IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.29580 & 29596 of 2018
&
W.M.P.Nos.2592 & 2594 of 2020

R.Sudarshan ... Petitioner in both WPs

Vs.

1. The Additional Chief Secretary to Government,
Tourism, Culture & Religious Endowment Department,
Government of Tamilnadu,
Fort St. George, Chennai - 600 009.

2. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam, Chennai - 600 034. ... Respondents in both WPs

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the Annual Confidential Reports for the respective periods from 28.09.2012 to 31.03.2013 and 01.04.2014 to 30.09.2014 dated nil prepared by the second respondent herein in respect of the petitioner herein and quash the same and further direct the respondents to treat the above periods as no report periods.

For Petitioner : Mr.D.Simon in both WPs

For Respondents : Mr.M.Karthikeyan
Special Government Pleader HR&CE
in both WPs

COMMON ORDER

These writ petitions have been filed to quash the Annual Confidential Reports of the petitioner for the periods from 28.09.2012 to 31.03.2013 and from 01.04.2014 to 30.09.2014 prepared by the second respondent and consequently, direct the respondents to treat the said periods as 'no report periods'.

2.Upon notice, the second respondent filed separate counter affidavits in the writ petitions with identical averments, wherein, in Paragraphs 4 and 5, it is stated that the then Commissioner has made adverse remarks in the ACRs of the petitioner for the periods from 28.09.2012 to 31.03.2013 and from 28.04.2014 to 30.09.2014, but the said reports were not sent to the Reviewing officer/1st respondent herein; further, the said adverse remarks were also not communicated to the petitioner as instructed in G.O.(Ms).No.11, P&AR Department, Dated 05.01.1984 and G.O.(Ms)No.121, P&AR Department, Dated 29.09.2011; the petitioner has requested permission to peruse the ACRs Vide letter dated 10.04.2015 and also requested to furnish the copy of the ACRs vide letter dated 18.05.2015; and accordingly, he was permitted to peruse the ACRs and copy of the same was also furnished to him on 28.05.2015. It is also stated therein that the petitioner has sent representations on 10.06.2015 to declare the periods in ACRs as "no report periods"; the said representations were forwarded to the 1st respondent herein vide Commissioner Rc.No.16003/2015, B1, dated 30.06.2015; and after rectifying the defects pointed out by the Government, detailed reports were sent to the 1st respondent on 23.08.2016."

3.The main ground of attack raised by the learned counsel for the petitioner is that the remarks made in the Annual Confidential Reports relating to the periods in question, have not been communicated to the petitioner, as mandated under the law and hence, the same are liable to be quashed.

4.The learned Special Government Pleader (HR&CE) appearing for the respondents reiterated the averments made in the counter affidavits and fairly conceded that the adverse remarks in the ACRs were not communicated to the petitioner.

5.Heard both sides and perused the materials placed before this Court.

6.The challenge in these writ petitions is to the Annual Confidential Reports relating to the periods from 28.09.2012 to 31.03.2013 and from 01.04.2014 to 30.09.2014 prepared by the second respondent. According to the petitioner, the said reports have not been communicated to him, which fact was also agreed upon by the respondents.

7.Be it noted, the purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance; that is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance. Therefore, the respondents have to communicate the adverse remarks made in the ACRs to the petitioner.

8.In Dev Dutt v. Union of India and Others, [(2008) 2 SCC (L&S) 771], it was held by the Supreme Court as follows:

> "19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India [AIR 1978 SC 597] that arbitrariness violates Article 14 of the Constitution.

9.Applying the aforesaid legal principle to the facts of the present case, wherein, admittedly, the copies of the ACRs were not communicated to the petitioner, this Court has no hesitation to quash the Annual Confidential Reports relating to the periods in question and are accordingly, quashed. The matter is remitted back to the respondent authorities for fresh consideration, after providing an opportunity to the petitioner. Such an exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

10.These writ petitions stand allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Additional Chief Secretary to Government,
Tourism, Culture & Religious Endowment Department,
Government of Tamilnadu,
Fort St. George, Chennai – 600 009.

2. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam, Chennai - 600 034.

+2ccs to Dr.D.Simon, Advocate, S.R.No. 21634, 21636

W.P.Nos.29580 & 29596 of 2018

KV(CO)
GN(15/07/2021)