



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)No.8832 of 2018

and

W.M.P.(MD) Nos.8262 and 8263 of 2018

R.Bagavathi Chandran

... Petitioner

Vs.

1.The Inspector General of Registration,
O/o.the Registration Department,
No.100, Santhome High Road,
Chennai - 28.

2.The District Registrar (Administration)
O/o.the District Registrar Office,
Collectorate Campus,
Palayamkottai,
Tirunelveli District.

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned dismissal order issued by the 1st respondent in his proceedings in No.49352/A1/2016 dated 27.03.2018 (served to the petitioner on 12.04.2018) and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan, Senior counsel
for M/s.Ajmal Associates

For Respondents : Mr.M.Murugan, G.A.

O R D E R

The prayer sought for herein is for a Writ of Certiorari, calling for the records relating to the impugned dismissal order issued by the 1st respondent in his proceedings in No.49352/A1/2016 dated 27.03.2018 (served to the petitioner on 12.04.2018) and quash the same as illegal.

2.The short facts, which are required to be noticed for the disposal of the writ petition, are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>
The petitioner was appointed as Junior Assistant on 09.06.1983 at Sub Registrar Office, Shenkottai, Tirunelveli District. He was



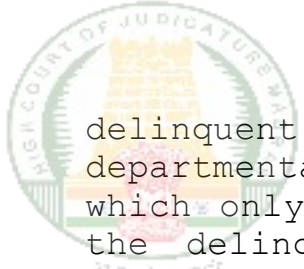
thereafter promoted as Assistant on 17.01.1994. He was thereafter promoted as Sub Registrar on 16.09.2009. While he was working as Sub Registrar, Kovilpatti, a Charge memo came to be issued by the first respondent under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 21.11.2016. Based on the said charge memo, enquiry was conducted by an enquiry officer appointed in this regard and thereafter, an opportunity was given to the petitioner to make his defence. Thereafter, based on the enquiry officer's report as well as the explanation/defence given by the petitioner, the disciplinary authority i.e. the first respondent passed the impugned order of punishment dated 27.03.2018. By the said order of punishment, the first respondent inflicted punishment of dismissal from service on the petitioner. Challenging the said order punishment dated 27.03.2018, the petitioner filed this writ petition with the aforesaid prayer.

3.I have heard Mr.M.Ajmal Khan, learned senior counsel appearing for the petitioner, who would submit that, on perusal of the impugned order, especially paragraph No.6, it would make clear that the disciplinary authority, without independently applying his mind on the veracity of the charge as well as the findings of the enquiry officer including the defence/explanation given by the delinquent i.e. the petitioner, has come to a swift conclusion within three lines at para 6 of the impugned order, accepting the enquiry officer's report and thereby awarding the major punishment of dismissal from service. In this regard the learned senior counsel would submit that, the disciplinary authority must have given reasons in the impugned order as to how and why the disciplinary authority has accepted the enquiry officer's report and rejected the defence given by the delinquent and only based on his independent consideration on the merits of the charge as well as the defence and the enquiry officer's report, the disciplinary authority must have inflicted the punishment. However, herein the case on hand, no such procedure has been followed, which is in violation of Rule 18(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

4.The learned senior counsel appearing for the petitioner, in support of his contentions, has relied upon the following decisions:

- i. (2010) 1 MLJ 714 - V.P.Chellappa V. Superintending Engineer, T.N.E.B. and others*
- ii. (2010) 7 MLJ 48 - P.Anthony Rajamani V. Commissioner of Police, Coimbatore City.*
- Iii. (2010) 2 Supreme Court Cases 497 - G.Vallikumari V. Andhra Education Society and others.*

5.By citing the above judgments, the learned senior counsel has argued that, unless reasons are given by the disciplinary authority as a basis for arriving at conclusion that the



delinquent was guilty and the guilt has been proved during the departmental enquiry conducted by the department and based on which only the disciplinary authority comes to a conclusion that the delinquent is deserved to be punished under the relevant service rules and thereupon, if such punishment is awarded, the same can be accepted, otherwise the said punishment awarded by the disciplinary authority is untenable.

