

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.03.2019

Delivered on : 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.41231 of 2006

and

M.P.No.1 of 2006

N.Balamurugan

... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.

2.The Special Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chempauk,
Chennai - 600 005.

3.The District Collector,
Villupuram.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records in G.O.(1D) No.448 Revenue Department, dated 27.06.2006, on the file of the first respondent and quash the same.

For Petitioner : Mrs.R.Nirmaladevi
for Mr.K.P.Gopalakrishnan

For Respondents : Mr.K.S.Suresh
Government Advocate

O R D E R

This Writ Petition is filed for a Writ of Certiorari to quash G.O. (ID) No. 448 Revenue Department dated 27.06.2006.

2.The case of the Petitioner is that he was employed in the Office of the Special Commissioner and Director of Survey and Settlement, Chennai as a Superintendent. For purposes of training, in the year 1996, he was selected to undergo Revenue Inspector's training and was allotted to the Villupuram District. The District Revenue Officer of Villupuram, in turn, posted him as Revenue Inspector, Tindivanam Firka and, thereafter, he was transferred to Kiliyanur Firka. When he was undergoing training there, he recommended the issuance of a residency certificate on the basis of a permanent nativity - cum community certificate issued earlier.

3.The Collector, Villupuram by Memorandum dated 14.02.1999 framed charges against the Petitioner under Rule 17(B) of the Tamil Nadu Civil Services(Discipline and Appeal) Rules 1955. The charges against the Petitioner were as follows:

(i)The Petitioner recommended the issuance of a false residence certificate to P.S.Manoharan in C.No.50/98 dated 17.03.1998.

(ii)The Petitioner has not enquired the Villagers and has not verified the Village Administrative Officer's report properly.

(iii)The Petitioner suppressed the facts and was not disloyal to the government by recommending the false certificate to a Pondicherry State resident, which enabled him to obtain a M.D.S. seat in the Dental College.

4.The Petitioner submitted his explanation in respect of the above-mentioned charges on 02.09.1999. The Collector, Villupuram, appointed an Enquiry Officer to enquire into the above charges. The Enquiry Officer held that the charges were not proved. However, the Collector by proceedings dated 31.05.2001 held that the enquiry report was not acceptable to him because the Petitioner's recommendation was not based on an enquiry with local residents and the Village Administrative Officer and that a wrong certificate was issued by the Tahsildar on the basis of the recommendation. Accordingly, the Collector, Villupuram, punished the Petitioner by censuring him. This order was communicated to the Petitioner after the lapse of one year and four months on 16.10.2002 through the Special Commissioner and Director of Survey and Settlement. The Petitioner appealed before the Special Commissioner and Commissioner of Revenue Administration, the next Appellate Authority, on 04.12.2002. The Appellate Authority, by Order dated 12.03.2004, found defects in the Collector's Order and directed him to pass a fresh order by rectifying the defects within 60 days. In particular, it was stated in the Order dated 12.03.2004 that the Collector had not

observed Rule 16(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 which provides that the punishing authority shall consult the lending authority before imposing any lesser penalty. It was also stated that the Petitioner had intentionally committed a serious offence by recommending a wrong certificate to a Pondicherry resident and therefore a wrong person was admitted in the course.

5. After about four months, the Collector, Villupuram communicated by Order dated 14.09.2004 that he is withholding the Petitioner's salary without cumulative effect for three years. The Petitioner appealed before the Special Commissioner and Commissioner of Revenue Administration on 27.10.2004 and requested that the order be set aside. In specific terms, the Petitioner stated that the principles of natural justice and Rule 23 (1) (c) (ii) (iii) and Rule 24 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 were violated. While the appeal was pending before the Special Commissioner and Commissioner of Revenue Administration, the Collector issued a corrigendum dated 20.02.2005 to the Order dated 14.09.2004 stating that the punishment awarded should be withholding of increment for three years and not stoppage of salary for three years. This order was served on the Petitioner on 17.02.2005. After taking the corrigendum in to consideration, the pending Appeal was disposed of by the Special Commissioner and Commissioner of Revenue Administration by imposing the reduced penalty of withholding of increment for six months without cumulative effect by order dated 17.05.2005. In this Order, the Special Commissioner stated that there were no procedural irregularities and that the Petitioner herein did not refute the fact that the recommendation made by him was false and merely stated that there were procedural irregularities.

