



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2020

(Reserved on 09.01.2020)

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P(MD)No.10109 of 2015

V.Shenbagaraja

... Petitioner

vs.

1)The Secretary to Government,
Micro Small and Medium Industries Enterprises
Department, Secretariat,
Chennai-600 009.

2)The Industries Commissioner and
Director of Industries and Commerce,
Guindy,
Chennai-600 032.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling records of the first respondent i.e. the Secretary to Government, Micro Small and Medium Industries Enterprises, Chennai relating to G.O.(2D)No.16, Micro Small and Medium Industries Enterprises Department, Chennai dated 21.05.2015 communicated in endorsement R.C.No.2556/2C/2012 dated 09.06.2015 and the earlier orders of the Government passed in G.O(2D)No.25, Micro Small and Medium Industries Enterprises Department, Chennai, dated 13.11.2014, communicated in endorsement R.C.No.4928/1CI/2014 dated 04.12.2014 and quash the same and consequently the first respondent may be directed to promote the petitioner as Assistant Director on par with his juniors.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.D.Muruganandham

Additional Government Pleader

ORDER

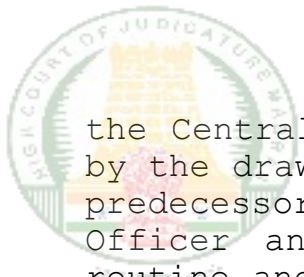
The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, calling records of the 1st respondent relating to G.O.(2D)No.16, Micro Small and Medium Industries Enterprises Department, Chennai dated 21.05.2015 communicated in endorsement R.C.No.2556/2C/2012 dated 09.06.2015 and the earlier orders of the Government passed in G.O(2D)No.25, Micro Small and Medium Industries Enterprises Department, Chennai, dated 13.11.2014, communicated in endorsement R.C.No.4928/1CI/2014 dated 04.12.2014 and quash the same and consequently direct the 1st respondent to promote the petitioner as Assistant Director on par with his juniors.



2.The case of the petitioner is that he is presently serving as Industrial Co-operative Officer in the office of the District Industries Centre, Dindigul. While he was serving as Branch Manager, Tamil Nadu Industrial Co-operative Bank, Karaikudi, disciplinary action was initiated under Rule 17(a) of the Tamil Nady Civil Services (Discipline and Appeal) Rules on 13.06.2012 for the alleged delinquency took place between 13.05.2006 and 30.06.2009 in the TAICO Bank, Karaikudi Branch, Sivagangai District. The gist of the charge is that he had not taken effective and timely action for collection of over dues of personal loans from 367 loanees in the capacity as Branch Manager. The above disciplinary action ended in infliction of punishment of stoppage of increment for a period of 18 months without cumulative effect on 11.11.2013, against which, the appeal preferred by the petitioner was dismissed vide G.O(2D)No.25, dated 13.11.2014 and the review filed thereagainst was also dismissed on 21.05.2015. Challenging those orders, this writ petition is filed.

3.Learned counsel for the petitioner would submit that during the abovesaid tenure, the petitioner had contacted 246 loanees and collected Rs.1,28,35,293/- including previous over dues and regarding over draft loans, he had collected a sum of Rs.1,28,16,680/- from the loanees which facts have been mentioned in the orders dated 11.11.2013 of the Principal Secretary/Industries Commissioner and Director of Industries and Commerce, Chennai. Therefore, the allegation that the petitioner had not taken proper and effective action to collect the overdue loans is baseless. Regarding the allegation of non renewal of regular over draft loans in time, it is stated that according to circular instructions, loanees having three fold rotation alone can be renewed and not others. The loanees in this case did not turn to the bank after getting the loan amount. As regards the allegation of failure in taking statutory action, it is stated that the petitioner has taken arbitration process in respect of 275 cases which has been mentioned in the order dated 11.11.2013 of the Principal Secretary / Industries Commissioner and Director of Industries and Commerce, Chennai and in the arbitration case filed, no award was passed during his tenure and therefore, the question of filing Execution Petition and Suit did not arise. As regards regular over draft dues, the learned counsel would state that the petitioner has taken action for auctioning the mortgaged properties in respect of 9 cases, of which, outstanding amount in 3 cases were fully collected.