6. Therefore, the learned senior counsel would submit that, in view of the violation of the aforesaid rules and also against the dictum of the Hon'ble Apex Court as well as this Court in the decisions referred to above, since the disciplinary authority has come to a sudden conclusion within three lines, stating that the petitioner is deserved to be punished, without assigning any reason independently on his own assessment, the disciplinary authority viz., the first respondent ought not to have passed the impugned order. Therefore, the same is liable to be interfered with.

7. Per contra, Mr. M. Murugan, the learned Government Advocate appearing for the respondents would submit that, the charges framed against the petitioner are serious in nature and based on the charges, opportunity was given to give explanation and thereafter, enquiry officer was appointed, by whom, full-fledged departmental enquiry was conducted and the petitioner has not raised any ground about the manner in which the enquiry was conducted and concluded.

8. The learned Government Advocate would further submit that, after having completed the enquiry, the enquiry officer has submitted his report and thereafter also chance of giving explanation was given to the petitioner and after getting his explanation only, the disciplinary authority, after having discussed the charges given against the petitioner as well as defence given by the petitioner, came to the conclusion that the enquiry officer's report has to be accepted and accordingly, the punishment under Rule 17(b) was inflicted against the petitioner through the impugned order. Therefore, the learned Government Advocate submits that, the impugned order does not require any interference from this Court as a detailed consideration has been shown by the disciplinary authority and hence, the writ petition is liable to be rejected.

9. I have heard the rival submissions made by the learned senior counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents and also perused the materials placed before this Court.

<https://hcservices.courts.gov.in/hcservices/>
10. I have gone through the impugned order dated 27.03.2018 passed by the first respondent, wherein, upto para 5, the charge

framed against the petitioner as well as the defence/explanation given by the petitioner/delinquent has been narrated. Also enquiry officer's report has been given in the said narration. After narrating the contents of the charge as well as the defence/explanation given by the petitioner upto para 5 of the impugned order, the first respondent has given his reason as he accepts the enquiry officer's report and rejects the defence given by the delinquent/petitioner at paras 6 and 7, which read thus:

“6) தனியர் மீது சமத்தப்பட்ட குற்றச்சாட்டு, தனியரின் விளக்கம், விசாரணை அலுவலரின் அறிக்கை, தனியரது மேல்விளக்கம் மற்றும் தேர் முக விசாரணையின் போது தனியர் அளித்த வாக்குமூலம் ஆகியன தொடர்புடைய பதிவுறுக்களுடன் கவனமாகப் பரிசீலனை செய்யப்பட்டது.

“Inquiry Officer findings are accepted and I am hereby awarding the punishment of dismissal from service as the land in question is a government land.

இவ்வாணையின் மீது மேல்முறையீடு ஏதுமிருப்பின், ஆணை பெறப்பட்ட நாளிலிருந்து 2 மாதங்களுக்குள் பிரதமில் அரசுக்கு மேல்முறையீட்டு மனுவினை உரிய வழிமுறையாக அனுப்பலாம்.”

11.On perusal of the aforesaid reasoning or findings given by the disciplinary authority, i.e. the first respondent at paras 6 and 7, one can easily say that the disciplinary authority has not independently applied his mind and has not given any independent reasons, after having assessed the charge as well as defence taken by the delinquent, before come to the conclusion that the enquiry officer's report can be accepted.

12.In this regard, as has been rightly pointed by the learned senior counsel appearing for the petitioner, Rule 18(b) of Tamil Nadu Civil Services(Discipline and Appeal) Rules can very well be pressed into service. To appreciate the said rule, it is extracted herein:

“All orders of punishment shall also state the grounds on which they are passed and shall be communicated in writing to the person against whom they are passed”

13.The aforesaid Rule has clearly mandated that, all orders of punishment shall also state grounds on which they are passed and shall be communicated in writing to the person, against whom they are passed.

