HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
19.12.2019	10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.13392 of 2017
and W.M.P.No.14430 of 2017

1 A.Arumuga Navaraj
S/o.M.Arumugam,
Sub Registrar, Sub-Registrar Office,
Vaniyampadi, Vellore District. ... PETITIONER

Vs.

1 The Additional Chief Secretary to Govt.,
Commercial Tax and Registration (K) Dept.,
Fort St.George, Chennai - 600 009.

2 The Inspector General of Registration,
Office of Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 600 028. ... RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, directing the 1st respondent to call for the records relating to the G.O.(D).No.370 Commercial Tax and Registration (K) Department dated 14.10.2016 in pursuance of the proceedings No.51745/V2/2011 dated 08.12.2015 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.T.M.Pappiah
Spl. Govt. Pleader

O R D E R

The brief facts leading to the filing of the instant writ petition are as follows:

When the writ petitioner was working as Sub Registrar in Ambur, Vellore District, on 31.10.2011, surprise raid was conducted in the office of Sub Registrar, Ambur, by the Deputy Inspection Cell of the Vigilance & Anti-Corruption headed by Superintendent of Police, Vellore District and seized unaccounted cash and demand drafts worth Rs.3,59,823/- and there is no proper explanation for possession of the said amount. Therefore, charge memo was issued to the petitioner under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules on 13.9.2013. The petitioner made a self defence statement to the charge memo along with form of questionnaires to the second respondent via District Registrar, Vellore on 29.10.2013 stating that the charges leveled against him are without any valid proof for the seizure of the said amount. On 23.12.2013, a revised charge memo was issued against the petitioner by the second respondent. On 27.2.2014, the petitioner submitted a written statement to the revised charge memo, dated 23.12.2013. Thereafter, Thiru C.Pitchandi, District Registrar (Audit), Vellore was appointed as Inquiry officer by the second respondent to inquire into the charges levelled against the petitioner. The petitioner submitted written statement to the charges made in the revised charge memo. The inquiry officer submitted a report to the second respondent on 11.10.2014 stating that the charges are not proved. However, the second respondent being disagreed with the finding of the inquiry officer in so far as the charge No.1, called for explanation from the petitioner on 21.7.2015. The petitioner submitted his explanation on 3.9.2015. The petitioner was awarded a punishment of stoppage of increment for two years without cumulative effect against the petitioner on 8.12.2015. The petitioner made an appeal before the first respondent against the punishment awarded by the second respondent. The first respondent after getting opinion from the Tamil Nadu Public Service Commission, dismissed the appeal filed against the punishment awarded by the second respondent, on 14.10.2016, by an order impugned in the present writ petition.

2. The second respondent filed counter affidavit wherein it is stated as follows:

(i) Charge memo was issued to the petitioner under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, based on the report of the DVAC on the surprise check conducted by them in Sub Registrar Office, Ambur on 31.10.2011.

(ii) Charge No.1:

When the petitioner was working as Sub Registrar, Ambur, Vellore Registration District, a joint surprise check was conducted at 17.00 hourse to 23.30 hourse on 31.10.2011 by the Vellore District Deputy Inspection Cell officials and the Inspector of Police, Vigilance and Anti-Corruption Department and recovered cash and demand draft for a sum of Rs.3,59,823/- as unaccounted money and the same was not claimed by anyone. No explanation was given by the petitioner for the said amount. Hence, the petitioner has committed official misconduct by abusing his official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

(iii) Charge No.2:

When the petitioner was working as Sub Registrar, Ambur, Vellore Registration District, a joint surprise check was conducted at 17.00 hourse to 23.30 hourse on 31.10.2011 by the Vellore District Deputy Inspection Cell officials and the Inspector of Police, Vigilance and Anti-Corruption Department, one Gurunathan, private person was working on a daily wages of Rs.250/- per day without authority and arbitrarily utilized his service for handling the records and documents. Hence, the petitioner has committed official misconduct by abusing his official position under Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules.