4.The learned counsel for the petitioner would further state that the basic and rudimentary reason for accumulation of huge loan arrears was due to the wrong disbursement of the loan amount to the employees of the Central Government against the circular instructions and without jurisdiction. According to the Head Office instructions, no personal loan shall be issued to any employee of

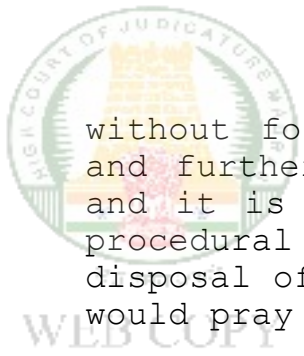


the Central Government, whether the undertaking is furnished or not by the drawing officers. But, overlooking the same, the petitioner's predecessors who were holding the posts of Industrial Co-operative Officer and Sub Accountant, sanctioned the loan as a matter of routine and such deliberate and wilful irregular sanction of loan by the petitioner's predecessors was the basic reason for accumulation of loan arrears and the successor cannot be taken to task for such accumulation. Even taking disciplinary action against such officials for sanction of loans without following the circular instructions, will not erase the ground for accumulation of arrears. It is further stated that when the officials who joined duty subsequently after the relieving of the responsible officers, were not taken to task, giving punishment to the petitioner alone is discriminatory and against Article 14 of the Constitution.

5.It is also submitted that both the petitioner's predecessors who were the root cause for accumulation of such arrears of loan and their immediate successors who were also responsible for non collection of arrears, were not proceeded departmentally and they were left scot-free and the above facts were not properly appreciated by the appellate and revisional authorities and in total non application of mind, they have confirmed the order of punishment and the petitioner is due to retire on 31.07.2020 Thus, he would pray for setting aside the impugned orders with consequential prayer.

6.Learned Additional Government Pleader would state that with regard to the failure of collection of personal loan and regular overdrafts and to take follow up action, charges were framed against the petitioner and others under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and after considering the petitioner's explanation and other records, punishment of stoppage of increment for 18 months without cumulative effect was imposed on the petitioner by the 2nd respondent on 11.11.2013. Against the said punishment order, the petitioner preferred appeal to the 1st respondent, who had referred the appeal petition to the TNPSC to offer its views and the TNPSC has opined that as the overdues in the loan sanctioned by the Branch was more, the petitioner ought to have taken some more steps to recover the amount during his 3 years of service and as there was no ground for consideration of the appeal, the TNPSC advised the Government to reject the petitioner's appeal. The Government after examining the views of the TNPSC, accepted the same and accordingly, rejected the petitioner's appeal. Further, the petitioner's review petition which contained same grounds, was also rejected as there were no fresh grounds to reconsider his petition.

7.He would further state that charges were also framed against one Thiru.R.Kannappan, Industrial Co-operative Officer along with three other bank officials for having sanctioned the personal loans



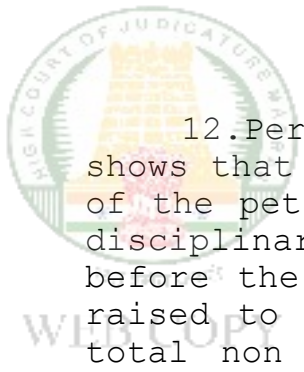
without following the circulars and procedures and inquiry report and further representation of Thiru.R.Kannappan have been received and it is under process. Thus, he would state that there are no procedural lapses in finalisation of the disciplinary action and disposal of appeal and review filed by the petitioner and therefore, would pray that the interference of this Court is not necessary.

