



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.02.2022

Pronounced on : 04.03.2022

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Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A. No.1342 of 2021
and
C.M.P. No.8372 of 2021

The Principal Secretary to Government
Handlooms, Handicrafts, Textiles
and Khadi (G1) Department,
Fort St.George, Chennai-600 009.

...Appellant/ Respondent

Vs.

M.Rathakrishnan,
Formerly Deputy Director of Sericulture,
Office of the Director of Sericulture,
Anaimeedu, Salem-1.

... Respondent/Petitioner

Now Residing at 470, TNHB, Opp to Railway Station
Hosur-635 109.

Prayer: Writ appeal is filed under clause 15 of the Letter Patent praying to set aside the order dated 27.02.2020 made in W.P. No.6172 of 2011 and allow this writ appeal.

Prayer in W.P. No.6172 of 2011: Writ Petition filed under Article 226 of constitution of India praying to issue a writ of Ceertiorarified Mandamus calling for the records relating to G.O. (2D) No.5, HHT & K(G1) Department dt 30.3.2010, and G.O.Ms. No.160 HHT & K (G1) dt 24.11.2010 issued by the 1st respondent quash the same and direct the respondents herein to disburse the amount withheld through the impugned order as well as all the increments which has been withheld on account of the penalty imposed prior to remand and further direct the respondents herein to treat the period of suspension from 5.5.86 to 30.6.1992 as duty for all purposes and consequently issue direction to disburse all the arrears accrued on the above head together with compensation for the mental agony caused to the petitioner for over a period of 25 years.



For Appellant : Mr.R.Neelakandan
Addl. Advocate General

For Respondent : Mr.M.Radhakrishnan

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JUDGMENT

MOHAMMED SHAFFIQ, J.

This intra-court appeal has been preferred against the order in W.P.No.6172 of 2011 insofar as the order in G.O.(2D). No:5, HHT & K(G1) department dated 30.03.2010 and order in G.O.Ms.No.160, HHT & K(G1) department dated 24.11.2010 issued by the appellant were set aside.

2. Brief facts :

At the outset, it may be relevant to state that this is the 3rd round of litigation against disciplinary proceedings which commenced with issuance of charge memo against the respondent/writ petitioner on 31.03.1986. The gravamen of the charge was that the respondent/writ petitioner who was serving as the Deputy Director of Sericulture, had issued self cheque and withdrawn money to the tune of Rs.35,796.25/-. It is the case of the appellant-Department that it was not permissible for the respondent/writ petitioner to have withdrawn monies by way of self cheque. On the basis of the pendency of the charge, the respondent/writ petitioner was placed under suspension on 05.05.1986. The respondent/writ petitioner suffered an order in G.O.(2D).No.1 H, H.T&K(G1) Department dated 19.02.1996 whereby he was imposed the punishment of stoppage of increment with cumulative effect for a period of 2 years and recovery of a sum of Rs.31,894.95/- in 25 monthly instalments was ordered.

3. The above orders of punishment was challenged before the Tamil Nadu Administrative Tribunal, which was transferred to this Court and re-numbered as W.P. No.13290 of 2006. The said order was set aside by this Court and the matter was remitted with a direction to the appellant/respondent therein to consider the explanation submitted by the respondent/ writ petitioner and to pass a reasoned order, within a period of 2 months. Thereafter, the appellant vide order dated 20.06.2008 proceeded to treat the period of suspension as not spent on duty from 06.05.1986 to 30.06.1992 and on duty from 01.07.1992 to 10.11.1992. The respondent/ writ petitioner challenged the same in W.P. No.19552 of 2008, this Court was pleased to set aside the order dated 20.06.2008 with a direction to pass final orders in the departmental proceedings on or before 31.03.2010.

4. Pursuant to the above directions of this Court, a show cause notice was issued on 05.03.2010 wherein it was proposed to impose the punishment of cut in pension at the rate of Rs.500/-



per month for a period of 18 months while also proposing recovery of a sum of Rs.31,894.95/-. The respondent/ writ petitioner submitted its objection/explanation on 19.03.2010 to the show cause notice dated 05.03.2010. In the meanwhile, by letter dated 10.03.2010, the opinion of the TNPSC was sought and the same was given by TNPSC on 26.03.2010. Immediately thereafter, the respondent/ writ petitioner was issued with order dated 30.03.2010 wherein penalty of cut in pension at the rate of Rs.500 per month for a period of 18 months and recovery of a sum of Rs.31,894.95/- was made, vide order in G.O.Ms.No.160 , Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 24.11.2010 was imposed. With regard to the regularisation of period of suspension, order was issued, treating the period of suspension from 06.05.1986 to 30.06.1992 as period not spent on duty and from 01.07.1992 to 10.11.1992 as spent on duty.