(iv) The inquiry officer submitted his findings that the charges levelled against the petitioner are not proved, in respect of both the charges. However, the second respondent being a competent authority taking a deviating view, held the charges as proved with respect to Charge 1 in respect of unaccounted money of Rs.11,000/- found in the office premises, which was kept under the office records. After perusing the explanation submitted by the petitioner and after considering all the facts and circumstances of the case and the deposition of the witnesses and the further representation submitted by the petitioner, it was held that the Charge 1 against the petitioner in respect of unaccounted money of Rs.11,000/- as proved and punishment of stoppage of increment for two years without cumulative effect was awarded to the petitioner. The statement of the petitioner that the amount of Rs.11,000/- recovered in the office records does not belong to him cannot be accepted as the same was seized by DVAC in the presence of the petitioner. The seizure gives an indisputable impression and proof on the extent of corrupt practices that was rampant in the office of the petitioner. After conclusion of the surprise check and after seizure of unaccounted money, drawn the proceedings and a copy of the proceedings was handed over to the petitioner on the same day in order to ensure that he was given adequate opportunity to explain his defence at the earliest point of time. The concept of preponderance of probability is sufficient to hold the charges against the petitioner as proved. Hence, the punishment is awarded to the petitioner only after considering the gravity of the offence committed by the petitioner and it is in order. The petitioner in his appeal petition, had not submitted any new grounds form his defence before the first respondent. The first respondent after considering the opinion of the TNPSC, decided to reject the appeal. The second respondent has judiciously applied his mind in arriving at a deviated conclusion from the findings of the inquiry officer in respect of the unaccounted money of Rs.11,000/- alone whereas the second respondent has accepted the findings of the inquiry officer in respect of the other charges levelled against the petitioner. Therefore, the impugned orders passed by the respondents 1 and 2 are sustainable in law.

3. The grounds raised by the writ petitioner are as follows:

(a) The Appellate authority failed to see that the order of punishment made against the petitioner by the Disciplinary authority is not based on any concrete evidence or material documents adduced by the prosecution.

(b) The Appellate authority did not apply his mind independently before confirming the appeal against the award of punishment without considering the report of inquiry officer.

(c) The Appellate authority failed to see that P.W.6 Anbu did not implicate the petitioner in the alleged charge and further he claimed that the said amount which belonged to his own money.

(d) The Disciplinary Authority while disagree with the finding of the inquiry officer in so far as it relates to the Charge 1, merely stated that the finding of the inquiry officer is vague and the same is not sustainable in law.

(e) The Disciplinary Authority has failed to see that P.W.1 Thiru S.Md.Munir, the Deputy Inspection Cell official in his cross examination relating to Rs.11,000/- seized from in between the forms of the records and the same is not recovered from the petitioner. Hence, the charge levelled against the petitioner is not sustainable in law.

(f) The Appellate Authority ought to have seen that no reason was recorded by the second respondent for taking a deviated view from the inquiry officer in respect of Charge 1.

(g) The Appellate Authority failed to see that the charge No.1 itself appears to be weak and vague. The finding of the unaccounted cash in one of the place of the office cannot be attributed to the petitioner. Hence, the punishment awarded to the petitioner is not based on the concrete evidence.

(h) The opinion of the TNPSC is not based on any concrete evidence of documentary evidence adduced against the petitioner and the same is not clarified by the appellate authority.

4. The learned counsel appearing for the petitioner would contend that it was for the enquiry officer to find out as to whether there was any connection of the alleged delinquent employee with the said amount. The unaccounted cash found in the office cannot be attributed to the petitioner. The role of the petitioner has been clearly established in the inquiry on the basis of the facts and evidence and as such, the second respondent cannot take a deviated view. In support of his contention, he placed reliance on the unreported judgment of this

Court in THE SECRETARY TO GOVERNMENT, COMMERCIAL TAXES & REGISTRATION DEPARTMENT, FORT ST. GEORGE, CHENNAI - 600 009 AND ANOTHER VS. S.GURUNOORTHY AND ANOTHER [W.A.Nos.953 and 954 of 2015 dated 23.7.2015].

5. The learned Special Govt. Pleader appearing for the respondents would submit that the second respondent being a Competent Authority need not accept the findings of the inquiry officer and the second respondent on the basis of facts and circumstances of the case and the evidence on record, held that the charge against the petitioner in so far as Charge No.1 as proved. In a departmental proceedings, the principle of preponderance of probability is sufficient to hold the charges against the petitioner as proved and the punishment is awarded to the petitioner only after considering the gravity of the offence committed by the petitioner. Therefore, the impugned order is sustainable in law.

6. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

7. In the case in hand, two charges were framed against the petitioner. The Charge No.1 relates to the recovery of a sum of Rs.11,000/- as unaccounted money, in the office records by the Vigilance and Anti-Corruption, on a surprise check conducted on 31.10.2011 in the office of the petitioner, which was not claimed by the petitioner or any one and no explanation from the petitioner for the said amount. The Charge No.2 is that the petitioner utilised the service of a private person viz., one Gurunathan on a daily wages of Rs.250/- for handling the office records and documents. The inquiry officer who conducted inquiry, found the two charges framed against the petitioner as not proved. However, the second respondent being a competent authority accepted the finding in respect of the second charge. In so far as the Charge No.1, it was held that the charge against the petitioner in respect of unaccounted money of Rs.11,000/- as proved and imposed a punishment of stoppage of increment for two years without cumulative effect.

8. The Inquiry officer on the basis of evidence, more particularly, P.W.6 in his evidence claimed that he kept Rs.11,000/- in the records and other oral and documentary evidence, found the charges framed against the petitioner as not proved. Out of the total amount recovered from the brokers by the Vigilance and Anti Corruption department, Rs.11,000/- was recovered from the Sub Registrar Office that was kept in the records. But no materials placed before this Court in respect of the action taken against the brokers for the seized amount of Rs.3,48,823/-. It is also stated that cheques and demand drafts

have also been seized from the stamp vendors, but no action was taken by the Registration department against the stamp vendors. PW.6 Anbu, Document Writer deposed before the enquiry officer that the seized amount of Rs.11,000/- was kept by him in the records of the Sub Registrar Office. Based on the aforesaid evidence, the enquiry officer has come to the conclusion that the charges framed against the petitioner is not proved. But, the Disciplinary Authority imposed a punishment against the writ petitioner without assigning any reason. The Appellate Authority also rendered findings based on the grounds raised by the Disciplinary Authority, whereas there is no discussion nor any finding in so far as the grounds raised by the writ petitioner herein in the appeal.

9. The Division Bench of this Court in THE SECRETARY TO GOVERNMENT, COMMERCIAL TAXES & REGISTRATION DEPARTMENT, FORT ST. GEORGE, CHENNAI - 600 009 AND ANOTHER VS. S.GURUNOORTHY AND ANOTHER [W.A.Nos.953 and 954 of 2015 dated 23.7.2015], held as under:

> ''7. The charge No.3, on reading itself, appears to be week and vague. A common charge has been levelled against all the three accused. Finding of unaccounted cash in one corner of the office cannot be attributed to any particular person or to all persons working in the office. The learned Single Judge has rightly come to the conclusion that the said charge was proved on the basis of no evidence and that the charge was rightly set aside and the writ petitions were allowed.''

10. Further, the Hon'ble Supreme Court in National Fertilizers Ltd. Vs. P.K. Khanna, [(2005) 7 SCC 597] held as follows:

> ''9. Apart from misreading the enquiry officer's report, the High Court also misapplied the law. The various decisions referred to in the impugned judgment make it clear that the disciplinary authority is required to give reasons only when the disciplinary authority does not agree with finding of the enquiry officer.....
>
> 10. It is apparent from sub-rule (2) that the disciplinary authority is not required to record its reasons if it concurs with the enquiry officer's findings in contradiction with the situation in which the disciplinary authority disagrees with the findings of the enquiring authority. Only in

the latter case does sub-rule (2) expressly mandate that the disciplinary authority shall, if it disagrees with the findings of the enquiry officer record its reasons for such disagreement as well as its own findings on such charges.

11. In Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84] the Hon'ble Supreme Court laid down a law as follows:

''19. .... whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.''

12. Considering the facts and circumstances of the case and the decision cited supra, the impugned order passed by the second respondent in proceedings No.51745/V2/2011, dated 8.12.2015 and the consequential order passed by the first respondent in G.O.(D) No.370, Commercial tax and Registration Department, dated 14.10.2016 are quashed.

13. Accordingly, the writ petition is allowed. No order as to cost. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1 The Additional Chief Secretary to Govt.,
Commercial Tax and Registration (K) Dept.,
Fort St.George, Chennai - 600 009.

2 The Inspector General of Registration,
Office of Inspector General of Registration,
No.100, Santhome High Road, Chennai - 600 028.

+1cc to the Government Pleader Sr.3472
+1cc to Mr.D.Veerasekaran, Advocate Sr.2808

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and W.M.P.No.14430 of 2017

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srg 21/02/2020