8.The petitioner has filed a reply to the counter affidavit stating that when he made specific contention before the appellate and revisional authorities that his predecessors were responsible for the accumulation of loan arrears and the officials who joined immediately after their relieving, were also left scot-free and he alone was discriminately given punishment, both the appellate and revisional authorities without considering any of his contentions, passed the non speaking orders simply stating that no new grounds made out for interference. Thus, he would pray for allowing the writ petition.

9.Heard both sides.

10.The allegation against the petitioner is that while he was working as Industrial Co-operative Officer at TAICO Bank, Karaikudi Branch, between 13.05.2006 and 30.06.2009, he failed to take timely action for collection of overdues of personal loan and regular overdraft loans, thereby caused accumulation of overdues in personal loan to the tune of Rs.148.28 lakhs; failed to renew the regular overdraft loans in time; failed to take statutory action against the defaulted loanees and failed to recover the regular overdraft dues by way of auctioning the mortgaged properties. Denying the above charges, the petitioner submitted his explanation giving the particulars of loan and interest amounts collected and the details of statutory actions taken by him for recovery of the loan amount. However, without affording any opportunity of personal hearing, the 2nd respondent straightaway imposed the punishment of stoppage of increment for 18 months without cumulative effect, without even any notice to the petitioner calling upon his further representation regarding the above punishment. The petitioner preferred appeal before the 1st respondent which was dismissed by the 1st respondent vide G.O(2D)No.25, Micro Small and Medium Industries Enterprises Department, Chennai, dated 13.11.2014, confirming the punishment.

11.Perusal of record shows that the petitioner has specifically pointed out who had issued loan, for which, there is no finding and his predecessors who were working during the relevant period were left scot-free and they have been working. It is seen from the records that the petitioner has taken earnest efforts to collect the money and initiated 275 cases of arbitrary proceedings and thereafter, he was transferred to Dindigul and therefore there is no opportunity for the petitioner to collect the loans.



12. Perusal of the orders passed by the appellate authority shows that the appellate authority did not advert to the contentions of the petitioner and he has simply reiterated the findings of the disciplinary authority and the subsequent review petition filed before the 1st respondent was also dismissed citing no new grounds raised to review the order. In my opinion, the 1st respondent in total non application of mind has passed the non speaking order without assigning any reasons. It is well settled that reasons are heart beats of any administrative decision. In this context, it is relevant to extract below the following decisions:-

(i) In **M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors.** reported in **2008 (5) Supreme 281**, the Supreme Court testing the correctness of an order passed by the Assistant Commissioner of Sales Tax against the assessment, at Paragraph 10, held as follows:

"10. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless."

(ii) In **Alexander Machinery (Dudley) Ltd. v. Crabtree** reported in **1974 ICR 120 (NIRC)**, it was observed that reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

(iii) In **M/s.Steel Authority of India Ltd., v. STO, Rourkela-I Circle & Ors.** reported in **2008 (5) Supreme 281**, the Supreme Court held that the appellate order must be a speaking order and well reasoned, otherwise, it is lifeless.

13. In the impugned orders, such reasons are absent and it reflects total non application mind and therefore, I am inclined to interfere with the impugned orders.

14. Accordingly, the impugned orders in G.O.(2D)No.16, Micro Small and Medium Industries Enterprises Department, Chennai dated 21.05.2015 and G.O(2D)No.25, Micro Small and Medium Industries Enterprises Department, Chennai, dated 13.11.2014 are quashed and the respondents shall pass orders to promote the petitioner as Assistant Director immediately from the day his juniors were promoted. The said exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (crl side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



bala

To

WEB COPY

1) The Secretary to Government,
Micro Small and Medium Industries Enterprises
Department, Secretariat,
Chennai-600 009.

2) The Industries Commissioner
and Director of Industries and Commerce,
Guindy,
Chennai-600 032.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-4957[F] dated 06/02/2020)

ORDER MADE IN
W.P(MD)No.10109 of 2015
DATED : 06.02.2020

VB(18.02.2020) 6P 4C