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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.18324 OF 2021

P.Muralidharan, S/o M.Ponnusamy

...Petitioner

Vs.

The Director General of Police/
Director General of Prisons &
Correctional Services,
Tamil Nadu, Chennai-600 008.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the respondent herein passed in his No.09857/CS1/2020, dated 23.06.2021 imposing the punishment of pay reduction by one stage (i.e. from 01.07.2021 to 30.06.2022) for a period of one year with cumulative effect and quash the same and consequently direct the respondent herein to include and promote the petitioner as Accountant for the year 2019-2020 with effect from 12.06.2019 and as Office Superintendent/Office Manager for the year 2020-2021 with effect from 14.05.2020 with all consequential service and monetary benefits.

For petitioner : Mr.Ravi Shanmugam

For respondent : Mr.L.S.M.Hasan Fizal, Addl.G.P.

ORDER

This Writ Petition is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the respondent herein passed in his No.09857/CS1/2020, dated 23.06.2021 imposing the punishment of pay reduction by one stage (i.e. from 01.07.2021 to 30.06.2022) for a period of one year with cumulative effect and quash the same and consequently direct the respondent herein to include and promote the petitioner as Accountant for the year 2019-2020



with effect from 12.06.2019 and as Office Superintendent/Office Manager for the year 2020-2021 with effect from 14.05.2020, with all consequential service and monetary benefits.

2. The petitioner originally joined as Junior Assistant on 20.07.1998 and he was promoted to the post of Assistant on 17.05.2011. On 27.06.2018, he was issued with charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, against the petitioner for certain acts of misconduct. According to the petitioner, on 08.01.2019, the seniority list was published in the category of Assistant as on 01.01.2019 and the petitioner's name was included in Sl.No.21 against his immediate junior one P.Sanjai Kumar.

3. Thereafter, on 26.03.2019, a panel of Assistants fit for promotion as Accountant for the year 2019-2020, was published and the petitioner's name had been included in Sl.No.8 above his immediate junior Mr.P.Sanjai Kumar. Subsequently, a further list was published on 12.06.2019 containing the candidate's name for promotion to the post of Accountant for the year 2019-2020 and even in that list, the petitioner's immediate juniors, were found promoted.

4. As regards the outcome of the charge memo issued against the petitioner, the Superintendent of Central Prison, Vellore, who was the competent authority, had imposed a penalty of stoppage of increment for a period of one year without cumulative effect on the petitioner, vide order dated 13.09.2019. As against that, the petitioner preferred statutory appeal to the Deputy Inspector General of Prisons, Vellore Range on 23.11.2019. Considering the appeal filed by the petitioner, the Deputy Inspector General of Prisons, Vellore Range, vide order dated 26.02.2020 cancelled the punishment imposed on the petitioner and exonerated him from the charges.

5. Thereafter, the petitioner preferred a representation to the respondent on 02.03.2020, requesting for grant of promotion as Accountant for the year 2019-2020 with effect from the date of promotion of his immediate junior.

6. Subsequently, on 14.05.2020, a list of panel of Accountants fit for promotion to the post of Office Superintendent/Office Manager for the year 2020-2021 was published and thereafter also, the petitioner's immediate junior named above, was included. According to the petitioner, he was entitled to be promoted as Office Superintendent/Office Manager for the year 2020-2021 with effect from 14.05.2020.

7. While matters stood thus, the respondent herein has issued a suo-motu revision show cause notice, dated 26.09.2020,



calling for explanation from the petitioner, purported to be in pursuance of the power conferred on him under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, as to why the punishment should not be imposed on him.

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8. In response to the same, the petitioner submitted his explanation on 10.10.2020 and thereafter, the respondent passed the impugned order on 23.06.2021 inflicting the punishment of reduction by one stage from 01.07.2021 to 30.06.2022 for a period of one year with cumulative effect. Challenging this punishment order, the petitioner is before this Court by filing the present Writ Petition for the relief stated supra.

9. The learned counsel for the petitioner straight-away attacked the impugned order stating that the show cause notice issued under Rule 36 of the said Rules, is illegal and cannot be maintained, as the same has been issued after a period of six months' limitation period prescribed in the said Rule itself. The punishment was cancelled by the appellate authority on 26.02.2020, but the so-called revisional power has been exercised by issuance of show cause notice on 26.09.2020 after expiry of period of six months. Therefore, it is legally impermissible for the respondent to issue such notice under Rule 36 of the Rules.

10. According to the learned counsel, the issue in this Writ Petition, is no longer res-integra, as the same has been covered by various orders of this Court. The first of the orders passed by this Court, has been promptly referred to by the learned counsel in W.P.No.9394 of 2000, dated 20.11.2003. He referred to paragraphs 4, 5 and 6 therein, which are extracted hereunder:

"4. Before this Court, learned counsel for the petitioner put forth two submissions viz., to invoke the review power, the authority has to do it within a period of six months from the date of order of the disciplinary authority and that since the order was passed by the Inspector General of Police, the power of review can be exercised by the Government and not by the Director General of Police.

5. Heard the learned counsel for the petitioner and the respondent. Admittedly, the order was passed by the Inspector General of Police. Against the said order, an appeal would lie to the Director General of Police. Here, the power of review exercised by the appellate authority, which is contrary to the Rules. Secondly, the review power has to be



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exercised within a period of six months from the date of the order and not within six months from the date of knowledge of the order of the appellate authority. That being the legal position, the show cause notice has to be quashed.