6. In the said Appeal, the Petitioner had pointed out that the Revenue Divisional Officer of Villupuram, who was appointed as the Enquiry Officer based on the Judgement of this Court in W.P.No.18449 of 1998 dated 11.01.1999, concluded that the father of the Petitioner therein is a native of Nagercoil town in Kanyakumari District of Tamil Nadu. According to the Petitioner, this confirms that the recommendation was not incorrect. The Petitioner further pointed out that Rule 23(1) (c) (ii) (iii) was intentionally overlooked by the Special Commissioner and Commissioner of Revenue Administration while imposing punishment. The Petitioner states that however, on further appeal by representation dated 08.07.2005, the Secretary to Government did not consider the above facts and merely confirmed the order of the Special Commissioner and Commissioner of Revenue Administration by stating in order dated 27.06.2006 that

the Petitioner did not provide any additional reasons as to why the order should be reversed. The said order is the Impugned Order in this Writ Petition.

7.The case of the Respondents is that this Court in W.P.No.18449 of 1998 merely held that the Government cannot have different standards for determining permanent residency status for engineering and medical College admission. It is further stated by the Respondents that Disciplinary Proceedings were initiated against S.Michael, the then Tahsildar, Vanur, who issued the certificate dated 17.03.1998, the Petitioner herein and K.Anbazhagan, the Village Administrative Officer, Rayaottai village. Based on the enquiry, the punishment of stoppage of increment for six months without cumulative effect was imposed on the Village Administrative Officer and the punishment of censure in respect of both S.Michael and the Petitioner herein.

8.The Respondents further state that the Special Commissioner and Commissioner of Revenue Administration by Order dated 12.03.2004 observed that the Disciplinary Authority had not consulted the Lending Department as per Rule 16 (ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and that therefore the matter was remanded for passing fresh orders. It is further stated that the District Collector, Villupuram perused the records, considered the gravity of the lapses committed by the Petitioner and proposed the punishment of stoppage of pay for three years without cumulative effect. Because this order contained an error, it was rectified by imposing the punishment of stoppage of increment for three years instead of stoppage of pay for three years. On appeal, the Special Commissioner and Commissioner of Revenue Administration reduced the punishment of stoppage of increment for three years and instead imposed the punishment of stoppage of increment for six months without cumulative effect. The Revision Petition to the Government against this order was rejected because no additional reasons had been adduced by the Petitioner for reversing the order.

9.At the hearing, the learned counsel for the Petitioner referred to the letter dated 12.03.2004 and pointed out as to how the Enquiry Officer concluded that none of the charges against the Petitioner were proved. Thereafter, the learned counsel adverted to the Order of the of the Division Bench of this Court in D.RAJA MANICKAM Vs. STATE OF TAMIL NADU in W.A.No.710 of 2016 wherein it was held that whenever the Disciplinary Authority does not concur with the views of the Enquiry Officer, he should record tentative reasons for such

disagreement. Thereafter, the Delinquent Officer should be given an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice require the authority, which is to take a final decision on the imposition of penalty, to give an opportunity to the officer charged with misconduct to file a representation before the Disciplinary Authority records its findings on the charges framed against the officer.

10. In response, the learned counsel for the Respondents referred to the Impugned Order and pointed out that the Appeal was rejected by the Government because no new reasons were adduced by the Petitioner. It was further submitted that the genuineness of the certificate issued to Mr. PS. Manoharan was not upheld by this court. By drawing reference to paragraph 7 and 8 of the counter affidavit, the learned counsel for the Respondents further submitted that the principles of natural justice were adhered to. According to the learned counsel, the Enquiry Officer concluded the enquiry after giving full opportunity to the Petitioner and the enquiry report was served on the Petitioner and his representation in respect thereto was also received on 17.05.2001. It was further stated that the District Collector, Villupuram, the Disciplinary Authority, personally heard the Petitioner on 28.05.2001 with reference to the reasons for disagreement with the Enquiry Report before passing orders on 31.05.2001. The learned counsel further submitted that rule 23 (1) (c) (ii) (iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was not violated because it envisages an opportunity to the charged officer in case punishment is to be enhanced whereas, in the instant case, punishment was reduced and not enhanced.

