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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.11183 OF 2009

AND

M.P.NOS.1 OF 2009 AND 1 OF 2011

K.Anbu Selvi
Junior Draughting Officer
O/o. Assistant Executive Engineer (A.E.)
Pollachi, Coimbatore District.

... Petitioner

-Vs.-

1.The Chief Engineer (Agri. Engg)
Nandanam
Chennai-600 035.

2.The Superintending Engineer
(Agricultural Engineering)
Coimbatore Region
Thadagam Road
Coimbatore 641 013.

3.The Executive Engineer
Agricultural Engineering
Tractor Workshop Campus
Coimbatore - 641 003.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records connected with the orders passed by the 3rd respondent No. @5858/2006 dated 17.05.2007 and the order of confirmation passed by the 2nd respondent in appeal proceedings in



ஆ/3693/2007 under Rule 17(a) of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules dated 27.08.2008 and the consequential order of revision passed by the 1st respondent dated 21.05.2009 made in செ.மு.எண்.ஒந1/923/2009, quash all the proceedings.

For Petitioner : Mr.P.M.Subramaniam

For Respondents : Mr.C.Selvaraj
Government Advocate

O R D E R

A month ago, in June of 2021, captioned writ petition turned 12 as it was filed in this Court way back in June of 2009, to be precise on 18.06.2009. This one decade and two years (12 years) old writ petition is listed today under the cause list caption 'NOTICE REGARDING ADMISSION'.

2. A perusal of case file placed before me brings to light that notice has been ordered in captioned writ petition on 23.06.2009.

3. However, a counter affidavit has been filed by all three respondents and pleadings are complete.

4. Mr.P.M.Subramaniam, learned counsel appearing on behalf of counsel on record for sole writ petitioner and Mr.C.Selvaraj, learned State counsel on behalf of all three respondents are before this Virtual Court.

5. Both learned counsel consented for the captioned writ petition being taken up, heard out and being disposed of as the pleadings are complete.

6. From the submissions made in this Virtual hearing i.e., web hearing on a video conferencing platform and from the case file placed before this Court, I find that the entire matter turns on a very narrow compass and therefore, it is not necessary to dilate much on facts and it will suffice to give a thumbnail sketch of facts i.e., essential facts imperative for



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appreciating this order. Factual matrix in a nutshell is that the writ petitioner while working as Junior Drafting Officer in Pollachi, Coimbatore District in the office of 'Assistant Executive Engineer' ['AEE' for the sake of brevity], Pollachi, Coimbatore District had to face disciplinary proceedings; that disciplinary proceedings were under the erstwhile 'Tamil Nadu Civil Services (Classification, Control and Appeal) Rules' [hereinafter 'said Rules' for the sake of convenience and clarity]; that two charges were framed, one charge turns on allegation of not maintaining Village register pertaining to subsidy disbursement and second charge pertains to alleged lapse in examination of applications for subsidiary; that charges were amended but it may not be necessary to delve into the same; that writ petitioner was called upon to give her explanation; that writ petitioner did give her explanation; that post explanation, third respondent made an 'order dated 17.05.2007 bearing reference No.ஐ5858/2006' [hereinafter 'I impugned order' for the sake of convenience] stating that the explanation is unacceptable and imposing punishment of stoppage of increment for six months without cumulative effect [ஆறு மாத காலத்திற்கு திறண்ட்பயனின்றி ஊதிய உயர்வு நிறுத்தம்]; that writ petitioner carried the matter in appeal to second respondent who is the appellate authority and second respondent vide 'order dated 27.08.2008 bearing reference No. ஆ/3693/2007' [hereinafter 'II impugned order' for the sake of convenience and clarity] confirmed the order made by third respondent; that writ petitioner carried the matter in revision to first respondent; that in the interregnum, writ petitioner was under suspension for 36 days; that first respondent-appellate authority passed 'order dated 21.05.2009 bearing reference No.செ.மு.எண்.ஒந1/923/2009' [hereinafter 'III impugned order' for the sake of convenience and clarity] by altering the charges from Rule 17(a) of said Rules to Rule 17(b) of said Rules and advised the original authority to proceed accordingly; that writ petitioner has filed the captioned writ petition assailing these three impugned orders.

7. To be noted, Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, which is being referred to as said Rules in this order, was rechristened as Tamil Nadu Civil Services (Discipline and Appeal) Rules on and from 23.06.1994. This is mentioned only for completion of facts. However, captioned writ petition stands governed by said Rules.