14.Therefore, it discloses and mandates that the grounds, based on which the disciplinary authority comes to a conclusion to award a punishment, shall not only be form part of the order, but also, the same shall be communicated to the person, against whom, such orders are passed. Therefore, the intention of the rule is to make it clear that, in case of punishment, the disciplinary authority, who passed order of punishment, shall not only record the reasons basing on which he comes to such a conclusion to award the punishment, but also shall communicate the reasons to the



person, against whom, such order of punishment is made. Therefore, it is mandatory on the part of the disciplinary authority to record his findings, which shall be basis for his conclusion to inflict the punishment against the delinquent. Therefore, the said reasons to be recorded by the disciplinary authority shall be explicit and the same shall be communicated means, it shall be form part of the order of punishment to be made by the disciplinary authority. If such import of the said rule is applied to the facts of the present case, especially in the context of the reasons given by the disciplinary authority at para 6 of the impugned order as has been extracted above, one can easily come to a conclusion that the parameters set out in Rule 18 (b) has not been followed by the first respondent disciplinary authority while passing the impugned order of punishment against the petitioner.

15. As has been rightly relied upon by the learned senior counsel appearing for the petitioner in the judgment in (2010) 1 MLJ 714 - *V.P.Chellappa V. Superintending Engineer, T.N.E.B. and others* cited supra, the learned Judge of this Court, almost in a similar situation, has made the following observation, which are usefully referred herein:

"7. Perusal of both the disciplinary as well as the appellate orders makes it clear that there has been a total non-application of mind with reference to certain important parameters to be considered while recording guilty. The factors to be considered by the disciplinary as well as the appellate authorities are, (1) The facts established offer sufficient ground for taking disciplinary action, (2) Whether the facts on the basis of which, the order was passed, have been established, and (3) Whether the penalty is adequate or inadequate.

11. A Division Bench of this Court has also expressed similar views in *K.Elaperumal v. The Deputy Inspector General of Police, Madurai* and another reported in 2009 Writ LR 112, where the Bench has held that the order passed by appellate authority should indicate application of mind and reasons, however brief they may be, should be incorporated in the order. In the said case, it was further held that the Appellate Authority by a very laconic order has merely recounted the allegations and observed that no new point has been brought to the notice. Such an order cannot be construed as reasoned order.

12. As both the orders of the Disciplinary as well as Appellate authorities do not reflect the consideration of the parameters stated supra and following the dictum laid down by the Division Bench of this Court in the above referred case, this Court is of



the considered view that the impugned orders are liable to be set aside and accordingly, set aside. It is stated by the learned counsel appearing for the parties that during the pendency of the Writ Petition, a sum of Rs.1,62,209/- directed to be recovered by the disciplinary authority, had already been recovered at the rate of Rs.2,000/- per month, pursuant to the interim orders passed by this Court.

13. Hence, the matter is remitted back to the disciplinary authority to consider the disciplinary proceedings afresh and consider all the relevant parameters, stated supra, as well as the further representation of the petitioner in accordance with law and pass appropriate orders, within a period of two months from the date of receipt of a copy of this order. If the respondents come to any conclusion that the petitioner has not committed the act of misconduct, as alleged, the amount recovered shall be refunded."

16. The yet another decision in (2010) 7 MLJ 48 - *P. Anthony Rajamani V. Commissioner of Police, Coimbatore City*, cited supra, as relied upon by the learned senior counsel for the petitioner can also be taken note of herein at this juncture. In the said decision, the learned Judge of this Court has held as follows:

"6. The Honourable Supreme Court has held in the latest Judgment reported in *G. Vallikumari vs. Andhra Education Society and others* (2010 2 SCC 497) that reasons must be given for accepting or rejecting the claim of an individual. In Para 19 it was stated as follows:

"19. In his order, the Chairman of the Managing Committee did refer to the allegations levelled against the appellant and representation submitted by her in the light of the findings recorded by the enquiry officer, but without even advertent to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules



of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

As per the ruling of the Supreme Court, it is clear that when the Disciplinary Authority has passed the order, removing the petitioner from service without recording reasons and by simply referring to findings of enquiry officer, it is not sustainable. The order is therefore violative of the statutory rules and principles of natural justices and it is not sustainable.

