner

Vs.

1.The Secretary to Government,  
Commercial Taxes and  
Registration Department,  
Fort St.George, Chennai - 9.

2.The Inspector General of Registration,  
Chennai.

3.The District Registrar,  
Central Madras, Chennai.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in No.4797/A1/99-3 dated 01.10.2002 passed by the 3rd respondent and No.49929/Aa1/2002 dated 23.06.2003 by the 2nd respondent and G.O.(D) No.101 dated 09.03.2006 Commercial Taxes and Registration Department passed by the 1st respondent and quash the same and consequently direct the respondents to reinstate the petitioner into service with all benefits.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents: Mr.K.Ravikumar

Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records connected with the proceedings issued in No.4797/A1/99-3 dated 01.10.2002 passed by the third respondent and No.49929/Aa1/2002 dated 23.06.2003 by the second respondent and G.O.(D) No.101 dated 09.03.2006 Commercial Taxes and Registration Department passed by the first respondent and to quash the same and to consequently direct the respondents to reinstate the petitioner into service with all benefits.

2.The case of the petitioner is that the petitioner joined the service as Night Watchman on 06.07.1992 and has completed ten years of service in the Registration Department as Office Assistant. On 23.06.1999 a charge memo was issued to the petitioner under Rule 17 (b) of the CCA (D&A) Rules alleging that his employment registration card no.14026 dated 06.12.1988 belongs to another one Ramesh and the petitioner has misused the said card and has joined in service, for which the petitioner gave his reply. Thereafter, Enquiry Officer was appointed and the Enquiry Officer held the charges as proved.

3.It is the further case of the petitioner that thereafter, a show cause notice dated 27.09.2001 was issued to the petitioner for which, the petitioner gave his reply on 28.11.2001. However, the second respondent vide order dated 23.06.2003 imposed the punishment of dismissal from service. Aggrieved by the same, the petitioner preferred appeal before the first respondent and the first respondent vide order dated 09.03.2006 dismissed the appeal. Hence, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner invited the attention of this Court to the order of the first respondent dated 09.03.2006 and submitted that after the original Authority passes an order, the only opportunity to ventilate the petitioner's grounds is before the Appellate Authority and it is the duty of the Appellate Authority to discuss each and every issue. However, in the present case, the Appellate Authority without considering the petitioner's case has simply dismissed the appeal and confirmed the order of the original Authority which is un-sustainable.

5.In support of his contentions, the learned counsel appearing for the petitioner relied upon the decision of a Division Bench of this Court made in the case of The Joint Commissioner of Police, Traffic Zone, Vepery, Chennai - 7 and another Vs. G.Anandan in W.A.No.668 of 2007 dated 19.09.2007, the relevant portion of which, reads as follows:

"7.(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider:

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the

Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders.

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of case.

4. The word consider in Rule 27(2) implies due application of mind. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to

whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside."

The above decision was followed by the Supreme Court in its latter judgment reported in (2006) 4 SCC 713 Narinder Mohan Arya v. United India Insurance Company Limited & Others).

(c) Another Division Bench of this Court in 2004 (3) LW 32 (M.Nagarajan & Others v. The Registrar, High Court, Madras-600 104 and another) following the above referred decision in AIR 1986 SC 1040 (cited supra), set aside the order of the appellate authority for non-compliance of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and remitted the matter back to the appellate authority to pass fresh orders by following the said rules.

11. In the light of the above decisions and having regard to Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, quoted above to be followed in this case by the appellate authority, the order of the appellate authority cannot be sustained. Yet another factor in this case is Chapter X (88) (1) of the Police Standing Order, which reads as follows, "Police Standing Order - Chapter X (88) (1) Provides: Absence without leave for 21 days completes the offence of desertion, after which the officers' name shall invariably be struck off from the date of absence.

(2) provides: An Application for reinstatement from an officer who has been struck off as a deserter shall not be entertained, unless it reaches the Superintendent or an officer of equal rank under whom the subordinate officer was

serving, within two months or the date of the commencement of the absence without leave. The superintendent of Police, if he satisfies after such an enquiry as may be necessary, shall reinstate him in service."