8. The narrative thus far captures the factual matrix in a nutshell and the trajectory the matter has taken.

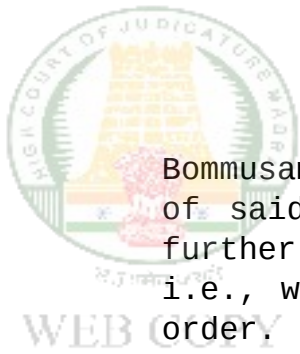
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9. Learned counsel for writ petitioner, submits that III impugned order i.e., order of revisional authority (first respondent) is bad as altering the charges from Rule 17(a) of said Rules which deals with minor penalties to Rule 17(b) of said Rules which deals with major penalties, cannot be done without further enquiry and without giving opportunity to the delinquent. In support of his contention, learned counsel pressed into service a judgment of Hon'ble Division Bench in Bommusamy's case [A.Bommusamy Vs. The Government of Tamil Nadu, Rep. by its Secretary to Government, Co-operation, Food and Consumer Protection Department, Fort St. George, Chennai and four others reported in 2007 (3) CTC 518]. Regarding the I impugned order and II impugned order, learned counsel for writ petitioner emphasized that charges are vague and delinquent cannot be called upon to respond to waived charges.

10. In response to the aforesaid arguments, Mr.C.Selvaraj, learned State counsel, notwithstanding very many averments in the counter affidavit submitted that the charges are not vague, revisional authority does have powers to confirm, modify, set aside, reduce or enhance the punishment and therefore, there is no error in the order made by the revisional authority (first respondent). Learned State counsel also emphasizes that the explanation given by writ petitioner was not accepted and therefore, I impugned order and II impugned order came to be passed.

11. In reply submissions, learned counsel for writ petitioner reiterated the submissions made in the opening submissions.

12. I now embark upon the exercise of discussing rival submissions in the fact setting of the case and giving my dispositive reasoning. The order of revisional authority i.e., first respondent (III impugned order) is clearly hit by



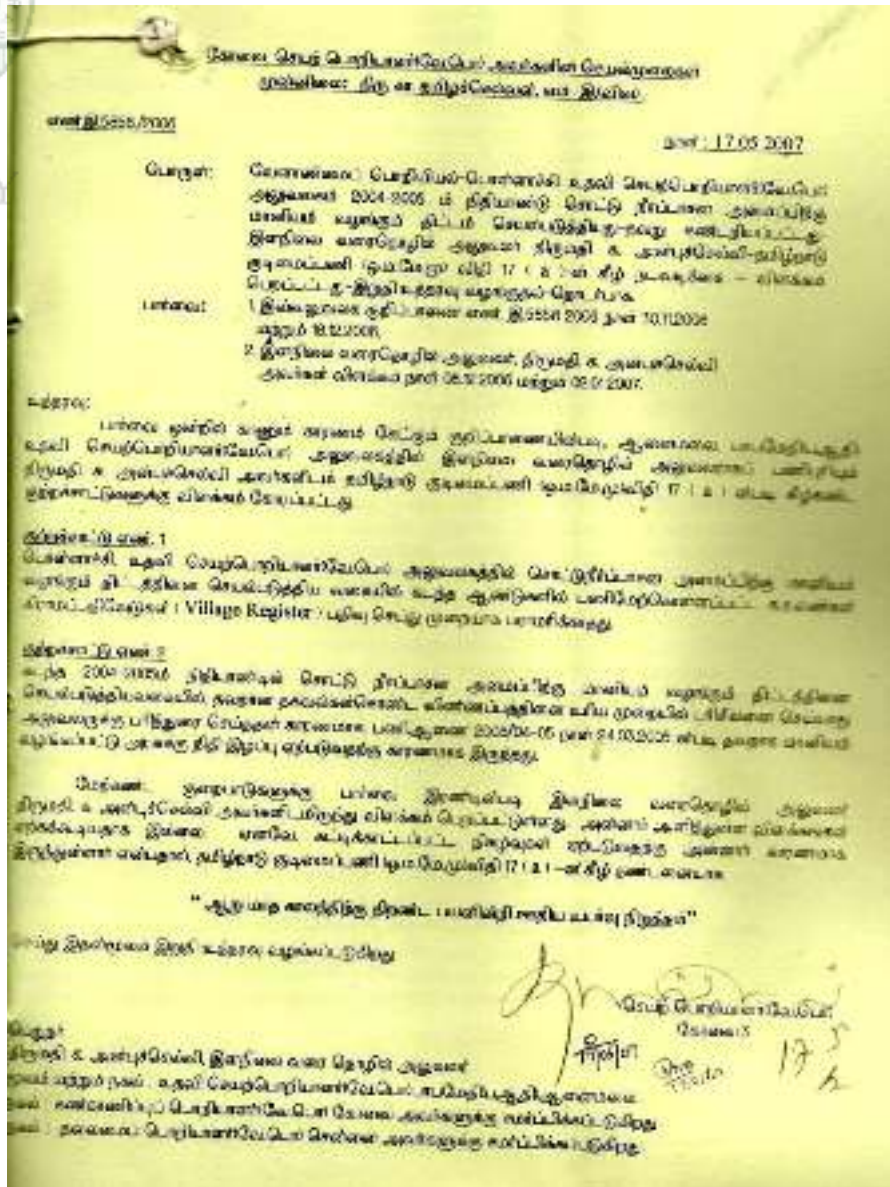
Bommusamy's principle, as it has altered charges from Rule 17(a) of said Rules to Rule 17(b) of said Rules without conducting further enquiry and without giving opportunity to the delinquent i.e., writ petitioner. This draws the curtains on III impugned order.

