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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.25723 OF 2008
AND M.P.NO.2 OF 2008
(THROUGH VIDEO CONFERENCE)

C. Saravana Kumar

...Petitioner

Vs.

1) The Commissioner of Rural
Development & Panchayat Raj,
Saidapet, Chennai 600 015

2) The District Collector,
(PD) Section,
Coimbatore District,
Coimbatore.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in connection with his proceedings Na.Ka.No. 53752/07/DPC 2-2 dated 18.09.2008 and also the records on the file of the 2nd respondent in connection with his proceedings Roc No.8057/2004/K4 dated 07.05.2007 and quash the same and direct the respondents to reinstate the petitioner in service with all service and monetary benefits.

For Petitioner : Mr.R.Singaravelan,
Senior Counsel,
For Mr.V.S.Jagadeesan

For Respondents : Mr.C.Selvaraj,
Government Advocate

O R D E R

The petitioner, while working as Junior Assistant (Noon Meals) in Valparai Town Panchayat Union was issued with a charge memo in Roc No.8057/2004/K4 dated 07.05.2007. The gravamen of the charges imposed on the petitioner are that, he manipulated the records and prepared bills in excess of the actual expenses



and misappropriated the money and thereby, caused loss to the Exchequer. Seven charges were framed against the petitioner and out of the seven charges, charges 1, 4, 5 and 7 were held to be proved. On the basis of the enquiry report, the Disciplinary Authority dismissed the petitioner from service and he preferred an Appeal and the Appeal was also rejected and therefore, he has preferred the above Writ Petition.

2. In the explanation to charge (1) of the proceedings dated 07.05.2007, the petitioner has stated that he had prepared the bills in excess of actual expenses and when money was drawn, without knowing what to do, he had spent the money as his own. With respect to all other charges, he said that the money was disbursed to the employees and there is no misappropriation. The total amount said to have been misappropriated was Rs.3,61,048/- and he had remitted Rs.3,07,902/- back to the respondents and the remaining balance of Rs.53,146/- is yet to be remitted. Therefore, he sought for an order of reinstatement of his service, for having committed the misconduct due to his inexperience and lack of proper training and knowledge. These charges were held to be proved as the petitioner has admitted the charges. A further perusal of the record shows that, he has taken a specific ground that he was made to submit such an explanation, as directed by the Superior Officials. Only the petitioner and another co-delinquent were made scape goats in this matter.

3. Even though a specific ground was raised on this aspect, the Appellate Authority had not considered that point, but mechanically rejected the Appeal in one line that misappropriation is a serious misconduct. Apart from this, no other discussion on the objections raised by the petitioner or reasons for confirming the findings of the Enquiry Officer as well as the Disciplinary Authority was recorded.

4. It is well settled that the Hon'ble Supreme Court in the case of Director (Marketing), Indian Oil Corporation Ltd., and another vs. Santhosh Kumar reported in (2006) 11 SCC 147 has made the following observations:

"A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set-aside the order passed by the Disciplinary Authority and the Appellate Authority and remit the matter for fresh disposal to the Disciplinary Authority. The Disciplinary Authority shall consider the detailed representation made by the respondent and also consider the detailed report of the Enquiry Officer and the records placed before him in its proper perspective and decide the matter afresh



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on merits. The Disciplinary Authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the Disciplinary Authority. The order passed by the High Court is set-aside for the above reason. We also set-aside the direction issued by the High Court ordering re-instatement into service with continuity in service and all consequential benefits. The Disciplinary Authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The Civil Appeal is disposed of accordingly. No order as to costs. "

5. In the above case the appellate authority, though stated that he had applied his mind, did not advert to the grounds raised in the appeal, nor discussed or recorded reasons. The order of punishment as well as the order passed in Appeal, shall contain reasons for rejecting the grounds raised by the appellants as well as the reasons for imposing the proportionate punishment. But in the present impugned appellate order, I do not find any reason recorded as mandated in conformity with principles of natural justice. On the other hand, it is a very cryptic order. The act of passing a cryptic order itself amounts to violation of Principles of Natural Justice, as it deprives a person without information as to the reasons of rejection of his grounds of appeal. On that ground, I am inclined to set aside the order passed by the Appellate Authority in proceedings No.53752/2007/DPC dated 18.09.2008 and remit the matter back for fresh consideration. The Appellate Authority is directed to consider the circumstances which led the petitioner to submit an explanation admitting the offence and if it is found true, to take appropriate action in that regard. At the time of deciding the Appeal, it is also expected that personal hearing is given to the petitioner to substantiate his contentions. This process shall be completed within a period of three(03) months from the date of receipt of a copy of this order, in accordance with Rule 23 of the Tamil Nadu Civil Servants (Discipline & Appeal) Rules.

6. Accordingly, the Writ Petition stands Disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

sts

Sub Assistant Registrar



To:

1) The Commissioner of Rural
Development & Panchayat Raj,
Saidapet, Chennai 600 015

2) The District Collector,
(PD) Section,
Coimbatore District,
Coimbatore.

Copy To

The Section Officer,
ER Section,
High Court,
Madras. (09/11/2021)

+1cc to Mr.V.S.Jagadeesan, Advocate, S.R.No.37339

W.P.No.25723 of 2008

(CO)
PM/13/10/2021