5. Aggrieved by the above proceedings of the department, the respondent/ writ petitioner had preferred a writ petition in W.P. No.6172 of 2011. The learned Judge on considering the rival submissions of the petitioner and the Respondent/writ petitioner in the writ petition, allowed the writ petition in view of the following reasons:

a. Delay :

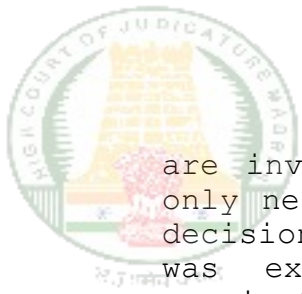
The learned Judge found that the proceedings which commenced with issuance of charge memo on 31.03.1986 culminated in an order of punishment on 19.02.1996, i.e., after 10 years. Importantly, the enquiry report itself was furnished only on 11.03.1991 i.e., 5 years after issuance of charge memo. The said proceedings dated 19.02.1996 was set aside by this Court in W.P.No.13290 of 2006 vide order dated 11.12.2006, fixing a time limit of 2 months to complete the disciplinary proceedings while permitting the respondent/ writ petitioner therein to retire on 30.04.1999. Despite the above directions of this Court, order was made after 4 years that too only after this Court fixed an ultimatum to pass the orders on or before 31.03.2010 in W.P. No.19552 of 2008. The disciplinary proceedings had taken close to 14 years to be completed. The learned Judge relied upon the following judgments of the Hon'ble Supreme Court, which would suggest that delay vitiates disciplinary proceedings:

i. M.V.Bijlani vs. Union of India and others reported in 2006 (5) SCC 88.

ii. P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board reported in 2005 (6) SCC 636.

b. Violation of Natural Justice - Failure to conduct common enquiry:

The learned Judge was of the view that the entire proceedings was made in gross violation of natural justice inasmuch as while self-cheques were drawn by the respondent/ writ petitioner, the same was encashed by the Manager. Thus, the above act also involved the manager, when two or more persons



are involved in an act, which is treated as misconduct, it is only necessary to conduct a common enquiry to avoid conflict of decisions/punishments. It was thus appropriate that the Manager was examined as a witness and an opportunity of cross examination was granted to the respondent/ writ petitioner. However, failure to conduct a common enquiry and examination of the manager resulted in the respondent/ writ petitioner being denied the opportunity to disprove the allegation of misappropriation. The failure to conduct a common enquiry and examination of the manager has thus caused prejudice to the respondent/writ petitioner. In this regard, reliance was placed on the following judgments of the Hon'ble Supreme Court:

i. M.Raghavelu vs. Govt. of Andhra Pradesh and another reported in (1997) 10 SCC 779.

ii. Man Singh vs. State of Haryana reported in (2008) 8 MLJ 518 (SC).

c. Violation of TNPSC Regulations:

It was found by the learned Judge that the entire proceedings stood vitiated inasmuch as it has been made in gross violation of the Regulation, in particular Regulation 18(1)(c) of TNPSC Regulations and Rule 9 of the Pension Rules.

The above regulations and rules provide that where there is a proposal to order cut in pension, which is objected, the matter should be referred to TNPSC and an opinion must be obtained. Though, in the present case, admittedly, the respondent/ writ petitioner had submitted his explanation on 19.03.2010, the opinion of TNPSC was sought prior thereto viz., on 10.03.2010. The TNPSC provided its opinion without even examining the objections put forth by the respondent/ writ petitioner and on receipt of the opinion from TNPSC on 26.03.2010, punishment was imposed soon thereafter on 30.03.2010. The above sequence of events in the opinion of the learned Judge did not give room for any doubt that the orders under challenge had been made in undue haste and in gross non-application of mind to the objection raised by the respondent/ writ petitioner.

