



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2019

Pronounced on : 16.05.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.12157 of 2004

E.Nagabushanam

...Petitioner

Vs

1.State of Tamil Nadu

rep. by

The Secretary to Government,
Backward Classes Department,
Fort St. George,
Chennai-9.

2.The Chairman,

Tamil Nadu Backward Classes,
Development Corporation Ltd.,
Chennai-2.

3.The Managing Director,

Tamil Nadu Backward Classes,
Development Corporation Ltd.,
Chennai-2.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records connected with Rc.No.A2/2333/2000 dated 07.06.2002 by the second respondent and to quash the same and direct the respondents to restore the petitioner to the post of Assistant.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents : Mr.K.Rajendraprasad, AGP

O R D E R

Heard Mr.S.Ilamvaludhi, learned counsel for the petitioner and Mr.K.Rajendraprasad, learned Additional Government Pleader appearing on behalf of the respondents.



2. The petitioner herein, while serving in the post of Assistant in the third respondent's Corporation, was levelled with 11 charges pertaining to dereliction of duties and certain other irregularities. Based on the findings of the Enquiry Officer, all the charges, except Charge Nos.5, 6 & 8, were held to be proved. Accepting the findings of the Enquiry Officer, the third respondent herein had issued a show cause notice dated 08.08.2000, to show cause as to why the petitioner should not be permanently reverted to the post of Junior Assistant. Not being satisfied with the reply of the petitioner, the third respondent had passed final orders dated 31.08.2000, imposing the punishment of reduction to the lower post of Junior Assistant, for 14 years, from the date of issue of final orders.

3. Aggrieved against the punishment order dated 31.08.2000, the petitioner had preferred an appeal before the second respondent herein on 27.09.2000. Simultaneously, the petitioner had also filed a Writ Petition in W.P.No.20385 of 2000, challenging the punishment and this Court, by an order dated 04.12.2000, dismissed the said Writ Petition on the ground that the Statutory Appeal was pending before the second respondent herein. The petitioner's challenge to the Writ Petition also came to be dismissed by an order dated 10.04.2001 in W.A.No.607 of 2001. Thereafter, the Statutory Appeal was rejected by the second respondent, by an order dated 07.06.2002, which is under challenge in the present Writ Petition.

4. Though the petitioner herein had raised several grounds challenging the Appellate Authority's order, this Court is of the view that the Writ Petition deserves to be allowed on the ground that the impugned order is a non speaking order.

5. On a perusal of the grounds of Appeal dated 27.09.2000 filed before the second respondent herein, it is seen that the petitioner had raised several grounds attacking the findings of the Enquiry Officer as well as the punishment imposed by the Disciplinary Authority. Moreover, the second respondent herein had chosen to pass a cryptic order and the grounds raised by the petitioner came to be rejected in the following manner:

"...The appeal has been entertained and the case has been examined carefully and independently along with the further representation of Tmt. E.Nagabhooshanam and with all other connected records. The decision of the Disciplinary Authority in having held that Charge Nos.1, 2, 3, 4, 7, 9, 10 and 11 as proved is agreed to ..."

It is a settled proposition of law that when an appeal is preferred against an order imposing penalty, the Appellate Authority shall consider as to whether the procedures laid down



in the Rules have been complied and if not, such non compliance has resulted in violation of any of the provisions of the Constitution of India. Further, there is also a duty cast on the Appellate Authority to ascertain as to whether the findings of the Disciplinary Authority are warranted by the evidence on record and whether the penalty imposed is adequate, inadequate or severe.

6. The impugned order of the second respondent has absolutely no reasoning or consideration of the various grounds raised by the petitioner and the appeal has been rejected mechanically stating that the case was examined carefully and the decision of the Disciplinary Authority is agreed. Such a disposal, from a responsible Statutory Authority, is totally in violation of the established procedures contemplated for disposal of such statutory appeals.

7. The various grounds raised by the petitioner herein before the second respondent in the appeal, have also been reiterated before this Court. In my view, if the matter is remanded back to the second respondent for a fresh consideration, after giving due opportunity to the petitioner, the ends of justice would be secured, instead of stepping into the shoes of Statutory Authority in considering the prayer sought for in the Writ Petition.

8. In the result, the impugned order of the second respondent in RC.No.A2/2333/2000 dated 07.06.2002 is hereby set aside and the matter is remanded back to the second respondent for fresh disposal. The petitioner is at liberty to raise additional grounds before the second respondent, at least within a period of four weeks from the date of receipt of a copy of this order and the second respondent shall thereafter dispose of the same, within a period of 8 weeks from the date of receipt of such additional grounds. In case, no such additional grounds are raised, the second respondent shall dispose of the appeal with the available records after giving due opportunity to the petitioner and shall pass appropriate orders on its own merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above observation and directions, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP



To

1.The Secretary to Government,
State of Tamil Nadu,
Backward Classes Department,
Fort St. George,
Chennai-9.

2.The Chairman,
Tamil Nadu Backward Classes,
Development Corporation Ltd.,
Chennai-2.

3.The Managing Director,
Tamil Nadu Backward Classes,
Development Corporation Ltd.,
Chennai-2.

W.P.No.12157 of 2004

LN (CO)

RRS (26/06/2019)