11. The affidavit, counter affidavit, documents on record and oral arguments were carefully considered.

12. In the instant case, initially, the Enquiry Officer held that the charges against the Petitioner were not proved. The Disciplinary Authority, while considering the report of the Enquiry Officer, did not agree with the Enquiry Officer and instead imposed the punishment of censure on the Petitioner. From the record, it does not appear as if the Petitioner was put on notice and called upon to make a representation before the Disciplinary Authority took the decision to disagree with the Enquiry Officer and impose punishment. Thereafter, the Petitioner appealed against the decision and in the Petitioner's appeal, the Special Commissioner and Commissioner of Revenue Administration (the Appellate Authority) took the view that the

Disciplinary Authority should have consulted the parent organisation of the Petitioner before imposing a lesser penalty and the case was remanded for this purpose. Once again, on remand, the District Collector by Order dated 14.09.2004 imposed a higher penalty of stoppage of salary for three years. This was done without putting the Petitioner on notice. While the appeal of the Petitioner against this order was pending, the District Collector rectified the order by changing the punishment to stoppage of increment for three years instead of stoppage of salary for three years. On further Appeal, the punishment was reduced to stoppage of increment for six months instead of three years.

13. Throughout the process, it is evident that the principles of natural justice have not been followed in as much as the Disciplinary Authority by Order dated 31.05.2001 initially disagreed with the Enquiry Officer without providing an opportunity to the Petitioner in the first round and, therefore, imposed a penalty of censure. Upon remand, in the second round, the Disciplinary Authority by Order dated 14.09.2004 went further and enhanced the punishment to stoppage of salary for three years without cumulative effect without notice and opportunity to the Petitioner. Although this punishment was subsequently corrected and thereafter reduced on further appeal to stoppage of increment for six months without cumulative effect, the enhancement of punishment by the Disciplinary Authority is, nevertheless, clearly against the principles laid down by the Hon'ble Supreme Court in PUNJAB NATIONAL BANK Vs. KUNJ BIHARI MISRA reported in (1998) 7 SCC 84, which was followed by the Division Bench of this Court. In fact, it was held as follows by the Division Bench at Paragraph 17 of the Order in W.A.No.710 of 2016(cited supra):

"17. From the above extracts, it could be seen that the Government had not considered the evidence on record independently and has not given its reasons for differing with the conclusions of the Enquiry Officer. As already stated there is nothing on record to show that the appellant was given a personal hearing, after the issuance of the second show cause notice. As per the law laid down by the Hon'ble Supreme Court in various cases, referred to above, when a Disciplinary Authority disagrees with the Enquiry Officer on any article of charge, before it records its own findings on such charge, it must

(i) Record its tentative reasons for such disagreement and its findings.

(ii) The report of the Enquiry Officer

containing its findings will have conveyed to the delinquent officer and the delinquent officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer.

(iii)The principles of natural justice require the authority, which has to take a final decision and can impose penalty to give an opportunity to the officer charged with a misconduct, to file a representation before the Disciplinary Authority records its findings on the charges framed against the officer."

14. Therefore, the Impugned Order is liable to be set aside in the exercise of supervisory jurisdiction. Accordingly, this Writ Petition is allowed but there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Revenue Department,
Secretariat,
Fort St. George,
Chennai - 600 009.
2. The Special Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The District Collector, Villupuram.

+1cc to Mr.K.P.Gopalakrishnan, Advocate, S.R.No. 31556
+1cc to the Government Pleader, S.R.No. 32005

W.P.No.41231 of 2006

SSI (CO)
GN (03/05/2019)