IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.20124 of 2008 and
M.P.No.2 of 2008

C.Sundar Raj ...Petitioner

Vs.

1. State of Tamil Nadu, rep. by its
   Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai - 600 009.

2. The Special Commissioner and
   Commissioner for Revenue Administration,
   Chepauk, Chennai – 600 005.

3. The District Revenue Officer,
   Kanniyakumari District at Nagercoil.

4. The Revenue Divisional Officer,
   Nagercoil Division,
   Kanniyakumari District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying Writ of Certiorari, to call for the records relating to the Impugned Orders passed by the 4th respondent by his proceedings No.A6/11381/95 dated 31.07.1997, confirmed by the 3rd respondent in his proceedings No.A3/81248/97 dated 03.09.1998 and enhanced by the 1st respondent on Suo-motu Revision in G.O.(2D) No.255 dated 29.05.2008 quash the same.

For Petitioner : Mr.K.Premkumar

For Respondents : Mr.C.Selvaraj
Government Advocate

O R D E R

The petitioner, represented by Mr.K.Premkumar, learned counsel, was appointed as a Village Munsif on 01.07.1975 and posted in Palur Village, Kanniyakumari District. On 11.08.1982, he was promoted to the post of Village Administrative Officer (VAO) at Thamaraikulam Village and thereafter in Ponmalai

Village. While he was working there, a charge memo was issued by R4/Revenue Divisional Officer (RDO) dated 20.04.1992 framing four charges in regard to him, having demanded and received illegal gratification from four persons during the discharge of his duties as VAO at Bhoothapandi Village.

2. Enquiry conducted by the enquiry officer appointed initially, was in favour of the petitioner, the enquiry officer holding that all four charges were not proved. A second enquiry officer was thus appointed being the Tahsildar (Distress Relief) Agastheeswaram Taluk to conduct domestic enquiry afresh.

3. After taking note of the explanation submitted by the petitioner, the second enquiry officer submitted his report to the effect that charge No.4 alone, stood proved. Based on the enquiry findings, an order came to be passed on 31.07.1997 which, according to the learned counsel for the petitioner has not taken note of the cleavage of opinion expressed by the two enquiry officers and also was not in line with the principles of natural justice. The order imposed punishment of stoppage of increment for a period of one year without cumulative effect holding that charges 1, 2 and 4 had been proved.

4. As against the aforesaid order, an appeal was preferred to the District Revenue Officer (DRO) who confirmed the order of the Disciplinary Authority. A revision petition was preferred before the Special Commissioner and Commissioner for Revenue Administration/R2 on 07.03.2003 that, according to the learned counsel for the petitioner, is yet pending. However, to be noted that a copy of the said revision petition has not been placed on record and neither is there any proof adduced for such filing.

5. In the aforesaid circumstances, a show cause notice came to be issued on 20.04.2000 from the Secretary to Government, Revenue Department arrayed as R1 proposing suo motu revision of order dated 31.07.1997 enhancing the punishment from stoppage of increment for one year without cumulative effect to stoppage of increment for three years with cumulative effect. A detailed explanation was submitted by the petitioner to the show cause notice.

6. A fresh charge memo came to be issued on 09.05.2005 by R4, which was the subject matter of challenge before the Madurai Bench of this Court in WP(MD)No.6749 of 2005. The writ petition came to be allowed on 09.10.2007 and a learned Single Judge of this Court set aside the charge memo, however, granting liberty to R1 to proceed with the show cause notice proposing suo motu revision, since the petitioner had already submitted his reply to the same.

7. As a result, the petitioner who was on the anvil of superannuation was suspended from service and not permitted to retire invoking Rule 56(1)(c) of the Fundamental Rules.

8. The proceedings initiated by show cause notice dated 20.04.2000 has culminated in G.O.(2D).No.255, dated 29.05.2008, which is the subject matter of challenge before me in this writ petition along with original order dated 31.07.1997 passed by R4.

9. Straightaway, I dismiss the challenge to order dated 31.07.1997 insofar as that order has merged since with appellate order dated 03.09.1998, that has attained finality. The petitioner appears to have challenged the original proceedings only by way of abundant caution and since the subsequent Government Order confirming the enhancement of punishment has been challenged by him. The original and appellate proceedings are dated 31.07.1997 and 03.09.1998 and there has been no challenge to the aforesaid proceedings till the present writ petition was filed in 2008. This writ petition is dismissed to this extent.

10. Coming to the challenge to G.O.(2D).No.255 dated 29.05.2008 suo motu enhancing the punishment imposed upon the petitioner, Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (in short 'Rules') which provide for suo motu enhancement after consultation with the Tamil Nadu Public Service Commission of any order passed originally under those Rules. Rule 36 as follows:

> 36. REVISION
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> (1) Notwithstanding anything contained in these rules -
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> (i) the State Government; or
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> (ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or
>
> (iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or
>
> (iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order ;
>
> may at any time, either on their or its own motion or otherwise call for the records of

any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or
(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or
(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or
(d) pass such other orders as they or it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)*, (vi), (vii) 24 and (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub-rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary:

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*(Vide G.O.Ms.No.117, P&AR(N) Department, dated 28.9.2011)
Provided further that no power of revision shall be exercised by the head of the department, unless --

(i) the authority which made the order in appeal, or
(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced --

(a) Where no appeal has been preferred, before the expiry of the period of limitation for an appeal, or

(b) Where an appeal has been preferred, before the disposal of such appeal.

(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules.'

11. However, the exercise of power under Rule 36 must set out the reasons on the basis of which R1 seeks to revise the order passed originally. In the present case, the trajectory of events would show that the original and appellate orders have taken note of the four charges framed in arriving at a conclusion in regard to the proportionately of the charges and the punishment imposed and the position has been laid to rest as early as in September 1996. Any move to upset the status quo must indicate the necessity and justification for such revision.

12. In response to the show cause notice, the petitioner has tendered an explanation running to 17 pages. However, there is no whisper in regard to the explanation tendered and the impugned order merely confirms the proposals in the show cause notice without any discussion of the reasons for the enhancement or the explanations putforth by the petitioner.

13. The power of suo motu revision carries serious repercussion and cannot be casually exercised. The very initiation has to be justified by adducing reasons for its invocation. Thereafter, the order passed has to contain sufficient reasoning. Both the aforesaid factors are conspicuously absent in the impugned proceedings. Thus the impugned G.O. is set aside. This writ petition is allowed with all consequential benefits. Since the petitioner is stated to be a senior citizen over 70 years of age, let effect be given to this order within a period of six (6) weeks from today. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
   Revenue Department,
   Fort St. George,
   Chennai - 600 009.

2. The Special Commissioner and
   Commissioner for Revenue Administration,
   Chepauk,
   Chennai - 600 005.

3. The District Revenue Officer,
   Kanniyakumari District at Nagercoil.

4. The Revenue Divisional Officer,
   Nagercoil Division,
   Kanniyakumari District.

+1cc to Mr.K.Premkumar, Advocate, S.R.No.42152
+1cc to the Government Pleader, S.R.No.42667

W.P. No.20124 of 2008 and
M.P.No.2 of 2008

PL[co]
NSK 23/09/2021