BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Date of Reservation : 09.02.2018
Date of Pronouncement : 25.07.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)No.2752 of 2014
and
MP(MD)No.2 of 2014

K.Balasubramanian ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep.by its Principal Secretary to Government,
   Commercial Tax and Registration (H)Department,
   Secretariat, Fort St.George, Chennai - 9.

2. The Inspector General of Police,
   100, Santhom High Road, Chennai - 28.

3. The Commissioner of Disciplinary Proceedings,
   Government of Tamil Nadu,
   Tribunal for Disciplinary Proceedings,
   5/1842/A, Trichy Road,
   Market Committee Complex,
   Ramanathapuram,
   Coimbatore - 641 045. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to his proceeding in G.O.(2D)No.130, Commercial Tax and Registration (H) Department dated 21.11.2013, quash the same and direct the first respondent to permit the petitioner to retire on superannuation with all eligible pensionary benefits.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.M.Murugan,
Government Advocate

ORDER

The petitioner was working in the Registration Department. He was holding the post of Assistant Inspector General of Registration in the year 2008. On 21.10.2008, the petitioner was to hold a monthly review meeting in the office of the District Registrar (Admin) at about 10.00 a.m. When the Vigilance and Anti Corruption Department received source information that "Mamool" is paid by the Sub Registrars in the monthly review meeting, a surprise check was conducted. In the said meeting, as many as

13 Sub Registrars had assembled. These Sub Registrars had come from various places. A sum of Rs.70,500/- was recovered in all from the individual Sub Registrars. The petitioner was having only a 100 rupee note in his pocket. The raiding party thereafter took the petitioner to his place of stay which was located at a distance about 6 kms at Raja Kaadu Karuppanasamy Kovil Theru. There, the DVAC personnel found a sum of Rs.25,000/- in his hand bag and a sum of Rs.7,400/- in his suit case. The prosecution came to the conclusion that the sum of Rs.7,400/- represented his salary amount while the sum of Rs.25,000/- represented illegal gratification.

2.The prosecution also took the view that the sum of Rs.70,500/- that was recovered from the Sub Registrars also was meant to be handed over to the writ petitioner. They registered F.I.R in Crime No.14/AC/08/ER on 21.10.2008. However, this F.I.R that did not culminate in a positive final report. The DVAC took the view that the material collected by them against the petitioner was not sufficient for a successful prosecution. However, they recommended that the petitioner should be proceeded against by the Commissioner of Disciplinary Proceedings. The matter was accordingly referred to Tribunal for Disciplinary Proceedings, Coimbatore and taken up for enquiry in TDP No.20/2009.

3.On the side of the department as many as 15 witnesses were examined. Six documents were marked on the side of the prosecution. 10 material objects were also marked. On the side of the defence, three witnesses were examined. The writ petitioner examined himself as the third witness. After considering the materials on record, the Tribunal passed an order dated 29.12.2011 holding that the charges framed against the writ petitioner stood proved.

4.The petitioner was furnished with a copy of the said report and asked to give his further representation. The writ petitioner gave his further representation dated 13.07.2012. The Government was inclined to agree with the findings of the Tribunal for Disciplinary Proceedings and tentatively proposed to dismiss the writ petitioner from service. The Tamil Nadu Public Service Commission was also consulted in this regard. The TNPSC was convinced that the findings of the Tribunal are fair and just and do not require any interference or modification. It advised the Government accordingly. Thereupon, the Government by the impugned G.O.2(D)No.130 dated 21.11.2013 passed the penalty of dismissal from service. Questioning the same, this writ petition has been filed.

5.Heard the learned counsel on either side.

6.On the side of the respondents, a detailed counter affidavit has been filed. The learned Government Advocate appearing for the respondents reiterated the contentions set out in the counter affidavit and wanted this Court to sustain the impugned order and to dismiss this writ petition.

