IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.A.No.1523 OF 2019

S.P.TAMILARASAN ... Appellants /Petitioners

Vs

1 THE STATE OF TAMILNADU
REP BY ITS SECRETARY REVENUE DEPARTMENT
FORT ST.GEORGE CHENNAI 600 009

2 THE PRINCIPAL SECRETARY AND
COMMISSIONER OF REVENUE ADMINISTRATION
CHEPAUK CHENNAI 600 006

3 THE DISTRICT REVENUE OFFICER
CUDDALORE DISTRICT
CUDDALORE ... Respondents/Responents

Writ Appeal filed to set aside the order passed in WP No.3923 of 2019 dated 11-02-2019 on the file of this Honble Court.

W.P.No.3923/2019:Writ Petition filed under Article 226 of the Constitution of India, to call for the entire record pertaining to order in Ref RC.NO A3/21786/2017 dated 26-12-2018-1 and ref RC.NO A3/21786/2017 dated 26-12-2018 -2 passed by the 3rd respondent to grant continuity of service and grand all terminal benefits as claimed by the petitoner in his representation dated 26-11-2018 in a time bound period.

For appellant : Mr.K.Mohanamurali
For Respondents : Mrs.A.Srijeyanthi, Spl.G.P.

J U D G M E N T

The appellant was removed from service taking into account the criminal court judgment dated 20 August 2013 in Spl.Case No.1/2004. The order passed by the Disciplinary Authority removing the appellant from service was challenged before the writ court in W.P.No.9646 of 2014. The Writ Petition was dismissed with an observation that in case the criminal appeal

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filed against the conviction is allowed, the appellant would be entitled for reinstatement with monetary benefits. The criminal appeal filed by the appellant in C.A.No.580 of 2013 was allowed by judgment dated 30 August 2017. The Disciplinary Authority thereafter issued a charge memo on the basis of the very same charges framed against the appellant in the criminal case. The Writ Petition filed against the charge memo was dismissed by the learned Single Judge. The order is under challenge at the instance of the unsuccessful Writ Petitioner.

2. We have heard the learned counsel for the appellant. We have also heard the learned Special Government Pleader on behalf of the respondents.

3. The Disciplinary Authority, without initiating disciplinary proceedings, removed the appellant from service pursuant to the conviction recorded by the Trial Court on 20 August 2013 in Spl.Case No.1/2004. The order dated 11 September 2013 removing the appellant from service clearly shows that only the judgment of conviction made the Disciplinary Authority to remove the appellant from service. It is also a matter of record that the appellant unsuccessfully challenged the order dated 11 September 2013 before the writ court in W.P.No.9646 OF 2014. The order passed by the learned Single Judge has become final. In the said order, there was a clear direction that in case the criminal appeal is allowed, the appellant would be entitled to an order of reinstatement. The respondents have not challenged the said order.

4. The appellant succeeded in the criminal appeal. The High Court passed a judgment dated 30 August 2017 in C.A.No.580 of 2013, allowing the appeal and setting aside the conviction and sentence passed by the Trial Court. The appellant thereafter called upon the Disciplinary Authority to reinstate him into service. The Disciplinary Authority without any regard to the earlier order in W.P.No.9646 of 2014, and without recalling the earlier order of removal from service, issued a fresh charge memo dated 26 December 2018.

5. The incident in question which made the District Revenue Officer, Cuddalore, to issue the charge memo relates to the year 2003. Even without conducting any enquiry, the appellant was removed from service, pursuant to the judgment in the criminal case. The removal was on 11 September 2013.

6. The Disciplinary Authority could have initiated disciplinary proceedings against the appellant even in the year 2003.

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7. The Trial Court judgment also clearly indicates that the charge relates to the period 8 October 2002 to 2 June 2003. The appellant is entitled to be reinstated into service on account of the order dated 3 April 2014 in W.P.No.9646 of 2014. The present attempt to issue a fresh charge memo is only to overcome the order passed by the writ court in W.P.No.9646 of 2014.

8. We have perused the charge memo, the documents annexed therewith, imputation and the list of witnesses. The very same allegations in respect of which the criminal trial was conducted is reiterated in the charge memo. The witnesses cited before the criminal court are again cited in the charge memo. Those witnesses have already been examined by the criminal court. Their evidence was considered by the High Court in the criminal appeal. It was only on consideration of the entire evidence produced by the prosecution before the criminal court, the High Court acquitted the appellant. The very same evidence is now sought to be relied on to proceed departmentally against the appellant.

9. The appellant attained the age of superannuation on 30 April 2016. It was only when a request was made to recall the order of removal, and pay him all the retirement benefits that the present charge memo was issued. There is no point in conducting disciplinary proceedings at this point of time on the basis of the very same materials considered and rejected by the High Court in C.A.No.580 of 2013.

10. The respondent ought to have passed an order directing reinstatement of the appellant into service immediately after the judgment in C.A.No.580 of 2013. It was only as an afterthought, the Disciplinary Authority initiated disciplinary proceedings. We are of the view that fresh proceedings initiated is nothing but abuse of process, which is liable to be quashed.

11. We quash the charge memo dated 26 December 2018. We direct the respondents to pass a formal order reinstating the appellant into service. We make it clear that the appellant would not be entitled to the monetary benefits for the period in question in view of the principle, “No work, no pay”.

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12.The intra court appeal is allowed as indicated above. No costs. Consequently, C.M.P.No.10341 of 2019 is closed.

s/d-

Assistant Registrar(CS VI)

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Sub-Assistant Registrar

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To

1 THE SECRETARY, REVENUE DEPARTMENT
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2 THE PRINCIPAL SECRETARY AND
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3 THE DISTRICT REVENUE OFFICER
CUDDALORE DISTRICT
CUDDALORE

+1 CC to Govt. Pleader sr 54070.
+1 CC to Mr.K.Mohanamurali, Advocate sr 52918.

W.A.No.1523 OF 2019

SJ(CO)
SP(29/07/2019)

HIGH COURT OF JUDICATURE MADRAS
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