

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2019

CORAM

THE HON'BLE MR. JUSTICE M. DURAISWAMY

W.P.No.9433 of 2004

R.Murugesan

... Petitioner

v.

1. The Executive Committee,
Tamil Nadu Warehousing Corporation Ltd.,
No.82, Anna Salai,
Chennai - 600 002.

2. The Chairman-cum-Managing Director,
Tamil Nadu Warehousing Corporation Ltd.,
No.82, Anna Salai,
Chennai - 600 002 .

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the 2nd respondent, relating to the Pro.Rc.5883/2000/K3, dated 26.07.2002 and that of the 1st respondent relating to Pro.Rc.No.17491/02/K3, dated 18.12.2002, quash the same as illegal and consequently direct the respondents to grant all service and monetary benefits to the petitioner.

For Petitioner : Mr. D.Baskar

For Respondents : Mr. S.A.Hafiz

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records of the 2nd respondent dated 26.07.2002 and that of the 1st respondent dated 18.12.2002, to quash the same and consequently direct the respondents to grant all service and monetary benefits to the petitioner.

2. As against the imposition of punishment imposed by the 2nd respondent dated 26.07.2002, the petitioner preferred an appeal before the 1st respondent and the 1st respondent passed the impugned order dated 18.12.2002, confirming the order of punishment, however, without assigning any reason. On this ground alone, the petitioner has preferred the above Writ Petition.

3. The learned counsel appearing for the petitioner submitted that the 1st respondent-appellate authority is bound to give reasons while passing the order either rejecting or accepting the original order. In support of his contentions, the learned counsel has relied upon the following Judgments: -

(i) 2017(2) SCC 308 [Allahabad Bank and otehrs v. Krishna Narayan Tewari] wherein the Hon'ble Supreme Court held that the appellate authority has to give reasons for his conclusions and he cannot simply reproduce the findings of the disciplinary authority.

(ii) 2008(3) SCC 469 [Divisional Forest Officer, Kothagudem v. Madhusudhan Rao] wherein the Hon'ble Supreme Court held as follows:-

" ... 19. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum. ..."

(iii) 2015(1) MLJ 486 [V. Veeramani v. Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai] wherein the Division Bench of this Court held as follows:-

" ... 9. As already stated, even as per enquiry findings, the appellant was not the Loan Sanctioning Authority and the allegations proved against the appellant itself is that he has recommended housing loans to 12 ineligible persons. The Appellate Authority simply accepted the views of the TNPSC and rejected the appeal. Thus, it is evident that TNPSC as well as the Government, while passing the order in appeal, have not considered the relevant and material

facts, particularly with reference to the proved charge against the appellant and simply confirmed the order of the Disciplinary Authority. If the said fact was properly appreciated, a different conclusion would have been arrived at regarding the punishment imposed by the Registrar of Co-Operative Societies.

10. This writ appeal is filed since the appellant is not satisfied with the punishment imposed by the learned single Judge and prayed for allowing writ appeal without any punishment. In view of the proved charge of erroneously recommending 12 beneficiaries for housing loan, this Court is unable to entertain such a prayer. On the facts and circumstances of the case, any punishment required to be imposed against the appellant can be considered by the first respondent Government/Appellate Authority and only for that limited purpose, we are of the view that the order passed by the Government in GO(D) No.405 Co-Operation, Food and Consumer Protection Department, dated 4.12.2008, which was modified by the learned single judge, is liable to be set aside and accordingly set aside. The appeal filed by the appellant before the Government is remitted to the first respondent to consider the appeal afresh with regard to the punishment imposed against the appellant and pass appropriate orders in accordance with law, within a period of three months from the date of receipt of copy of this order. It is made clear that the order passed by the learned single Judge modifying the punishment as withholding of increment for five years without cumulative effect having not been challenged by the respondents, the Government can either cancel the entire punishment or impose a lesser punishment than the one recorded in the writ petition order i.e, stoppage of increment for five years without cumulative effect. The merits of the contention can be gone into by the first respondent independently, and the order of this Court will not stand in the way in any manner. The appellant has already attained the age of superannuation and therefore the punishment, if any to be

imposed, should be in respect of recovery of increment amount alone.”

(iv) 2016(6) MLJ 270 [Divisional Forest Officer, Kothagudem v. Madhusudhan Rao] wherein the Hon'ble Supreme Court held as follows:-

“ ... 18. It is seen from Rule 23 that in the event of an appeal against an order, imposing any penalty, the appellate authority should consider whether the facts on which the order was based have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is excessive, adequate or inadequate and then pass orders. In this case, the appellate authority has passed a cryptic order. In fact, the appellate authority gave personal hearing and after recording the same, straightaway confirmed the order of the disciplinary authority without any discussion or assigning any reasons holding that on examination of the documents and evidences, no new ground has been made or any evidence has been let in by the petitioner and therefore the order of the disciplinary authority was confirmed. A reading of the order of the appellate authority, extracted above, would make it clear that Rule 23 has not been complied with. There is no discussion whether the facts on which the order was based have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is proportionate to the charges.”

5. In the Judgments relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court as well as this Court has consistently held that the Appellate authority is bound to give reasons while dealing with the order passed by the disciplinary authority.

6. In the case on hand, the 1st respondent had confirmed the order passed by the 2nd respondent recording as follows:-

“ ... The Executive Committee found that no fresh reason is adduced to consider his request and rejected his appeal. Accordingly, the appeal petition of Thiru R.Murugesan, Office Assistant is hereby rejected.”

7. From the above it is clear that the order passed by the 1st respondent is against the settled position of law. When the 1st respondent is rejecting the appeal filed by the petitioner, he should have given reason for rejecting the appeal.

8. Following the ratio laid down in the judgments relied upon by the learned counsel for the petitioner, the impugned order dated 18.12.2002 is liable to be set aside. Accordingly, the same is set aside and the matter is remitted back to the 1st respondent for fresh consideration. The 1st respondent is directed to decide the matter afresh on merits and in accordance with law, by passing a detailed order.

With these observations, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1. The Executive Committee,
Tamil Nadu Warehousing Corporation Ltd.,
No.82, Anna Salai,
Chennai - 600 002.
2. The Chairman-cum-Managing Director,
Tamil Nadu Warehousing Corporation Ltd.,
No.82, Anna Salai,
Chennai - 600 002 .

+1cc to Mr.S.A.Hafiz, Advocate SR.95671(06/03/2020)

W.P.No.9433 of 2004

KK(CO)
CB(16/12/2019)

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