



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 28.01.2020
PRONOUNCED ON : 09.02.2021
CORAM

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.P(MD)No.7706 of 2014

WEB COPY

P.Murugan

... Petitioner

Vs.

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The District Collector,
Ramanathapuram District,
Ramanathapuram

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent relating to G.O.(D).No.355, Rural Development and Panchayat Raj (E2) Department dated 19.07.2013 communicated in the endorsement dated 13.08.2013 of the District Collector and quash the same and consequently direct the respondents to send revised pension proposals within a specified time frame that may be fixed by this Court.

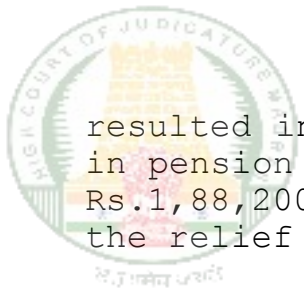
For petitioner : Mr.S.Visvalingham

For respondents : Mr.S.Dhayalan
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner challenging the order dated 19.07.2013 imposing punishment of cut in pension of Rs.500/- and recovery of Rs.1,88,200/- from the Death cum Retirement Gratuity payable to him passed by the disciplinary authority and for consequential direction to the respondents to send revised pension proposal.

2. The petitioner would aver among other things that lastly he served as Assistant Project Officer in the office of the District Rural Development Agency, Pudukottai and he was allowed to retire on 31.05.2009 without prejudice to the disciplinary cases and enquiries pending against him for his alleged failure to verify genuineness of the eligible beneficiaries properly while selecting them under IAY Scheme 1990-2000 in Kamuthi Panchayat Union, Ramanathapuram District, Pudukottai District. Accordingly, seven charges were framed against the petitioner, who in turn, gave explanations to the authorities concerned, which did not go in favour of him and



resulted in issuing the impugned order imposing a punishment of cut in pension of Rs.500/- p.m. for a period of one year and recovery of Rs.1,88,200/-. Therefore, the petitioner is before this Court for the relief stated supra.

3. The learned counsel for the petitioner submitted that the impugned order is a non-speaking order and therefore, it is not sustainable in the eye of law. He would further submit that as far as selection of beneficiaries are concerned, the petitioner has no role to play, since it will be done by the Task Force Committee comprising of the President of the Village Panchayat concerned and its Members of Village Panchayat and the Assistant Block Development Officer or his nominee. It is well settled law that the authority while imposing punishment on the delinquent, the officer concerned has to record reasons for arriving at such conclusion. In this case, it has not been done so. Though the petitioner gave a detailed explanation to the charges framed against him, it miserably failed to discuss how the report of the enquiry officer is correct and why the petitioner's explanations are not acceptable. Therefore, the order suffers from infirmities in various angles and it is liable to be set aside.

4. *Per contra*, the learned Government Advocate would submit that since the petitioner failed to identify the genuine beneficiaries, the houses had been allotted to the non-eligible persons, which derailed the main focus of the Scheme framed by the Government to the needy people. Further, since the Government *prima facie* found that there is irregularity in selecting the beneficiaries identified by the petitioner, a show cause notice was issued, followed by an enquiry officer was appointed where all the charges levelled against the petitioner came to be proved and eventually, the detailed impugned order has been passed by the respondents in which no infirmities or illegalities could be found and therefore, he would pray for sustaining the impugned order.

5. Heard the learned counsel appearing for the petitioner and learned Government advocate for the respondents and perused the materials available on record.

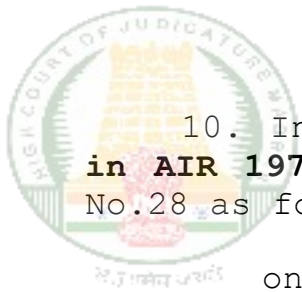
6. Admittedly, in this case, the petitioner was issued with the charge memo at the verge of his retirement on 20.04.2009 for the occurrence took place during the financial year period 2003 -2004. There are totally seven charges were framed. The petitioner submitted his explanation to the charges. The petitioner was permitted to retire from service on attaining the age of superannuation on 31.05.2009 without prejudice to the disciplinary proceeding pending against him. After enquiry, the Enquiry Officer has held that all the charges are proved. The petitioner submitted his further explanation. The disciplinary authority has imposed a punishment of Rs.500/- per month cut in pension for one year, besides a recovery of Rs.1,88,200/- from the Death cum Retirement Gratuity payable to him, being the 50% of proportionate loss towards loss caused to the Government by him.



