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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.12.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.12588 of 2017

and

W.M.P(MD).Nos.9697 and 9698 of 2017

V.Kumaresan ... Petitioner

/vs./

1.The Government of Tamil Nadu,
rep., by its Principal Secretary,
Department of Hindu Religious and
Charitable Endowments,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

2.The Commissioner,
The Commissioner Office,
Department of Hindu Religious and
Charitable Endowments,
Chennai-34.

3.The Joint Commissioner,
Joint Commissioner Office,
HR & CE Department,
Near Hotel Temple Tower,
Thanjavur District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order in G.O.(Pa).No.72 (Tourism, Culture and Religious Endowments (Aa.Ni 2-2) Department) dated 24.04.2017 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.T.Aswin Rajasimman
for Mr.T.Lajapathi Roy
For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The petitioner herein, during his tenure as Assistant Commissioner in the respondents Department, was levelled with three charges, pursuant to which, an enquiry came to be conducted and the

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first charge was held to be proved. The first respondent had issued show cause notice proposing a punishment and after consideration of the petitioner's explanation, he had imposed a punishment of stoppage of increment for two years without cumulative effect. Challenging the same, the present writ petition has been filed.

2.The learned counsel for the petitioner relied upon the Circular No.4342/2017/L1, dated 02.02.2017 and submitted that the respondents herein had no authority to proceed under Rule 17(b) of 'Tamil Nadu Civil Services (discipline & Appeal) Rules' (herein after referred to as 'said Rule' for the sake of brevity) for the levelled charges, since it does not attract a major penalty. In support of his contention, the learned counsel for the petitioner relied upon two decisions of this Court.

3.The learned Additional Government Pleader relied upon the statements made in the counter affidavit and submitted that the entire disciplinary proceedings was done in accordance with the principles of natural justice. In view of the first charge being proved against the petitioner, he has been imposed with the punishment of stoppage of increment for the period of two years without cumulative effect, which cannot be deemed to be excessive.

4.I have given a careful consideration on the submissions made by the respective counsel.

5.The charges levelled against the petitioner revolve around the petitioner's failure to participate in the review meetings. Apparently, the charges itself may not warrant a major penalty of dismissal for removal from service. As pointed out by the petitioner, Guideline No.3 of the respondent/Department Circular, dated 02.02.2017 states that failure to attend the review meetings should not be proceeded against under 17(b) of said Rule. While that being so, the conduct of the respondents in treating the charges to be serious in nature and proceedings under Rule 17(b) itself may not be proper.

6.This Court in the case of ***S.Kannan Vs., State of Tamil Nadu, rep., by its Secretary to the Government, Home Transport-II Department, The Transport Commissioner and the Joint Transport Commissioner, Chennai Zone, Transport Department*** reported in ***(2009) 8 MLJ 217*** had held that unless a major punishment is really warranted, the framing of charges under 17(b) of the Rules is not necessary and should be avoided.

7.The relevant portion of the order reads as follows:

> '.....
>
> 14.The only point that arises for determination in this case is, whether the charges framed against the petitioner attract Rule 17(a) or Rule 17(b) of the Rules ?

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15.For deciding the charges to be framed under Rule 17(b), the Government, vide Circular No. 14353, P&AR; (Per.N)/93-1, dated 11.03.1993, has framed certain guidelines, which read as under:

> Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption etc., charges under Rule 17(b) have to be framed in the following types of cases for imposing any one of the major penalties:
>
> (1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.
>
> (a) possession of assets disproportionate to the known sources of income;
>
> (b) obtaining or attempting to obtain illegal gratification ;
>
> (c) misappropriation of Government property, money or shares;
>
> (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc;
>
> (2) Falsification of Government records.
>
> (3) Irregularity or negligence in the discharge of official duties with a dishonest motive.
>
> (emphasis supplied)
>
> (4) Misuse of official position for personal gain.
>
> (5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.
>
> (6) Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills etc.
>
> Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.
>
> (emphasis supplied)

11. On a perusal of the above guidelines, what comes to be known is that none of the charges framed against the petitioner comes under the above category of cases. Though the charges are framed against the petitioner under Rule 17 (b) as if there is irregularity or negligence in the discharge of official duties, as adumbrated in clause 3 of the guidelines referred to supra, the said negligence, alleged by the respondents, does not contain the dishonest motive, which is a crucial factor for deciding the category of the charge i.e., under 17 (a) or under 17 (b).

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12. The very object of framing of the guidelines is that unless a major punishment is really warranted, namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.'

8.The aforesaid decision was followed by another learned Single Judge of this Court in ***W.P(MD).No.12725 of 2011, dated 22.03.2013*** in the case of ***M.Sampoornam Vs., State of Tamil Nadu, rep., by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and another*** and held thus:

'12.In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17 (a) and not under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding.'

9.The aforesaid orders are self explanatory in nature.

10.In view of the same, the very conduct of the respondents in proceedings against the petitioner under 17(b) of said Rule for the minor charges and also in view of their own Circular No.4342/2017/L1, dated 02.02.2017, there was no justification on their part and as such, the entire disciplinary proceedings itself would stand vitiated.

11.For all foregoing reasons, the impugned order in G.O.(Pa) No.72 (Tourism, Culture and Religious Endowments (Aa.Ni 2-2) Department), dated 24.04.2017 on the file of the first respondent stands quashed. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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To
1.The Principal Secretary,
Government of Tamil Nadu,
Department of Hindu Religious and
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Nungambakkam, Chennai-34.

2.The Commissioner,
The Commissioner Office,
Department of Hindu Religious and
Charitable Endowments,
Chennai-34.

3.The Joint Commissioner,
Joint Commissioner Office,
HR & CE Department,
Near Hotel Temple Tower,
Thanjavur District.

+1 CC to M/s.SPL.GP (SR-104500[F] dated 11/12/2019)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-104577[F] dated 12/12/2019)

W.P.(MD)No.12588 of 2017
10.12.2019

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