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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.07.2021
PRONOUNCED ON : 22.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.31885 of 2018

S.Esakkimuthu

...Petitioner

Vs.

Agricultural Production Commissioner &
The Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai-600 009.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of the respondent herein passed in G.O.(3D) No.97, Agriculture Department, dated 30.07.2018 imposing a punishment of compulsory retirement from service and to quash the same and consequently direct the respondent herein to reinstate the petitioner in service with all consequential service and monetary benefits.

For Petitioner :Mr.Ravi Shanmugam

For Respondent :Mr.K.Tippu Sultan, GA

O R D E R

The present Writ Petition is heard through Video Conferencing on 07.07.2021.

2. Heard Mr.Ravi Shanmugam, learned counsel appearing for the petitioner and Mr.K.Tippu Sultan, learned counsel appearing on behalf of the respondent.

3. Based on the charges levelled against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955, alleging indulgence in corrupt practices of collecting money from his subordinates for facilitating their promotions and transfer, the petitioner was accused of failing to maintain absolute integrity and devotion to his duty. During the course of enquiry, though 32 prosecution witnesses were



cited, only two of the prosecution witnesses were examined and they had also turned hostile. However, by placing reliance on the statement of the witnesses recorded before the Directorate of Vigilance and Anti-corruption (DVAC) authorities, the respondent herein had passed the impugned order of punishment dated 30.07.2018, compulsorily retiring the petitioner from his service.

4. The short point involved in the Writ Petition is as to whether the authorities are justified in placing reliance on the witnesses recorded before the DVAC authorities and consequently holding the petitioner as guilt of the charges is permissible or not?

5. This issue came to be dealt with by the Hon'ble Supreme court in the case of Central Bank of India Ltd., V. Prakash Chand Jain reported in AIR 1969 SC 983, in which it was held that the statements recorded behind the back of the delinquent, cannot be treated as 'substantive evidence'. The relevant portion of the order reads as follows:

"8. ... It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. In fact, learned counsel for the appellant Bank was unable to point out any case at all where it may have been held by this Court or by any other Court that a domestic tribunal will be justified in recording its findings on the basis of hearsay evidence without having any direct or circumstantial evidence in support of those findings."

6. Likewise, a learned Single Judge of this Court in the case of K.Ramalingam V. The Superintendent of Police, Perambalur reported in 2009 (7) MLJ 578, had held that reliance on the



statement of witnesses during the preliminary enquiry, in which the petitioner had no occasion to cross examine the witnesses, is impermissible. The relevant portion of the order reads as follows:-

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"14. In view of the above cited settled position of law on this aspect and having regard to the fact that there is no controversy about the enquiry officer's finding of guilt on the part of the petitioner, relying upon the statements given by the witnesses during the preliminary enquiry and there was no occasion to cross examine the said witness during the preliminary enquiry, I am of the view that the charges framed against the petitioner cannot be said to be validly proved. Hence the petitioner is bound to succeed in this writ petition challenging the order of dismissal passed against him."

7. Admittedly, in the present case, the two witnesses examined by the authorities had turned hostile and the delinquency attributed to the petitioner was established on the basis of the statements given by the witnesses before the Investigating Authorities, in which, the petitioner did not have an opportunity to cross examine those witnesses. By applying the ratio held in the aforesaid decision, such statement of witnesses are unreliable and cannot establish the guilt of a delinquent officer. As such, the consequent punishment imposed by the respondent herein, cannot be sustained.

8. In the result, the impugned order passed by the respondent herein in G.O.(3D) No.97, Agriculture Department, dated 30.07.2018, is hereby quashed. Consequently, there shall be a direction to the respondent herein to forthwith reinstate the petitioner back into service, with all monetary and consequential benefits, within a period of eight weeks from the date of receipt of a copy of the order. The Writ Petition stands allowed. There shall be no orders as to costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

DP



To

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Agricultural Production Commissioner &
The Principal Secretary to Government,
Agriculture Department,
Secretariat, Chennai-600 009.

W.P.No.31885 of 2018

RSV(CO)
SP(09/08/2021)