IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.27078 of 2004

T.Thangamani ...Petitioner

Vs

The District Revenue Officer,
Cuddalore. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for records in connection with proceeding issued in No.A5/611/51/03 dated 11.07.2004 on the file of the District Revenue Officer, Cuddalore, the respondent herein and quash the same.

For Petitioner : Mr.S.Ilamvaludhi

For Respondent : Mrs.K.Bhuvaneswari
Additional Government Pleader

O R D E R

The petitioner herein has joined duty as a Village Administrative Officer in the year 1984. On 10.10.2003, certain charges were issued against the petitioner herein, under Rule 17 (a) of the Tamilnadu Civil Services (Disciplinary and Appeal) Rules which culminated into the punishment of stoppage of increment, for a period of two years, without cumulative effect, though an order dated 11.07.2004. The said order is under challenge in the present writ petition.

2. Mr.S.Ilamvaludhi, learned counsel for the petitioner raised a ground stating that the appointing authority of the petitioner is the Revenue Administrative Officer, whereas the charges framed by the District Revenue Officer, who is the appellate authority. The impugned order of punishment was also passed by the District Revenue Officer and in view of the same, the petitioner has lost a valuable right to file an appeal and on this ground the impugned order requires to be set aside. In support of his submission, the learned counsel relied upon the decision of the Apex Court reported in (1995) 2 Supreme Court Cases 474 in the case of Surjit Ghosh Versus Chairman & Managing Director, United Commercial Bank and others.

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3. The learned Additional Government Pleader submitted that since certain lapses and misconduct of the petitioner were noticed by the respondent himself, the charges came to be framed under Rule 17 (a) of the Tamilnadu Civil Services (Disciplinary and Appeal) Rules, after following the principles of natural justice. The learned Additional Government Pleader also submitted that as against the order passed by the District Revenue Officer, an appeal lies to the Special Commissioner, which has not been availed by the petitioner. In view of the availability of the alternate remedy, this writ petition is not maintainable.

4. I have given careful consideration to the submissions made by the respective counsel.

5. As rightly pointed out by the learned counsel for the petitioner, the Revenue Administrative Officer cadre is the disciplinary authority, in so far as the petitioner is concerned. In the instant case, the charges came to be framed by the District Revenue Officer and the consequent punishment was also imposed by the District Revenue Officer. In normal circumstances, when the disciplinary authority imposes the punishment, the delinquent would be entitled to prefer an appeal before the appellate authority. But when the appellate authority himself chooses to impose the punishment, the substantive right of the petitioner to prefer an appeal before this Authority, is lost.

6. In the decision cited by the learned counsel for the petitioner in the case of Surjit Ghosh Versus Chairman & Managing Director, United Commercial Bank and others (cited supra), the Hon'ble Apex Court had held that an order of punishment passed by the appellate authority, acting as disciplinary authority, suffers from an inherent defect, since a right of appeal is denied to the delinquent. The relevant observation of the said decision, reads as follows:

> "5. Some grievances have been made by the appellant in the present appeal touching upon the illegalities in the conduct of the proceedings such as that (a) the disciplinary proceedings were initiated by an incompetent disciplinary authority in breach of Regulation 8(2)(iii) read with Regulation 3(g) of the Regulations; (b) the statement of witnesses recorded earlier were not supplied to him in breach of Regulation 8(10)(b)(iii) and (c) he was denied opportunity to explain circumstances appearing against him in evidence in breach of Regulation 6 (17) of the Regulations. However, it is not necessary to go into the merits of the said grievances since we are of the view that one of the objections taken by the appellant

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to dismissal, viz., that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations, goes to the root of the dismissal order. The undisputed facts relating to the said grievance of the appellant are that the disciplinary action was taken against him by the Deputy General Manager. As the Regulations stood then, the disciplinary authority for officers in Grades E, D, C and B (Excepting Divisional Managers in Grade B) was the Divisional Manager / AGM (Personnel) and the appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager, the review lay to the General Manager. It is not disputed that the appellant was an officer in Grade D. Hence in his case, as per the said Regulations, the disciplinary authority was either the Divisional Manager or the AGM (Personnel) and if the action was taken by either of them, he had an opportunity to appeal to the Deputy General Manager or any other officer of the same rank, and thereafter he had a further right of review to the General Manager. However, since the action against him was taken by the Deputy General Manager although the Divisional Manager and AGM (Personnel) were available for taking the action, the appellant was denied the right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank, therefore, suffers from an inherent defect.

6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such

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authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

7. The aforesaid observations of the Hon'ble Apex Court is self-explanatory. As held by the Hon'ble Apex Court in the aforesaid decision, the order of dismissal, suffers from an inherent defect since the appellant therein was denied the right of an appeal and also a right of review which lies against an appellate order. Since the impugned order in the present case in hand, was passed by the District Revenue Officer, who is also the Appellate Authority, the petitioner herein has lost a valuable right of an appeal and by laying down the ratio laid down in the aforesaid decision, the impugned order cannot be sustained.

8. It is now brought to my notice that the petitioner had reached the age of superannuation and in view of the present punishment, it is said that he has been denied pensionary and monetary benefits for a period of two years and since this Court has now held that the impugned order itself cannot be sustained,

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the petitioner would therefore be entitled to all the pensionary and monetary benefits, as if the punishment was not imposed on him.

9. In the light of the above observations, this writ petition stands allowed and the order dated 11.07.2004 made in the proceedings No.A5/611151/03, on the file of the the respondent/District Revenue Officer, Cuddalore, is quashed. Consequently, the respondent is directed to disburse the pensionary and monetary benefits calculated for the period of two years for which the punishment of stoppage of increment was imposed on the petitioner. Such an exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To
The District Revenue Officer,
Cuddalore.

+1cc to Government Pleader SR.No.32009

W.P.No.27078 of 2004

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