12. It is also the fact that on the 59<sup>th</sup> day the respondent appeared before the Superintendent of Police with medical certificate and he was permitted to join duty. We are not expressing any opinion about the said factual aspect in this appeal and we leave it open to the appellate authority to consider the same while passing fresh orders in the appeal.

13. In the result, we set aside the order of the appellate authority dated 12.08.2006 and remit the matter to the first appellant herein to pass fresh orders following Rule 6 (1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, within a period of four weeks from the date of receipt of copy of this order. The order of the learned single Judge is set aside."

6. Heard the arguments advanced on either side and I have also gone through the entire material available on record.

7. On perusal of the impugned order, this Court is satisfied that the Appellate Authority has not applied its mind and simply extracting the charge memo and the order passed by the Disciplinary Authority has dismissed the appeal which is non est in law. Hence, applying the ratio laid down in the decision cited supra, I am inclined to set aside the order passed by the Appellate Authority. Accordingly, the order passed by the first respondent dated 09.03.2006 is set aside and the matter is remitted back to the first respondent for fresh consideration after following the due process of law.

8. The writ petition is disposed of in the above terms. No costs.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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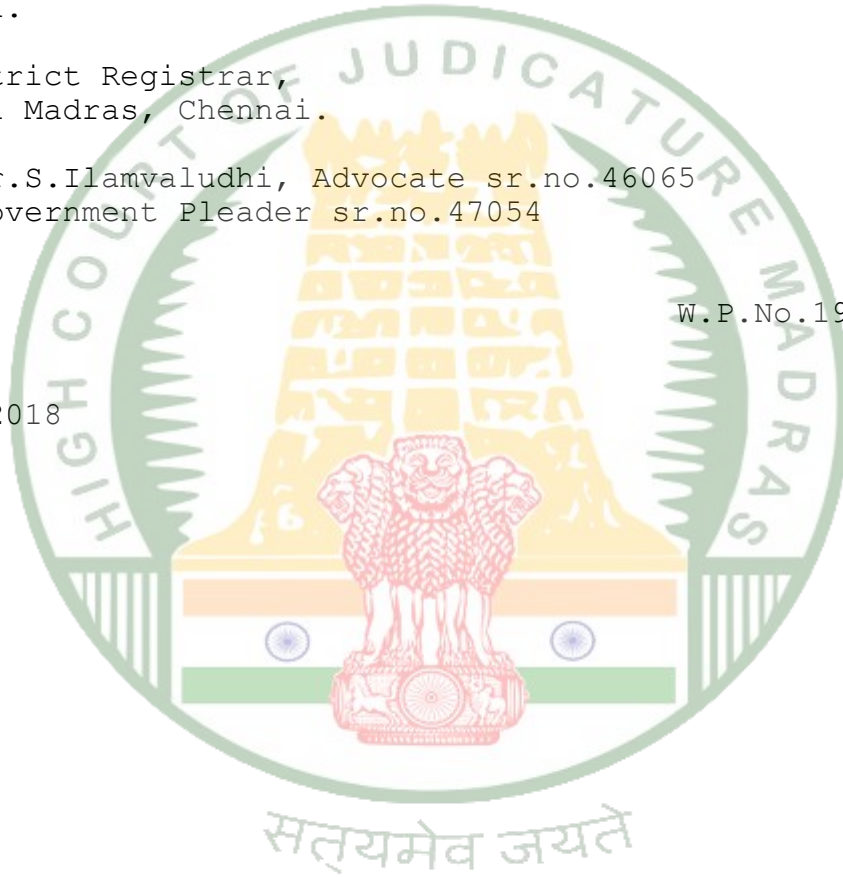
To

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- 3.The District Registrar,  
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+1cc to Mr.S.Ilamvaludhi, Advocate sr.no.46065  
+1cc to Government Pleader sr.no.47054

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