



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.07.2018
CORAM :
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P(MD)No13948 of 2014
and
M.P.(MD) No.1 of 2014

S.Dhanasekaran

... Petitioner

Vs.

The District Collector,
Ramanathapuram District,
Ramanathapuram.

... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in Na.Ka.Va5/10492/2013 dated 08.08.2014, quash the same.

For Petitioner : Mr.AR.L.Sundaresan, senior counsel
for Mr.Veil Kani Raju
For Respondent : Mrs.S.Srimathy Spl.G.P.

ORDER

The prayer sought for in this writ petition is for a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in Na.Ka.Va5/10492/2013 dated 08.08.2014 and quash the same.

2.Heard Mr.AR.L.Sundaresan, senior counsel for Mr.Veil Kani Raju, learned counsel appearing for the petitioner and Mrs.S.Srimathy, learned Special Government Pleader appearing for the respondent.

3.When the petitioner was working as Deputy Block Development Officer (Audit) in R.S.Mangalam Panchayat Union, he was issued with the charge memo dated 24.07.2013. In the said charge memo, 5 charges were framed against the petitioner. Along with the said charge memo, in Annexure 3, the respondent has stated that there are no supporting documents on the side of the prosecution/department to substantiate the said charges. In Annexure 4 to the said charge memo, the respondent has stated that there are no witnesses on the side of the prosecution/department to be enquired. Accordingly, enquiry was conducted and ultimately, by impugned order dated 08.08.2014, the respondent has inflicted the punishment of reduction in rank, reducing the rank of the petitioner from Deputy Block Development Officer to Junior Assistant till 31.12.2010 in the time scale of pay of Rs.5200 - 20200 + G.P.2400. Challenging the said punishment dated 08.08.2014, the present writ petition has been filed.

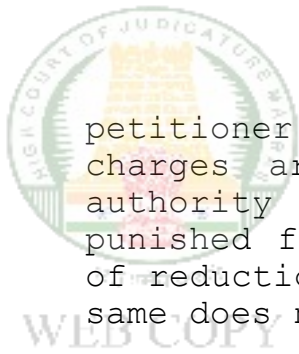


4.I have heard the learned senior counsel appearing for the petitioner, who had straight away taken me to the said Annexures 3 and 4 given along with the charge memo dated 24.07.2013. By relying upon the said annexures, the learned senior counsel would submit that it was an admitted fact that there are no documents on the side of the department/prosecution to substantiate the said charges. It is also asserted on the side of the respondent to state that, there are no witnesses on their behalf to be enquired. When that being the position, the enquiry officer, in his enquiry report, has stated that he has relied upon the documents and has come to a conclusion that the charges made against the petitioner have been proved. Based on the said enquiry report, the respondent District Collector, who is the disciplinary authority has stated in one paragraph that the enquiry officer's report has been accepted and the charges have been proved and lapses committed by the individual was grave and therefore, punishment was given.

5.In this regard, the learned senior counsel would submit that, when there are no documents on the side of the department to substantiate the allegation made in the charge memo, the enquiry officer could not have referred to any documents and if at all, the enquiry officer could have referred to some documents, those documents should have been given to the petitioner/delinquent and after giving sufficient opportunity by furnishing those documents, enquiry should have been conducted. When this basic requirement has not been followed by the enquiry officer, it is a grave violation of the principles of natural justice and therefore, on the said ground itself, the entire enquiry conducted by the enquiry officer is vitiated.

6.Apart from the aforesaid infirmity, the learned senior counsel would submit that, the disciplinary authority i.e. the respondent, on considering the said enquiry report, should have independently applied his mind in each of the charges and the defence given by the delinquent and the views of the disciplinary authority should have also been made clear in the order of punishment as to how the disciplinary authority has accepted the enquiry officer's report and has rejected the defence taken by the delinquent. Without making any such view on the side of the disciplinary authority, who is the respondent herein, he has simply accepted and adopted the enquiry officer's report and straight away proceeded to inflict the punishment against the petitioner. Therefore, the impugned order is vitiated.

