

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.17226 of 2017
and
W.M.P.No.18726 of 2017

K.Murthy

...Petitioner

Vs

1. Union of India,
Secretary,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi - 110 001.
2. The Chairman,
Chennai Port Trust,
Kamaraj Salai,
Chennai - 600 001.
3. The Deputy Chairman,
Chennai Port Trust
Kamaraj Salai,
Chennai - 600 001.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandaus to call for records relating to the impugned order of the 3rd respondent in proceedings No.V1/2975/2012/Vig. Dated 07.11.2015 confirmed in appeal by the 2nd respondent in proceedings No.V1/2975/2012/vig dated 19.05.2016 and further confirmed in revision by the 1st respondent in proceedings C-16012/12/1/20-16-vig dated 17.03.2017 and quash the same and direct the respondents to pay back the petitioner the recovered amounts consequent to the impugned orders with interest.

For Petitioner : Mr.Vasudevan

For Respondent : Mr.K.S.Jayaganeshan,
Standing counsel for R1
Mr.M.Palanimuthu for R2 & R3.

O R D E R

The petitioner is aggrieved against the order of the 3rd respondent dated 07.11.2015, the order of the Appellate Authority namely, the 2nd respondent dated 19.05.2016 and the order of the Revisional Authority dated 17.03.2017 namely, the 1st respondent. Consequently, the petitioner seeks for a direction to the respondent to pay back the petitioner, the recovered amounts.

2. The following are the short facts which have driven the petitioner to file the present writ petition.

While, the petitioner was working as Assistant Engineer (Mechanical), a charge memo dated 28.05.2013 was issued on him listing out four articles of charge. The petitioner gave explanation on 14.06.2013 denying the charges. The explanation was rejected and domestic enquiry was conducted. Consequent upon the report submitted by the Enquiry Officer holding that the charges 1 and 3 are proved and charges 2 and 4 are not proved, the 3rd respondent after issuing show cause notice dated 17.08.2015 and receiving the explanation from the petitioner dated 09.10.2015, passed the impugned order dated 07.11.2015 by imposing a punishment of penalty of withholding of increment with cumulative effect for a period two years. The petitioner preferred an appeal before the 2nd respondent on 13.12.2015. The said appeal was also dismissed, however, by the very same person who passed the original order of punishment. The petitioner filed further revision before the 1st respondent, who also rejected the revision on 17.03.2017.

3. A counter affidavit is filed by the 1st to 3rd respondents, wherein the facts and circumstances warranting the imposition of punishment on petitioner were dealt with in detail. Apart from the above statement, it is also stated in the counter that the 3rd respondent was entrusted with the additional charge of the 2nd respondent by the Ministry of Shipping, Government of India, through their letter dated 07.03.2016 and therefore, the 2nd respondent only in the capacity of Appellate Authority, has passed the orders in the appeal upholding the punishment.

4. Mr.Vasudevan, learned counsel for the petitioner, apart from raising other contentions on the merits of the impugned orders, has mainly urged before this Court to consider the

preliminary objection as against the manner in which the appeal was disposed of by the 2nd respondent. The learned counsel contended that admittedly, the person held the office of 2nd and 3rd respondents is one and the same person at the time of passing the respective impugned orders. Therefore, he contended that the person who passed the original order of punishment cannot pass the order in appeal as well.

5. On the other hand, the learned counsel appearing for the respondents after reiterating the contentions raised in the counter affidavit has further submitted that only in pursuant to the order passed by the 1st respondent, the 3rd respondent had officiated the function of the 2nd respondent and only during such course of such functioning, the order was passed in the appeal. Therefore, he submitted that though the person who passed the order in original and appeal is one and the same, it was passed in different capacity and therefore, that cannot be a ground to interfere.

6. Heard both sides. Perused the materials placed before this Court.

7. Though, several contentions are raised by the respective parties on the merits of the charges leveled against the petitioner and the consequent punishment imposed, this Court is not inclined to go into those contentions and give any finding on the same, since this Court is inclined to interfere with the order of the Appellate Authority viz., the 2nd respondent only on the admitted fact that the very same officer who passed the original order of punishment has also considered the appeal filed against his own order and dismissed the appeal. No doubt, it is sought to be contended before this Court that such order was passed in his capacity as officiating chairman in pursuant to the order passed by the 1st respondent. Certainly, that cannot be a reason to justify that the person who passed order in original can also pass an order in appeal, however, while functioning in different capacity. Such action cannot withstand the scrutiny of law as the same person cannot act as Original Authority as well as Appellate Authority. Assuming that the same person was directed to act as an officiating Chairman, in all fairness, he ought not to have taken the appeal and passed the impugned order, when admittedly the order under challenge before him was passed by himself while functioning as the original authority. Therefore, the said official, who was officiating as the Appellate Authority, ought to have referred the matter before some other official of same cadre or kept the appeal pending for the new official to consider and decide. Instead, the very same officer dismissed the appeal, which violate all canons of law. Therefore, this Court is inclined to set aside the order of the Appellate Authority viz., the 2nd

respondent dated 19.05.2016 and remit the matter back to the 2nd respondent for fresh consideration, as it is now stated that a new officer is functioning in the post of 2nd respondent. Since, this Court is inclined to set aside the order of the Appellate Authority, the subsequent order passed by the 1st respondent in the revision should also go.

8. Accordingly, this Writ Petition is allowed in part. The order of the 1st and 2nd respondents dated 17.03.2017 & 19.05.2016 are set aside. Consequently, the matter is remitted back to the 2nd respondent for passing fresh orders on merits and in accordance with law in the appeal filed by the petitioner, uninfluenced by any of the observations made by the 1st and 2nd respondents in the orders, impugned in this writ petition, dated 17.03.2017 & 19.05.2016. Such exercise shall be done by the 2nd respondent within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

vsi

Sub Assistant Registrar

To

1. The Secretary,
Union of India,
Ministry of Shipping,
Transport Bhavan,
No.1, Parliament Street,
New Delhi - 110 001.
2. The Chairman,
Chennai Port Trust,
Kamaraj Salai,
Chennai - 600 001.
3. The Deputy Chairman,
Chennai Port Trust,
Kamaraj Salai,
Chennai - 600 001.

+1 cc to Mr.Vasudevan, Advocate, S.R.No.2668
+1 cc to Mr.K.S.Jayaganeshan, Advocate, S.R.No.3386
+1 cc to Mr.Palanimuthu, S.R.No.2688

W.P.No.17226 of 2017

SSM(31/01/2019)