IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

CORAM :

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.34342 OF 2016

R.Devarajan ... Petitioner

Vs

1 The Principal Secretary to the Government of Tamil Nadu Department of Commercial Taxes and Registration Fort St. George Chennai-600 009.

2 The Inspector General of Registration Santhome High Road Mylapore Chennai-600 004. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to orders dated 30.06.2016 passed by the 1st respondent in G.O.(D) No.230 Commercial Tax and Registration (K) Department and quash the same as being illegal arbitrary discriminatory and for a consequential direction to the 1st respondent to restore all the benefits including promotion and seniority to the petitioner.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.K.Tippu Sultan, Government Advocate

ORDER

The petitioner herein, while working as Assistant at the Sub- Registrar Office, Sriperumpudur, Kanchipuram District, was levelled with certain charges along with three other co delinquents. As per the charges, an unaccounted sum of Rs.28,765/-/- was found in between the documents like Encumbrance Certificate and books found in that room. The Tribunal issued a charge memo. An inquiry was conducted by the Commissioner of Disciplinary proceedings and the charges against the petitioner and co-delinquents were held to be proved. The second respondent herein had imposed a punishment of stoppage of increment for one year with cumulative effect.

2. The petitioner herein preferred an appeal against the

said punishment to the first respondent herein, and by an order dated 30.06.2015, passed in Government G.O.(D) No.230, Commercial Taxes and Registration Department, the punishment was confirmed.

3. The petitioner herein challenges the order of punishment in this Writ Petition.

4. One of the main grounds raised by the petitioner was that the appellant authority, while passing the order in the appeal, had not addressed the various grounds raised by the petitioner in his appeal petition dated 28.08.2015.

5. The learned Government Advocate on the other hand submitted that the charges levelled against the petitioner herein as well as co delinquents are very serious in nature and since the punishment imposed was a minor one, no interference is required.

6. I have carefully considered the submissions made by the respective counsels. This court is not going into the various grounds raised in the writ petition. One of the infirmities that stares on the face of the record is the manner in which the appellate authority had dealt with the appeal petition filed by the petitioner, and the manner in which the appellate order dated 30.06.2015 was passed. The appellate authority has simply extracted the facts of the case and order of punishment and vide paragraph 5 of the order, rejected the appeal stating that there are no sufficient grounds to interfere with the order of punishment. Such a procedure adopted by the appellate authority is contrary to the procedure prescribed under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Rule 23 of the aforesaid Rules, which prescribes the procedure to be adopted by the appellate authority while disposing of an appeal, reads as follows:

> 23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--
>
> (a) whether the facts on which the order was based have been established;
>
> (b) whether the facts established afford sufficient ground for taking action; and
>
> (c) whether the penalty is excessive, adequate or inadequate and pass orders--
>
> (i) confirming, enhancing, reducing, or setting aside the penalty; or (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;
>
> Provided that --
>
> (i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and

(viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case.

7. The appellate authority is therefore expected to strictly observe the procedure contemplated above, in the sense, that while considering the appeal, the authority is required to substantiate as to whether the facts has been established, so as to afford sufficient ground for taking action, and the proportionateness of the penalty.

8. In the instant case, apart from stating that the ground raised by the petitioner in the appeal is not sufficient, there does not seem to be any application of mind by the appellant authority with regard to the facts of the case. In other words, the appellate authority has not ventured into the facts of the case to establish sufficient grounds for the disciplinary authority for imposing such punishment. In the absence of the same, the order in appeal itself is deemed to be violative of the procedure under Rule 23 and hence, the same cannot be sustained. However, if the first respondent herein is directed to re-do the entire exercise by reconsidering all the grounds of appointment raised by the petitioner and pass fresh order, ends of justice would be secured.

9. In the light of the above observation, the impugned order passed by the first respondent in the appeal in G.O.(D) No.230, Commercial Tax and Registration Department, dated 30.06.2015, is set aside and the matter is remitted back to the first respondent for re-consideration.

10. The first respondent herein shall give due consideration to all the grounds raised in the appeal petition dated 28.08.2015 and pass a reasoned order, in conformity with the procedure laid down under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and the first respondent herein shall complete the entire proceedings at least within a period of three (3) months from the date of receipt of a copy of this order. The Writ Petition stands partially allowed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

mrn

To

1 The Principal Secretary to the Government
Department of Commercial Taxes and Registration
Fort St. George Chennai-600 009.

2 The Inspector General of Registration
Santhome High Road, Mylapore, Chennai-600 004.

+1cc to Mr.D.Veerasekaran, Advocate, S.R.No. 32639

W.P.No.34342 OF 2016

SR II(CO)
GN(19/07/2021)