

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.03.2019

CORAM
THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.20673 of 2004

S.Ravindran

... Petitioner

Vs.

1.The State of Tamil Nadu rep.
by Secretary to Government,
Rural Development (E6) Department,
Fort St. George,
Chennai-600 009.

2.The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai-600 015.

3.The District Collector,
Karur District, Karur.

... Respondents

Prayer:Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, calling for the records of the respondents herein comprised in the proceedings RC.P.D.7/8052/2000 dated 10.04.2001 passed by the third respondent herein; RC.No.43541/2001-DPC 3-3 dated 19.10.2001 passed by the second respondent and in G.O.(D) No.196, Rural Development (E6) Department dated 21.04.2003 passed by the first respondent herein, quash all the above impugned orders as being illegal and violative of the principle of natural justice.

For Petitioner : Mr.G.Thangavelu

For Respondents: Mrs.K.Bhuvaneswari
Addl. Government Pleader

O R D E R

The orders under challenge in the present Writ Petition are for punishment of stoppage of increment for a period of four years with cumulative effect, which was passed by the third respondent herein, which came to be confirmed in the Appeal by the second respondent herein.

2.Heard Mr.G.Thangavelu, learned counsel for the petitioner and Mrs.K.Bhuvaneswari, learned Additional Government Pleader appearing on behalf of the respondents.

3.The petitioner herein was charged with 10 acts of alleged misconduct, pertaining to the distribution of 160 Chulah Stoves in the year 1999-2000. Among the 10 Charges, except Charge No.2, the Disciplinary Authority had held the other charges to be proved. The Appellate Authority had also confirmed the same, which orders are under challenge.

4.The learned counsel for the petitioner submitted that the petitioner herein had assumed the office of the Commissioner from 04.12.1999 only and since the charges pertains to the year 1999-2000, the entire charges itself is baseless. Even otherwise, he would submit that when the petitioner had only one year of service, prior to his retirement, the punishment of stoppage of increment for a period of four years with cumulative effect is not feasible of compliance and as such, submitted that the imposition of the punishment itself is on a non application of mind.

5.The learned Additional Government Pleader, by reiterating the averments in the counter affidavit as well as the findings of the Disciplinary Authority submitted that, the punishment is major in view of the seriousness of the charges. According to the learned Additional Government Pleader, there were sufficient materials before the Disciplinary Authority to come to the conclusion that the petitioner was guilty of all the charges. As such, the punishment is quite proportionate to the charges and hence, there is no infirmity in the order passed by the respondents.

6.I have given careful consideration to the submissions made by the respective counsels.

7.The Tamil Nadu Civil Services (Discipline and Appeal) Rules defines the penalty of stoppage of increment for the period of four years with cumulative effect as a major penalty. It is no doubt true that the entire charges pertains to certain infirmities alleged to have been committed by the petitioner herein, which pertains to establishment of 160 Chulas Stoves during the year 1999-2000. As pointed out by the learned counsel for the petitioner, since the incident itself pertains to the year 1999-2000 during which period the petitioner was not holding the post of the Commissioner, the possibility of petitioner's involvement becomes doubtful. As a matter of fact, Charge No.2 was dropped against the petitioner on this ground. Nevertheless, the Disciplinary Authority had come to the conclusion that there were sufficient materials to hold that the petitioner is liable for the charges and thereby, a major penalty was imposed. Aggrieved against the order of the Disciplinary Authority, the petitioner herein had filed an appeal before the second respondent on 25.05.2001, wherein, he had specifically raised several grounds touching on the

infirmities of the findings of the Disciplinary Authority and thereby sought for interference by the Appellate Authority. On consideration of the grounds raised by the petitioner herein in the appeal, the second respondent had passed an order on 19.10.2001, confirming the punishment imposed by the third respondent herein. I had perused the order passed in the appeal. Though the order runs to about four pages effectively, the Appellate Authority had rejected the appeal on one single line, stating that there are no sufficient reasons to set aside the punishment imposed by the Original Authority. Apart from this finding, there is absolutely no justification in the said order as to how the Appellate Authority incidentally not considered the grounds raised by the petitioner and confirmed the original punishment imposed.

8. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules envisages the power and procedure of the Appellate Authority. As per the said provision, when the Appellate Authority deals with an appeal petition raising several grounds, it is mandatory on his part to consider the reasons as to whether the facts on which the order was based has been established by the Original Authority or not. Furthermore, it is mandated that the Appellate Authority should consider as to whether such facts established afford sufficient grounds so as to take action against the delinquent and above all, he must also independently come to the conclusion as to whether the penalty imposed was excessive, adequate or inadequate.

9. As observed earlier, the petitioner herein had raised several grounds, questioning the findings of the Original Authority, which grounds have never been addressed by the Appellate Authority. On a co-joint reading of the entire Appellate Order, it is more of a clerical job exercised by the Appellate Authority, wherein, he had extracted the charges, findings of the Disciplinary Authority and by one line finding, he has just stated that there are no sufficient reasons to interfere with the order of the Original Authority. The Appellate Authority cannot be insensible to the duties and obligations cast upon him under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As such, the order passed by the second respondent herein is opposed to the duties and obligations cast upon the Appellate Authority under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

10. In normal circumstances, when the Appellate Authority has not properly considered and exercised his powers while passing an order, this Court would be inclined to remand back the matter to the Appellate Authority for a fresh consideration. However, in the present case, the charges were framed against the petitioner in the year 2000 and the original punishment was

also in the year 2001. The petitioner herein has been waiting for nearly 17 years after the original penalty imposed, seeking for justice. It is also stated that the petitioner is now aged about 77 years. Taking into consideration, the age of the petitioner as well as the time lapsed, it would not be appropriate to once again re-open the matter and direct the Appellate Authority to pass fresh orders. In view of the apparent illegality in the order of the Appellate Authority, I am of the view that the petitioner is entitled to succeed in the present writ petition.

11. In the light of the foregoing reasons, the order dated 10.04.2001 passed by the third respondent herein which was confirmed by the second respondent by his order dated 19.10.2001 and in G.O.(D) No.196, Rural Development (E6) Department dated 21.04.2003 passed by the first respondent herein is hereby set aside. Consequently, the petitioner herein would be entitled to any monetary or pensionary benefits arising thereupon.

12. The Writ Petition stands allowed accordingly. No costs.

Sd/-
Assistant Registrar (VI)

//True Copy//

Sub Assistant Registrar

DP

To

1. The State of Tamil Nadu rep.
by Secretary to Government,
Rural Development (E6) Department,
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Chennai-600 009.

2. The Director of Rural Development,
Panagal Building,
Saidapet,
Chennai-600 015.

3. The District Collector,
Karur District, Karur.

+1cc to Mr.G.Thangavel, Advocate, S.R.No.19888
+1cc to the Government Pleader, S.R.No.20537

W.P.No.20673 of 2004

AK (CO)
RRS (04/04/2019)