6. In this view of the matter, the writ petition is allowed. No costs. Connected W.M.P. stands closed."

11. The learned counsel further referred to a detailed order of a learned Judge of this Court (as he then was), dated 26.08.2008 in W.P.No.29034 of 2006. After advertng to the various submissions of the learned Senior Counsel therein, it was observed by the learned Judge from paragraph 26 onwards as follows:

"26. The power of the Head of the Department to exercise the suo-moto review is circumscribed under the second proviso to Rule 36 and exercise of the same, beyond the restrictions imposed therein, should be taken to be without jurisdiction. It is settled legal position that the power conferred on the authority can be exercised in the manner provided under the statute and not otherwise. It is worthwhile to extract few decisions on this aspect in this regard.

27. In T.Ramamoorthy v. The Secretary, Sri Ramakrishna Vidyalaya High School, etc. & Others reported in 1998 Writ. LR 641, this Court at Paragraph 6, held as follows:

"If the statutory provision enacted by the Legislature prescribed a particular mode for terminating the service or dismissing the teaching or a non-teaching staff of a school, it can and has to be done not only in that manner alone, but it cannot be done in any manner too. This principle that where a power is given to do a certain thing in a certain way, things must be done in that way and not otherwise and that the other method of performance is necessarily precluded, is not only well settled, but squarely applies to this case also in construing the scope of the power as also its exercise by the management under Section 22 of the Act."



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28. In Captain Sube Singh v. Lt. Governor of Delhi [(2004) 6 SCC 440], the Supreme Court, at Paragraph 29, held as follows:

"29. In Anjum M.H. Ghaswala, a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhanajaya Reddy v. State of Karnataka.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification under Section 67(1)(d) read with sub-clause (i) thereof."

29. The Supreme Court in State of Jharkhand v. Ambay Cements reported in 2005 (1) CTC 223, at Paragraph 27, held as follows:

"27. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation and where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case of obtaining prior permission is mandatory, therefore, non-compliance of the same must result in cancelling the concession made in favour of the grantee-the respondent herein."



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30. In Pandit D Aher v. State of Maharashtra reported in 2007 (1) SCC 437, the Supreme Court, at Paragraph 19, held as follows:

"If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

31. The punishment of stoppage of increment without cumulative effect for one year was imposed on 27.03.1995 by the Original Authority. Show cause notice issued after nearly a lapse of one year and four months by the Principal Commissioner and Commissioner of the Revenue Administration, Chennai, first respondent, purporting to be under Rule 36(1)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, proposing to enhance penalty is without jurisdiction. The Judgement of the Division Bench of this Court in P.Sabesan v. State of Tamil Nadu reported in 1984 W.L.R. 557 squarely applies to the facts of this case and I have no hesitation to follow the same. As the impugned show cause notice is found to be without jurisdiction, this Court deems it fit not to transverse into the factual aspects.

32. In view of the above, the Writ Petition is allowed. No costs."

12. In view of the settled legal position, the present exercise of power by the respondent and by issuance of notice after a period of six months, is to be discountenanced in law and the Writ Petition is liable to be allowed on that legal ground alone.

13. The learned Additional Government Pleader appearing for the respondent had not disputed the legal position as demonstrated by the learned counsel for the petitioner. At the same time, he however attempted to argue that the charges framed against the petitioner, were serious in nature, which impelled the respondent to issue notice by invoking his revisional power.



14. But, this Court is not inclined to hear the learned Additional Government Pleader on the merits of the charges, as, ex-facie, the impugned order is unsustainable in law for the above stated legal reasons.

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15. The facts as disclosed, are not in dispute and the authority who exercised the power, is not the Government and therefore, the limitation that is prescribed in the relevant Rules, is very much applicable to the respondent and in those circumstances, the very issuance of the show cause notice, dated 26.09.2020, has to be held as not maintainable in law.

16. When once the show cause notice itself is held to be unsustainable and outside the frame-work of the limitation prescribed in the relevant Rules, the further action by the respondent in passing the impugned order and punishment, dated 23.06.2021, has to go "lock, stock and barrel".

17. In view of the above rulings of this Court and also the plain language as contained in Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the impugned action of the respondent is unsustainable in law. Accordingly, the impugned order dated 23.06.2021 passed by the respondent is set aside.

18. As the punishment has been set aside, the petitioner's further claim for promotion to the post of Accountant and then to the post of Office Superintendent/Office Manager, shall be decided by the respondent by passing appropriate orders.

19. The respondent shall treat the claim of the petitioner as if the petitioner was not imposed with any penalty and grant him the promotional benefits, if he is otherwise entitled to in terms of his turn of his promotion to the post of Accountant as well as Office Superintendent /Office Manager and appropriate orders in that regard shall be passed within a period of eight weeks from the date of receipt of a copy of this order or the web-copy of this order, whichever is earlier.

20. With the above directions, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

The Director General of Police/
Director General of Prisons &
Correctional Services,
Tamil Nadu, Chennai-600 008.

+1cc to the Government Pleader SR.No.63830

W.P.No.18324 of 2021

NMI (CO)
RVM(20/12/2021)