IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 7/1/2019
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.2857 of 2018

M. Gandhi ... Appellant

Vs

1. State
   rep. By the Special Commissioner and
   Commissioner for Revenue Administration
   Chennai 600 005.

2. The District Collector
   Tuticorin District
   Tuticorin.

3. The District Revenue Officer
   Tuticorin District
   Tuticorin.

4. The Revenue Divisional officer
   Tiruchendur
   Tuticorin District. ... Respondents

Prayer Appeal filed under Clause 15 of the Letters Patent against the order dated 29/6/2018, passed in W.M.P.No.382 of 2012 in M.P.SR.No.123540 of 2012 in W.P.No.38831 of 2004, dated 29/6/2018.

Prayer:

WPMP.382/2012:

petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the Delay of 2 days in filing the Restoration Petition in WP No.38831 of 2004.

MP.SR123540 OF 2012: To Restore WP.38831/04 on the file of this Hon'ble Court, dismissed for default on 01.10.2012.

PRAYER IN WP No.38831 of 2004:

To issue a Writ of Certiorarified Mandamus the call for the records pertaining to the impugned order issued vide order No.Na.Ka.A2/1747/97, dated 4.5.1999 issued by the Revenue Divisional Officer, Tiruchendur, the fourth respondent herein confirmed in Appeal vide order No.Service 5(3)49988/03, dated 3.1.2004 issued by the Special Commissioner and Commissioner for Revenue Administration, Chepauk, Chennai 600 005, and quash the same and direct the respondents 1 to 4 to reinstate the petitioner in service as Village Administrative Officer, Tiruchendur Taluk, Tuticorin District with all concommittant service and monetary benefits.

For appellant ... Mr.R.Muralidharan

For respondents ... Mr.P.S.Sivashanmuga Sundaram
Special Government Pleader

- - - - -

J U D G M E N T

(Judgment of the Court was delivered by Subramonium Prasad,J)

Appellant challenges the order, dated 1/10/2012, passed in W.P.M.P.No.382 of 2012 in M.P.SR.No.123540 of 2012 in W.P.No.38831 of 2004. Learned Single Judge, vide, order, dated 29/6/2018, dismissed the application for restoration of the writ petition in WP.No.38831 of 2004, and the application to condone the delay of two days, in filing restoration the petition, in W.P.No.38831 of 2004. W.P.No.38831 of 2004 was dismissed for default, on 1/10/2012.

2. The Appellant was appointed as a Village Administrative Officer, through Tamil Nadu Public Service Commission. The Appellant was issued with an order of suspension, on 10/4/1997, by the Revenue Divisional Officer, Tiruchendur and was issued with a charge memorandum, dated 1/10/2007, by the Revenue Divisional Officer, Tiruchendur, wherein four charges were levelled against him and they are as follows:-

(i). The appellant while working at Malavarayanatham Village fom 21/3/1997 to 23/7/1997 collected land tax from the pattadars to a sum of Rs.7,235/- from the pattadars, deposited the amount on 5/4/1997 instead of 27/3/1997 and thereby committed temporary misappropriation.

(ii). The appellant while working at Malavarayaatham Village, has collected Rs.5,440/- from the Pattadars, paid Rs.1,946/- on 20/2/1997 and paid the balance amount of

Rs.3,994/- only on 27/2/1997 and thereby misappropriated the amount for 7 days.

(iii). When verification was conducted by comparing the receipts from the pattadars and the Chitta No.13 of the Village, there was a difference in the dates printed in the receipts and the chitta. The appellant had tampered with records and committed misappropriation of funds.

(iv). The appellant was not residing at Malavarayanatham Village and thereby violated the rules.

3. The explanation submitted by the appellant was not accepted. An Enquiry Officer was appointed and proceedings were conducted. The Enquiry Officer, filed his report, holding that the first three charges have been proved and the fourth charge as not proved. The Disciplinary Authority, after perusing the enquiry report, by an order, dated 4/5/1999, made in Na.Ka.No.A.2/1747, imposed a punishment of dismissal from service.

4. Appellant preferred an appeal, before the Special Commissioner and Commissioner for Revenue Administration. He rejected the same, confirming the order of dismissal from service and the rejection of appeal was challenged, in W.P.No.38831 of 2004.

5. A learned Single Judge, by an order, dated 1/10/2012, dismissed the petition, stating that, "when the writ petition was listed, on 27/9/2012, there was no representation for the petitioner. Therefore, this matter was directed to be listed under the caption 'for dismissal' on 1/10/2012. Again, when the matter was taken up for hearing, none appeared for the petitioner. Therefore, this Court was constrained to dismiss the matter for default."

6. Material on record discloses that an application, for restoration was filed, on 1/11/2012, against the order of dismissal, dated 1/10/2012. An application for condonation of delay, of two days, in filing the restoration petition, was also filed. Unfortunately, the applications which were filed in 2012, came up for hearing, only on 29/6/2018. The learned Single Judge, by the impugned order, dismissed the application, for restoration, on the ground that the writ petition was dismissed, for non-prosecution, on 1/10/2012, six years ago and the appellant herein has not provided an explanation, as to why no steps were taken, to restore the writ petition.

7. Heard Mr.R.Muralidharan, learned counsel for the appellant and Mr.P.S.Sivashanmuga Sundaram, learned Special Government Pleader for the respondents.

8. Material on record discloses that the petition for restoration was filed on 1/11/2012, one month after the dismissal of writ petition, that is on 1/10/2012. Unfortunately, the application was listed only after six years. Hence, the appellant cannot be found fault with.

9. Resultantly, Writ Appeal is allowed. Writ Petition is restored to file. Since the writ petition pertains to the year 2004, Registry is directed to post the writ petition, at the earliest, for hearing, on merits. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Special Commissioner and
Commissioner for Revenue Administration State
Chennai 600 005.

2. The District Collector
Tuticorin District
Tuticorin.

3. The District Revenue Officer
Tuticorin District
Tuticorin.

4. The Revenue Divisional officer
Tiruchendur
Tuticorin District.

Copy to:

The Section Officer,
Writ Section,
High Court, Madras-104.
(For posting WP at the earliest for hearing)

+1cc to Mr.R.Muralidharan, Advocate sr.no.1562
+1cc to Government Pleader sr.no.1876

Writ Appeal No.2857 of 2018

nr 07/03/2019