13. In the instant case, I refrain myself from going into the question of whether doctrine of merger will operate in cases of this nature, wherein an order of punishment by the disciplinary authority is carried to a revisional authority via appellate authority. The reason is, in the case on hand I and II impugned orders i.e., orders made by the original and appellate authorities fail to pass the muster (de hors the order of revisional authority) as they are non speaking orders with no reasons. Dispositive reason being the soul of an order imposing punishment they cannot but be interfered with. In other words, the question as to whether doctrine of merger will operate in cases of this nature is left open in this order as the case on hand can be decided de hors this question. However, there will be discussion and dispositive reasoning qua interfering with I and II impugned orders (orders of original authority and appellate authority) infra in the paragraphs to follow.

14. This takes me to I and II impugned orders made by third and second respondents respectively i.e., original authority and appellate authority. Though submissions made before me was on charges being vague, what impresses me is that the order of original authority is laconic and does not give reasons. In this regard, this Court deems it appropriate to scan and reproduce the order of third respondent (I impugned order) dated 17.05.2007 and the same is as follows:



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15. A perusal of the above order makes it clear that the third respondent has said that the explanation given by writ petitioner is unacceptable (அன்னார் அளித்துள்ள விளக்கங்கள் ஏற்கக்கூடியதாக இல்லை)/ In one sentence, third respondent has stated அன்னார் அளித்துள்ள விளக்கங்கள் ஏற்கக்கூடியதாக இல்லை which means the explanation given by writ petitioner is unacceptable without making a whisper or giving a shred of reason as to why and how the explanation given by writ petitioner is unacceptable. A careful perusal of Rule 17(a) of said Rules makes it clear that when a representation is given by delinquent, the same 'shall be taken into consideration' before imposing penalty. In this regard, the term 'consider' occurring in disciplinary proceedings came up for



elucidation in Hon'ble Supreme Court in R.P.Bhatt case [R.P.Bhatt Vs. Union of India reported in (1986) 2 SCC 651]. In R.P. Bhatt case, Hon'ble Supreme Court dealing with Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, has held that the term 'consider' implies 'due application of mind'. Therefore, the term 'consider' has been interpreted in disciplinary proceedings to mean 'due application of mind'. This R.P.Bhatt principle has been followed by Hon'ble Mr.Justice V.Ramasubramanian, as a single Judge of this Court (as his Lordship then was) in K.Kandasamy case [K.Kandasamy Vs. Deputy Inspector General of Police, Tiruchirappalli Range and others reported in (2006) 4 MLJ 1382].

16. Therefore, if this principle that the term 'consider' in disciplinary proceedings means 'due application of mind' is applied in the case on hand, the inevitable sequitur is, there has been no application of mind qua order made by third respondent i.e., I impugned order. In appeal, there cannot be any enlargement to support the order of original authority. In any event, the order of appellate authority (II impugned order) made by second respondent does not discuss the explanation given by writ petitioner.

17. Therefore I and II impugned orders also fail to pass the muster qua 'consider' occurring in Rule 17(a) of said Rules. The inevitable sequitur is, prayer in the writ petition is to be answered in affirmative. Prayer is answered in affirmative. The order dated 17.05.2007 bearing reference No.இ5858/2006 passed by the third respondent, order dated 27.08.2008 bearing reference No.ஆ/3693/2007 passed by the second respondent and order dated 21.05.2009 bearing reference No.செ.மு.எண்.ஒந1/923/2009 passed by the first respondent are set aside. Captioned Writ Petition is allowed. Consequently, connected miscellaneous petitions namely, M.P.Nos.1 of 2009 and 1 of 2011 are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

mk



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+1cc to Mr.P.M.Subramaniam, Advocate, S.R.No.41288

+1cc to the Government Pleader, S.R.No.41485

W.P.No.11183 of 2009

VSN-II(CO)
RLP(16/09/2021)