7.This Court carefully considered the rival contentions. The charge against the writ petitioner was that he had fixed targets to the Sub Registrars working in Erode District for illegal Mamool collection and that he was in possession of unaccounted sum of Rs.25,000/-. The raid by the DVAC personnel was conducted on 21.10.2008 when the writ petitioner herein was holding the monthly review meeting in his office. As many as 13 Sub Registrars were present. It is true that sums varying from Rs.2,000/- to 11,500/- were seized from individual Sub Registrars. Most of them were examined before the Tribunal for Disciplinary Proceedings. None of the Sub Registrars who were examined before the Tribunal supported the case of the prosecution. Therefore, there is absolutely nothing on record to show that the writ petitioner intended to collect Mamool from the Sub Registrars. The writ petitioner cannot be obviously blamed for the possession of unaccounted sums by the Sub Registrars who were present in the monthly review meeting. Therefore, that leaves with the second part of the charge.

9.Now, the question is whether the petitioner can be said to have been possessing unaccounted sum of Rs.25,000/-. It is relevant to note here that during the meeting in question what was found on the person of the petitioner was only a mere 100 rupee note in his pocket. He was taken to his place of stay that was located at a distance of 6 kms from the meeting place. A sum of Rs.25,000/- was recovered from the hand bag and a sum of Rs.7,400/- from his suit case. It is relevant to mention that the petitioner's family was then based in Rajapalayam, Virudhunagar District. Since the petitioner was working in Erode, he had taken a room for stay.

10.The learned counsel for the petitioner also submitted that it was on the eve of Diwali and that therefore, the petitioner had withdrawn the said amounts from his savings bank account maintained in State Bank of India. In fact, the raiding party also recovered the bank pass book of the petitioner. In this regard, the petitioner's counsel would point out that a Government employee can have cash to the tune of three months salary. Form - II annexed to Rule 7(3) of the Tamil Nadu Government Servant Conduct Rules indicates that explanation has to be given only if the cash and bank balance exceeded three months emoluments. As Assistant Inspector General of Registration, the monthly salary of the petitioner was close to Rs.20,000/-. Therefore, possession of a sum of Rs.32,400/- falls well within this statutory ceiling of three months emoluments.

11.More than anything else, the amount in question was not recovered from his person at the time of holding the monthly review meeting. It was seized from his place of stay. A person who is staying away from his family is bound to have this amount to meet his emergent expenses. By no stretch of imagination can this amount be said to be an unaccounted cash. This Court is of the view that the raiding party would have come with a hope that they can catch the petitioner red handed. But then, the raid did not succeed. That is why, the prosecution even though registered a criminal case rightly came to the conclusion that the material collected by them was not sufficient to launch a successful criminal prosecution. Therefore, they recommended that the petitioner be proceeded against by the Commissioner of Disciplinary Proceedings.

13.This Court is able to see that there was no evidence adduced before the Tribunal for Disciplinary Proceedings in support of the charges framed against the petitioner. Yet, by a convoluted reasoning and perverted logic, the Tribunal gave a report holding that the charges framed against the petitioner stood proved. This Court has no doubt whatsoever in its mind that the case against the petitioner is based on no evidence. Therefore, the findings given by the Commissioner for Disciplinary Proceedings will have to be rejected as perverse. The petitioner has clearly highlighted these aspects in his further representation. Both the Government as well as the Tamil Nadu Public Service Commission have seriously erred in concurring with the findings given by the Tribunal for Disciplinary Proceedings.

14.Looked at from any angle, this Court has to come to the conclusion that the impugned Government Order is bad in law. It stands quashed. The first respondent is directed to permit the petitioner to retire from service with all pensionary benefits. The first respondent shall pass orders in this regard within a period of six weeks from the date of receipt of a copy of this order and also disburse all the consequential benefits shortly thereafter. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
1. The Principal Secretary to Government,
State of Tamil Nadu,
Commercial Tax and Registration (H)Department,
Secretariat, Fort St.George, Chennai - 9.

2. The Inspector General of Police,
   100, Santhom High Road, Chennai - 28.

3. The Commissioner of Disciplinary Proceedings,
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   Tribunal for Disciplinary Proceedings,
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   Market Committee Complex,
   Ramanathapuram,
   Coimbatore - 641 045.

+1cc to Mr.M.Kannan, Advocate Sr.No.75165
+1cc to Spl.Government Pleader Sr.No.75069

SKM

VB/KAK/SAR4/09.08.2018/5P/6C

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and
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