IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2019

CORAM

The Honourable Mr.JUSTICE K.K.SASIDHARAN

and

The Honourable Ms.JUSTICE P.T.ASHA

W.A.No.1360 of 2018
and
CMP.No.10821 of 2018

V. Dhandapani

..Appellant

Vs.

1. The Personal Assistant (General) to
District Collector,
Villupuram,
Villupuram District.

2. The District Collector,
office of the District Collector
Villupuram,
Villupuram District.

3. The Principal Secretary,
Cum Commissioner of Revenue Administration,
Ezhilagam,
Chepauk,
Chennai-9. .. Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent praying to set aside the order dated 04.05.2017 passed by the learned Judge in W.P.No.10333 of 2011 and allow this Writ Appeal.

Prayer in WP No.10333 of 2011 : This Writ Petition filed under Article 226 of the Constitution of India seeking for a writ of certioriarifed mandamus, to call for the records in relating to the impugned order passed by the 3rd respondent Na. Ka. Panee 4 (2)/84330/2008 dt 25.3.2011 and quash the same consequently direct the respondents to reinstate the petitioner in his service with continuity of service Bank wages and all other attendant benefits.

For Appellant : Mr. P.R.Thiruneelakandan

For Respondents : Mrs. A. Srijayanthi, Spl, G.P.

J U D G M E N T

(Judgment of the Court was delivered by P.T.ASHA, J)

This intra court appeal is filed at the behest of the unsuccessful Writ Petitioner challenging the order in W.P.No.10333 of 2011.

2. It is necessary to briefly allude to the facts of the case for morefully appreciating the case on hand.
The appellant was appointed as an Office Assistant in the Revenue Department on 03.08.1990 and was confirmed in service on 12.06.1992. Thereafter he had passed a special exam and was selected as a Jeep driver and by order dated 22.05.1995, he was posted in the office of the Assistant Commissioner Land Reforms, Villupuram. On his successful completion of ten years of service on 26.12.2005, he was awarded the selection grade and thereafter transferred to the Villupuram District camp office as a Jeep driver to drive VIP's Jeeps.

3. The appellant would submit that he was driving the vehicle bearing Registration No. TN.32 G-0353 which was used by the District Collector for his personal and official use. The said Jeep was also used to pick up and drop the relatives of the District Collector and also to ply VIP's from the Airport, Railway Station, etc.

4. The appellant would further submit that all of a sudden, on 06.12.2007, the first respondent herein suspended him from service. The order of suspension was issued on two grounds:-
a) that he had purchased diesel over and above the requirements between the period June 2007 and October 2007 and
b) that he had not maintained the Log Book.

5. The appellant would submit that the charge memo was issued on 10.12.2007 and a detailed explanation was submitted by him. However, without considering the fact that it was for the District Collector that the appellant had driven, the officer subordinate to the District Collector was appointed as the Enquiry Officer. The Enquiry was conducted hastily without following proper procedure and ultimately the charges were held to be proved and the appellant was removed from service on 22.05.2008.

6. The appellant would submit that as per the procedure he had filed an appeal before the second respondent. The second respondent refused to reconsider the order and by order dated

19.09.2008 the appeal was dismissed. The appellant thereupon filed a Revision Petition before the third respondent and by order dated 25.03.2011, the third respondent confirmed the orders passed by the second respondent and rejected the Revision. It is challenging this order that the appellant had come forward with the Writ Petition.

7. The respondents had filed a counter affidavit inter alia denying the various allegations contained in the affidavit filed in support of the Writ Petition and contended that the appellant had used excessive petrol without there being any need for fuel and it is clear that he was guilty of pilfering oil in active collusion with the petrol bunk workers. Though the appellant, who is driving the vehicle for the use of the District Collector had come forward with a specific case, that he was driving the vehicle for the use of the District Collector, the same was not emphatically denied by the respondent in their counter. The counter contains a vague statement that the vehicle was used for plying VIP's. The respondent would reiterate their contention that the appellant did not maintain the log book as per the Rules.

8. The learned Single Judge after hearing the parties had proceeded to dismiss the writ petition holding that the order of the third respondent did not suffer from any infirmity. Challenging this order the appellant has filed this Intra Court appeal.

9. Heard the counsels on either side.

10. A reading of the following Tamil Nadu Departmental Vehicle General Rules, 1996 would be useful for considering the issue on hand:

"Rule 8 deals with the duties of responsibilities of drivers

Rule 8(a) would state that "The driver of a vehicle shall act under the orders, directions or instructions of the officer-in-charge of the vehicle" and one of the duties is that the driver was bound to do check up and maintain daily the level of the engine, oil pump and water in the radiator.

Rule 12 relates to the Maintenance of the Log Books- (a) Log books in Form I given in the schedule I to these rules shall be maintained in printed books supplied by the Director of Stationery and Printing, Madras. No log book other than printed once shall be used. One book should be used for each vehicle and when the vehicle is transferred to another officer, all the log books relating to that vehicle shall also be transferred to that officer. The entries shall be made in the log books then and there for each trip and the officer making use of the vehicle shall record the trips made and initial it himself with his designation noting the mileages at the start and the end. Normally no vehicle shall be allowed to run without a speedometer."

11. Therefore from a reading of the Rules, it is clear that the driver is bound to follow the instructions of the officer-

in-charge of the vehicle. That apart the log books had to be checked after every trip by the officer concerned. The charge memo which has been issued alleges that the appellant had pilfered excess oil and failed to maintain log books. A reading of the above rules would clearly show that the onus of checking the log book after every trip is on the officer-in-charge of the vehicle which in this case was Mr.K. Kumarabalan. If the log book was checked as mandated the pilferage as alleged could have been detected at the inception itself. The officer-in-charge has abdicated this responsibility. It is also seen that Mr. K. Kumarabalan, the officer-in-charge of the vehicle, who had also been charge sheeted, has been awarded lesser punishment. The appellant who is no way connected with the maintenance of log book as per the Rules was given the capital punishment of dismissal from service.

12. Considering the fact that the Officer-in-charge on whom the onus of maintaining the log book has only been granted a lesser punishment and also the fact that there is no earlier allegations of misconduct against the appellant, We are of the view that interest of justice would be sub served if the order of dismissal is converted into one of compulsory retirement. This view is taken only after taking into consideration that for the very same complaint the co-accused and the person in charge and in control of the vehicle had been let off with a minor punishment.

13. The respondent is directed to convert the order of dismissal from service into one of compulsory retirement and pay the admissible benefits to the appellant within two months. The Writ Appeal is partly allowed on the above lines. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

mrn

To

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Villupuram District.

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Chennai-9.

+1cc to Mr.P.R.Thiruneelakandan, Advocate SR.No.66404

W.A.No.1360 of 2018
and
CMP.No.10821 of 2018

RGN(CO)
GMY(20/09/2019)