7. The charges framed against the petitioner is that without properly verifying the genuineness of the beneficiaries, he has sanctioned the benefit provided under schemes to ineligible persons and thereby caused loss to the Government and failed in his duty.

8. According to the petitioner, the beneficiaries were selected by the President of Kakudi Panchayat Union for some of the schemes by passing a resolution in the Panchayat, but he left scot free. According to the job chart issued in G.O.Ms.No.238, dated 25.07.1997, the extension Officer ie., the Adi-dravidar Welfare Officer was responsible for collecting the particulars relating to landless agriculturists. Further, as per the guidelines issued by the Government Circular in No.5001/99/JVVT-2, dated 19.01.1999, the selection of IAY beneficiaries in the selected village Panchayat will be done by a Task Force Committee, consisting of the President, Members of the Village Panchayat and the Assistant Block Development Officer or his nominee shall get it ratified by the Grama Sabha. No approval of the Panchayat Union Council is required for selection of beneficiaries. As per G.O.Ms.No.150, Rural Development and Panchayat Raj Department, dated 17.10.2006, the beneficiaries were selected by the Rural Welfare Officer of Kakudi Panchayat. But, the Rural Welfare Officer has been left scot free. The petitioner, who was working as Additional Block Development Officer has no role to play in the selection of beneficiaries. Though the above grounds urged by the petitioner in his explanation, neither the Enquiry Officer not the disciplinary authority has considered the same.

9. A bare perusal of the impugned order shows that after extracting charges, explanation of the petitioner, finding of the Enquiry Officer and further explanation of the petitioner to each charge, the disciplinary authority, without going into the merits of the submission of the petitioner to each charge, has simply held that the disciplinary authority, after careful examination of the charges framed against the petitioner, his defence statement, findings of the Inquiry Officer, further representation of the delinquent officer along with all connected records, have decided that all the seven charges framed against the petitioner are held as proved. Even in the provisional conclusion letter addressed to the petitioner with proposed punishment, the disciplinary authority, without considering the explanation offered by the petitioner, have held so. It is seen that the Tamil Nadu Public Service Commission has also given his report without even considering/discussing the explanations offered by the petitioner. Ultimately, it could be seen that without having any discussion / consideration, the disciplinary authority has imposed the punishment. It is needless to say that reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order. Hence, this Court has no hesitation to hold that the impugned order is nothing but a non speaking order.



10. In the decision in **Union of India Vs. M.L. Capoor** reported in **AIR 1974 SC 87**, the Hon'ble Apex Court has held in paragraph No.28 as follows:

"Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable."

11. The Hon'ble Supreme Court in the decision in **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in **(2010) 7 SCC 678**, has held in paragraph No.23 as follows:

"23. Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

12. In a decision in **N.S. Jayaraman & Sons Vs. the Government of India**, reported in **2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made.

13. The above decisions are squarely applicable to this case. As stated earlier, the disciplinary authority has passed only a non speaking order. When that be so, the matter requires remand for a detail order considering the explanation offered by the petitioner. However, considering the length of time and also considering the mental agony undergone by the petitioner for these long years and considering the fact that that would be more than punishment, this Court is not inclined to remand the matter.



14. In the result, this Writ Petition is allowed and the impugned order is set aside and the respondents are directed to remit the amount, if any, deducted from the petitioner's pension and retireal benefits as passed in the impugned order and to revise the petitioner's pension within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.

2.The District Collector,
Ramanathapuram District,
Ramanathapuram.

+1 CC to Mr.S.VISVALINGAM, Advocate (SR-3879[F] dated 09/02/2021)

order made in
W.P(MD)No.7706 of 2014
09.02.2021

VB (03.03.2021) 5P 4C