7.Per contra, the learned Special Government Pleader would submit that, the respondent, who is the disciplinary authority, after having exhaustively extracted the import of each of the charges framed against the petitioner and also the defence taken by the petitioner in each of the charges and the conclusion arrived at by the enquiry officer and after having gone in entirety, has come to a correct conclusion that the charges framed against the



petitioner had been proved and therefore, since the said proven charges are very serious in nature or grave, the disciplinary authority had come to a conclusion that the petitioner shall be punished for a major punishment. With result, the said punishment of reduction in rank was imposed against the petitioner. Hence, the same does not require any interference from this Court.

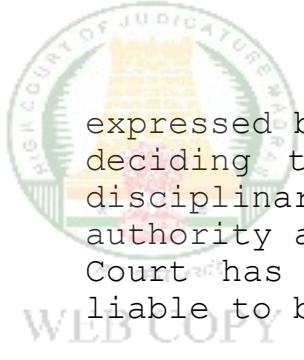
8.I have considered the submissions made by both sides and perused the materials available before this Court.

9.As has been rightly pointed out by the learned senior counsel appearing for the petitioner, when there is no document on the side of the prosecution/department to substantiate the charges as has been stated in the annexure 3 to the charge memo and there had been no document available for furnishing the same to the delinquent before proceedings the enquiry, the enquiry officer ought not to have relied upon any such document. Also, he has relied upon the evidence of the persons, whereas, no such evidence in the eye of law were available according to the department as they have admitted in annexure 4 to the charge memo. When that being the position, the said enquiry even though was conducted with the cooperation of the petitioner without furnishing the copies of the documents relied upon by the enquiry officer and without giving any opportunity to the petitioner to cross examine any of the witnesses, but statements or witnesses since have been relied upon by the enquiry officer, the entire enquiry conducted by the enquiry officer, can be safely concluded to be a farce. And accordingly, it is vitiated.

10.When that being the position, the disciplinary authority also in the impugned order has simply stated in one paragraph, which reads thus:

"I, the District Collector, Ramanathapuram have carefully and independently examine the lapses and the explanation submitted by the individual and findings of the enquiry officers with connected records, the charges are has been proved, the lapses committed by the individual is grave. Hence explanation given by the individual is not accepted. "The rank of the individual reduced to Junior Assistant level till 31.12.2020 in the time scale of pay Rs.5200-20200+G.P.2400" is awarded as a measure of punishment."

11.The disciplinary authority has simply stated that after examining the lapses and the explanation submitted by the individual and finding of the enquiry officer with connected records, the charges have been proved. Each and every charges framed against the petitioner, the defence given by the delinquent and also the findings given by the enquiry officer must have been independently considered by the disciplinary authority and his views in that regard must also be recorded before coming to the conclusion as to how and why the disciplinary authority has concurred with the views



expressed by the enquiry officer. In this case, the basic import of deciding the punishment be imposed against a delinquent by the disciplinary authority has not been followed by the disciplinary authority as it is evidenced in the impugned order. Therefore, this Court has no hesitation to hold that the impugned order is not liable to be sustained and hence, the same is liable to be quashed.

12. In that circumstances, this Court is inclined to quash the impugned order by remitting the matter back to the disciplinary authority to appoint a fresh enquiry officer with clear guidelines and conduct enquiry by giving proper opportunity to the petitioner/delinquent by supplying documents, which are going to be relied on by the prosecution/department and also if the enquiry officer permitting any person to make evidence, opportunity of cross examination also shall be provided to the delinquent/petitioner. After affording all the opportunities, the enquiry officer may conduct the enquiry and conclude the same.

13. Since the issue has been pending for a long time, the aforesaid denova enquiry as directed above shall be completed and final order with regard to the disciplinary proceedings against the petitioner shall be passed, within a period of three months from the date of receipt of a copy of this order.

14. With the above observation and direction, this petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1.side)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1CC to Mr. Veil Kani Raju, Advocate, SR.No.74322

W.P (MD) No13948 of 2014
and
M.P. (MD) No.1 of 2014
19.07.2018

Arul

ES/SV/SAR 2/01.11.2018/4P/3C

<https://hcservices.ecourts.gov.in/hcservices/>