

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.01.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ
W.P.No.9067 OF 2010

K.Natarajan

... Petitioner

Vs.

1.The Special Commissioner and
Commissioner of Revenue
Administration, Chepauk,
Chennai-5

2.District Revenue Officer
Salem, Salem District

3.Revenue Divisional Officer
Attur, Salem District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings Pani.5 (2)/59735/07 dated 24.02.2010, confirming the order of the 2nd respondent in his proceedings Na.Ka.62724/05/A5 dated 25.04.2007 confirming the order of the 3rd respondent in his proceedings Na.Ka.3256/03/A1 dated 17.08.2005 and quash the same.

For Petitioner : Mr.P.Ganesan
for M/s. C.S.Associates

For Respondents: Mr.P.Chinna Durai
Additional Government Pleader

W E B C O P Y
O R D E R

The petitioner while working as Village Administrative Officer was issued with a charge memo dated 12.07.2004 in proceedings Na.Ka.No.3256 of 2003. The gravamen of the charges are that

(i) He was not residing in the village to which he was posted and all other charges are that he lost the revenue records pertaining to that village.

(ii) Derailment of regular routine works of the Revenue

department and for dereliction of duty.

2. An enquiry officer was appointed to conduct enquiry and based on statement obtained from the petitioner as well as the Village Assistant, the enquiry officer held all the charges were approved and Disciplinary Authority has also imposed punishment of removal from service. Challenging the same petitioner preferred an appeal and it was confirmed by the Appellate authority. Aggrieved over the appellate order, the petitioner is before this Court.

3. Learned counsel for the petitioner would rely on the judgment of this Court in W.P.No.39098 of 2006 dated 20.04.2009 and seek for setting aside the punishment order for violation of principles of natural justice and for want of proper enquiry.

4. Controverting the statement made by the learned counsel for petitioner, learned Additional Government Pleader appearing for the respondents would contend that the petitioner was given ample opportunity. He appeared before the enquiry officer but never asked for examination of any witnesses infact he has admitted the guilt and does not submitted any objection to the enquiry report. The punishment of removal from service was imposed for the admitted misconduct. Therefore the order of the respondents need not be interfered with.

5. I heard the submissions and perused the original file produced by the 1st respondent.

6. From the records, it is seen that a charge memo is issued and the petitioner had submitted a detailed explanation denying all the charges. In so far the first charge is concerned the gravamen of the charge is that he was not residing in the concerned village to which he was posted. But there is no evidence on the side of the prosecution to show that petitioner was not residing at the village. When there is no factual dispute over the matter, it is not incumbent on the prosecution side to examine witnesses to prove the same. On the other hand the finding is that the delinquent has failed to disprove the charge and punishment was imposed on that finding.

7. In my opinion as contended by the learned counsel for the petitioner that the enquiry was not conducted in a proper manner. In a major disciplinary proceedings under Rule 17(b), it is incumber on the administration to provide ample opportunity to the delinquent to examine and cross examine witnesses. In the instant case, the prosecution has failed to prove the charge No.1 and therefore finding on that ground is liable to be set aside.

8. In respect of other charges, it emanates from loss of revenue records from the custody of the petitioner. The petitioner would take a stand that it was entrusted to the Village assistant who misplaced it. Pursuant to which he has lodged a police complaint for loss of records. The Police after investigation has given a certificate that the records were not traceable that will not exonerate the petitioner from the delinquency. The petitioner has repeatedly reiterated it was lost by the village assistant and he is not responsible. In so far as that part is concerned it cannot be said that the petitioner is not responsible and he has not committed any delinquency. Whether this delinquency is willful or not is the criteria to be considered. In the instant case by lodging Police complaint, petitioner has shown some bonafide that it was lost by accident and it was not deliberate or malafide act of the petitioner. The Disciplinary Authority as well as the Appellate authority should have taken this into consideration while imposing punishment. Even though the charges of loss of records stood proved by the very admission made by the petitioner, it was not deliberate, willful or wanton. In such circumstances, imposition of capital punishment or removal from service is disproportionate in view of this Court.

9. Learned counsel for the petitioner submitted that after the incident the revenue records were reconstructed and it was restored and there is no complaint as to the entries made therein. Even if there is some hindrance or disturbance to the effective functioning of the department, which warrants some punishment to the petitioner, but not a capital punishment or removal from service. Hence the reasoning adopted by the Disciplinary authority as well as the Appellate authority is fully based on the report of the enquiry officer and do not find any independent application of mind with regard to the same.

10. In such circumstances, I am inclined to set aside the order of punishment. Now that the petitioner has retired and 71 years of age it is not feasible to remit the matter to conduct enquiry and pass fresh orders. In such circumstance, the order of punishment or removal from service is modified to one of withholding of increment with cumulative effect for a period of three years. The petitioner is permitted to retire and the monetary value equivalent to that punishment can be recovered from the terminal benefits of the petitioner and paid to the Government account. The balance amount if any available shall be paid to the petitioner. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Special Commissioner and
Commissioner of Revenue
Administration, Chepauk,
Chennai-5

2.The District Revenue Officer
Salem, Salem District

3.The Revenue Divisional Officer
Attur, Salem District

+1 cc to Government Pleader Sr.No. 6193

+1cc to M/s.C.S.Associates , Advocate SR.No. 5812

W.P.NO.9067 OF 2010

A.SK(28/07/2020)



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