7. The learned counsel appearing for the petitioner also relied upon the latest decision of the Honourable Supreme Court reported in State of Uttaranchal and another vs. Sunil Kumar Singh Negi (2008 11 SCC 205) wherein the decision reported in Raj Kishore Jha vs. State of Bihar (2003 11 SCC 519) was reported. In Para 11, it was held as follows:-

"11. "8. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made;.....".

The above Supreme Court Judgment would clearly indicate that there should be reasoning for any order so as to enable the claimant to know as to and on what basis his contention was not accepted.

8. The learned counsel appearing for the petitioner also relied upon the two ruling of this Court reported in V.P.Chellappa v. Superintending Engineer, T.N.E.B. Dharmapuri-5 and others (2010 1 MLJ 714) wherein it was held that the order passed by the Appellate Authority should indicate application of mind and reasoning however brief they may be, should be incorporated in the Order, which admittedly is lacking in this case. Paras 8 and 9 are extracted hereunder:

"8. It is well settled that the disciplinary as well as appellate authorities are the fact finding authorities and therefore, when the right of appeal is a substantive right, the appellate authority ought to have passed a reasoned order dealing with the contentions



of indication of application of mind in the context of Rule 120(1)(d)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi-judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognised facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the authority concerned."

18. Taking into account the principles mentioned in the aforesaid judgments it would clearly indicate that even an administrative authority, who is entrusted with the task of passing order in disciplinary proceedings, must have recorded reasons for come to such conclusion to inflict the punishment on the delinquent and if such reasons are not recorded by the said authority, certainly, the order passed by the said authority shall be vitiated. If we applied the aforesaid parameters and principles to the facts and circumstances of the present case especially in the context of para 6 of the impugned order, as the said para alone gives reasons in three lines by the first respondent to come to the conclusion to inflict the maximum punishment of removal of service against the petitioner, certainly it would disclose that the impugned order does not meet the aforesaid parameters or principle laid down in the said judgments and also it does not meet the mandatory requirement as contemplated under Rule 18(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

19. Therefore, this Court is of the view that the impugned order, on the ground of non recording of reasons by the disciplinary authority independently by applying the mind of the disciplinary authority in the impugned order of punishment, is liable to be interfered with. Accordingly, the impugned order, since it is vitiated for the said reasons alone, is liable to be quashed.

20. In the result, the impugned order is quashed and the matter is remitted back to the first respondent for reconsideration. While making reconsideration, the first respondent shall apply his mind independently and record his own reasoning in each of the charges framed against the petitioner as well as the defence given by the petitioner and also the findings given by the enquiry officer in that regard and pass orders thereon. It is made clear that this Court while quashing the impugned order does not express any opinion about the merits of the findings given by the enquiry officer. The impugned order is quashed only on the ground of non



disclosure of reasoning in the impugned order itself as has been discussed above.

21. The needful as indicated above shall be undertaken by the first respondent, within a period of two months from the date of receipt of a copy of this order and within such time, final order shall be passed.

22. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Inspector General of Registration,
O/o. the Registration Department,
No. 100, Santhome High Road,
Chennai - 28.

2. The District Registrar (Administration)
O/o. the District Registrar Office,
Collectorate Campus,
Palayamkottai,
Tirunelveli District.

+1cc to M/S. AJMAL ASSOCIATES, Advocate, SR.No. 64547

+1cc to M/s. Special Government Pleader, SR.No. 64120

W.P (MD) No. 8832 of 2018

and

W.M.P. (MD) Nos. 8262 and 8263 of 2018

27.04.2018

ARUL

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