The learned Judge had held that the haste with which the entire proceedings were made would show that the entire proceedings was an empty formality, pre-determined and suffers from non-application of mind. It was also found by the learned judge that the order imposing punishment does not assign any reason with regard to rejection of the objections raised by the respondent/petitioner therein. To the contrary, the order of punishment simply contained extracts of the charge memo, enquiry report and reference to the opinion of the TNPSC. The learned Judge found the order to be cryptic insofar as it imposed punishment without assigning any reason.

d. Perverse:

It was found by the learned Judge that the order of punishment also suffered from the vice of being perverse



inasmuch as there was no evidence whatsoever to show that the respondent/ writ petitioner had used the self cheque to withdraw the money and used the same for his personal purpose. It was found by the learned Judge that the conclusion of misappropriation was arrived at without any evidence and thus clearly perverse.

6. Aggrieved by the order of the learned Judge, the appellant/department has preferred this Appeal. The learned Additional Advocate General appearing on behalf of the appellant/department submitted as under:

a. That the delay in the disciplinary proceedings was only in view of the litigious attitude of the respondent / writ petitioner who filed writ petitions at every stage.

b. That the opinion of the TNPSC was obtained and thus there was compliance with Regulation 18(1)(c) of the TNPSC Regulations and Rule 9 of the Tamil Nadu Pension Rules.

c. That the respondent/ writ petitioner was provided with adequate opportunity to cross examine the witness and to peruse records during the enquiry.

7. To the contrary, it was submitted by the learned counsel for the respondent/writ petitioner that the order of the learned Judge was well-reasoned and does not warrant interference and reiterated that the entire proceedings stood vitiated inasmuch as there was delay of close to 14 years to complete the disciplinary proceedings, which culminated in imposition of penalty that the order of punishment was made in violation of every facet of natural justice and therefore the writ appeal must fail.

8. We have heard the rival submissions made by the learned counsel for the appellant and the respondent/ writ petitioner, we find that the order of the learned Single Judge does not warrant interference in view of the following reasons:

a. Conclusion of Disciplinary Authority not based on any evidence - Perverse :

The learned Judge at Para 20 and Para 21 of the order in the writ petition has held that the order is perverse inasmuch as it has been made without any evidence to support the conclusion. On going through the grounds, we find that there is no ground which has been raised challenging the finding of the learned Judge that the punishment has been imposed without any evidence and perverse. Failure to challenge the above finding may prove fatal to the case of the appellant inasmuch as any order which suffers from the vice of being perverse stands vitiated and cannot be sustained. In this regard, the following decisions of the Hon'ble Supreme Court are relevant:

i) Punjab & Sind Bank vs. Daya Singh reported in (2010) 11



SCC 233 wherein the relevant portion reads thus:

"24....A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in Triveni Rubber & Plastics vs. CCE (1994 Supp(3) SCC 665:AIR 1994 SC 1341). Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be said to be perverse..."

ii) Roshan Di Hatti vs. CIT reported in (1977) 2 SCC 378, wherein while considering the perversity of finding it was held as under:

"... when the finding of fact was arrived at without any material or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law would have come to that determination, the decision can be said to be perverse. It is, however, true that if perversity is shown and proved, it would be open to the writ court to hold as such."

The above decision in Roshan Di Hatti was followed in the case of South Bengal State Transport Corpn. v. Sapan Kumar Mitra, reported in (2006) 2 SCC 584.

b. Opinion of TNPSC without considering objections of the petitioner and failure to take into account relevant objections - vitiates:

We find that there are irregularities in obtaining the opinion of TNPSC. The opinion of TNPSC was sought on 10.03.2010 i.e., prior to the objections/representations put forth by the respondent/writ petitioner on 19.03.2010. The objections/representations of the respondent/writ petitioner which is relevant ought to have been considered by TNPSC before providing its opinion. The opinion of TNPSC without taking into account the objections/representations of the respondent/ writ petitioner which is relevant, stands vitiated.

c. Non-application of mind:

While the opinion of TNPSC itself stands vitiated for not taking into account the relevant viz., objections/representations of the respondent/ writ petitioner, perusal of the impugned order would reveal that the opinion of TNPSC at para No.2 in order dated 30.04.1999 has been verbatim reproduced in the impugned order, which would be evident from the following:



Opinion of TNPSC vide communication dated 26.03.2010	Impugned order of the appellant dated 30.03.2010
In the light of the above appreciation of evidence and specific parawise consideration of his eight page explanation dated 08.05.1991 it is palpable that with such gross findings of the Government which are couched in resipsa loquitur (self explanatory) evidence on technical grounds. The punishment of a very meagre cut of Rs.500/- in pension for 18 months and recovery of Rs.31,894.95/- is disproportionately less to the scale of the delinquent officer's scandalous misdemeanour. Hence the Commission advises the Government to enforce the punishment proposed to be imposed on the delinquent officer and to issue orders accordingly.	In the light of the above appreciation of evidence and specific parawise consideration of his eight page explanation dated 08.05.1991 it is palpable that with such gross findings of the Government which are couched in resipsa loquitur (self explanatory) evidence on technical grounds. The punishment of a very meagre cut of Rs.500/- in pension for 18 months and recovery of Rs.31,894.95/- is disproportionately less to the scale of the delinquent officer's scandalous misdemeanour. Hence the Commission advises the Government to enforce the punishment proposed to be imposed on the delinquent officer and to issue orders accordingly.

The above would show that the impugned order has been made by the appellant without applying his mind independently overlooking the position that the opinion of TNPSC is only recommendatory in nature and duty is cast on the competent authority to apply his mind independently before passing any order. In this regard, it may be relevant to refer to the decision of the Hon'ble Supreme Court in the case of N.Rajaratnam vs State of T.N. and another reported in (1996) 10 SCC 371, wherein it was held that failure to take into account the objections would render the proceedings bad in law, the relevant portion of the order reads as under:

"3.The view of the Public Service Commission being only recommendatory, the Government was not bound to accept the recommendations made by the Public Service Commission.....Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the



d. Failure to assign reason:

"10. This Court has consistently emphasised the need for assigning reasons in support of its conclusion and while doing so must deal with all the issues raised by the parties to the lis. Indeed, this Court has made the following very pertinent observations on this issue in Union of India v. Jai Prakash Singh [Union of India v. Jai Prakash Singh, (2007) 10 SCC 712] which read as under : (SCC pp. 714-15, para 7)

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e. Undue Haste:

<https://hcservices.ecourts.gov.in/hcservices/>



order of punishment which was made on 30.03.2010 soon after receipt of the opinion of TNPSC by merely reproducing the same, which itself was obtained even before the receipt of the objections would clearly show that the entire proceedings was carried out by the appellant in undue haste. In this regard, it may be relevant to refer the following decision of the Hon'ble Supreme Court, wherein it was held as under:

Zenith Metaplast (P) Ltd. v. State of Maharashtra, reported in (2009) 10 SCC 388

"39. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law (vide M.P. Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain [(1995) 1 SCC 638 : 1995 SCC (L&S) 364 : (1995) 29 ATC 159] and Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159]).

It is trite law that haste tends to arbitrariness and any proceeding which suffers from vice of arbitrariness would fall foul of Article 14 of the Constitution of India and would stand vitiated, it was held by the Hon'ble Supreme Court in the case of East Coast Railway v. Mahadev Appa Rao, reported in (2010) 7 SCC 678, which reads as under:

"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 the 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."

f. Delay in disciplinary proceedings:

We also find that the appellant has displayed absolute lethargy in conducting the disciplinary proceedings and had taken 14 years to conclude the same which commenced with the issuance of charge memo on 31.03.1986. The attempt by the appellant to suggest that the delay was only in view of the repeated challenges made by the Respondent/ writ petitioner therein to the proceedings lacks merits inasmuch as the



petitioner has succeeded on the earlier occasions in demonstrating that the proceedings were vitiated thereby necessitating this Court to set aside the order on both occasions. Thus, it would be preposterous for the appellant to suggest that the delay is attributable to the writ petitions filed by the Respondent/ writ petitioner.

9. For all the reasons stated above, we see no reason to interfere with the order of the learned Judge. Thus, the Writ appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

mka

To

The Principal Secretary to Government
Handlooms, Handicrafts, Textiles
and Khadi (G1) Department,
Fort St.George, Chennai-600 009.

W.A.No.1342 of 2021
and
C.M.P. No.8372 of 2021

AK-II (CO)
SB(18/03/2022)