



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A. (MD) No.1132 of 2021

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B.Nellaiappan

... Appellant/Petitioner

Vs.

1. The Principal Secretary,
Secretary to Government,
Most Backward Class and Backward Class
Welfare Department,
Secretariat, Chennai.

2. The Commissioner,
Most Backward Class and
Denotified Communities Welfare,
Chepauk, Chennai - 5.

3. The District Backward Class and
Minorities Welfare Officer,
Collectorate Complex,
Kokkirakulam,
Tirunelveli - 9.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 26.03.2021, made in W.P.(MD) No.11606 of 2011.

Prayer in WP(MD). 11606 OF 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records from the 3rd respondent the Commissioner, Most Backward Classes and Denotified Communities Welfare relating to the impugned order passed by him in his proceedings Se.Mu.No.C1/1449/2005 dated 25.07.2011 quash the same and direct the respondents to pay the Petitioner all the retiral benefits namely pension, family pension, gratuity, backwages from the date of suspension and all other monetary benefits due and payable to him.

For Appellant
For Respondents

: Mr.J.John
: Mr.S.R.A.Ramachandran
Additional Government Pleader



J U D G E M E N T
(Delivered by PARESH UPADHYAY, J.)

1. Challenge in this appeal is made to the order dated 26 March 2021 recorded on W.P(MD) No.11606 of 2011. This appeal is by an unsuccessful writ petitioner.

2. Learned advocate for the appellant has submitted that, the petitioner employee was to attain the age of superannuation in July 2011 and few days before his retirement i.e. on 25 July 2011, he was dismissed from service by the Head of Department (the second respondent), by exercising his powers as Reviewing Authority qua the punishment order passed by disciplinary authority (the third respondent) as back as on 13 December 2004. It is submitted that, apart from other contentions that the Reviewing Authority had pre-judged the issue against the appellant and, on merits no such order could have been passed, the same was without authority of law, since the order of the disciplinary authority was dated 13 December 2004 against which appeal was preferred on 14 January 2005. At the worse the appellant / petitioner could have lost in that appeal before Head of Department, however not only the appeal was not entertained, as late as on 16 June 2011 the Head of Department issued notice to the petitioner, which was more in the form of order less in the form of notice, asking for explanation of the petitioner. It is submitted that the said power could not have been exercised at that stage by the Reviewing Authority. Without prejudice to this it is further submitted that, keeping the appeal filed by the appellant pending for years together would not confer additional power to the appellate authority, who by his designation also happens to be the Reviewing Authority. It is submitted that what could not be done directly is done indirectly. It is submitted that, for this reason, the order impugned in writ petition should have been set aside. It is submitted that the dismissal of writ petition needs to be interfered with. It is submitted that this appeal be allowed.

3. On the other hand, learned Government Advocate has vehemently opposed the appeal. It is submitted that there was gross misconduct on the part of the writ petitioner and the disciplinary authority was more lenient by not dismissing him and therefore the powers exercised by the Head of Department, on the facts of this case, is rightly not to interfere with by the Writ Court and therefore this appeal be not entertained.

4. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

4.1 The petitioner was charge sheeted and was prosecuted departmentally under the Tamil Nadu Civil Services (D&A) Rules, 1955. On conclusion of enquiry, the disciplinary authority passed an

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



order on 13 December 2004 ordering recovery of defaulted amount from him. The said order was challenged by the petitioner by filing departmental appeal on 14 January 2005. The said appeal was kept pending for years together.

4.2 While the said appeal was pending, the Head of Department (the second respondent), who was Appellate Authority, so also the Reviewing Authority, issued a communication dated 16 June 2011, asking the petitioner to give his explanation, as to why he should not be dismissed from service, for which the Disciplinary Authority had imposed lesser punisher in the year 2004.

4.3 This Court has considered the said notice dated 16 June 2011 issued by the Commissioner of Most Backward Classes and De-notified Communities, Chennai. The relevant part thereof reads as under:

"The evidences and findings put forth before me reveal that the individual has misutilised Rs.7,21,509/- by making loss to the Government. I have applied my mind and I am satisfied with the materials which prove his gross misconduct. Hence, I hereby order for the dismissal of the individual from services forthwith. The departmental proceedings are separate from the Criminal trial.".

4.4 The above would show that the petitioner was asked to offer explanation to the above decision. It further shows that, though the said notice was styled as and termed as show-cause notice, it was a concluded decision by the Head of Department (the Reviewing Authority) why the petitioner needs to be dismissed. The argument by the appellant about pre-judging the issue does have force. Even if it was not so, that does not change the complexion of the matter in view of the following.

5.1 In continuation of the above, the dismissal order was passed on 25 July 2011. The petitioner was to retire on 31 July 2011. The said dismissal was by reviewing the order dated 13 December 2004.

5.2 The power of the Reviewing Authority flows from Rule 36 of the Tamil Nadu Civil Services (D & A) Rules, 1955. The said Rules read as under:-

"36. Revision of any orders by Appellate / Higher Authorities:-

(1) Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or

<https://hcservices.ecourts.gov.in/home> the appellate authority, other than the State



Government, within six months of the date of the order proposed to be revised; or

(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as they or it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)*, (vi), (vii) and (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub-rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary:

Provided further that no power of revision shall be exercised by the head of the department, unless --

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced --

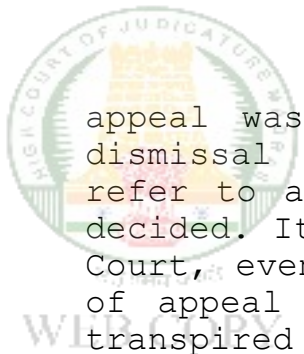
(a) Where no appeal has been preferred, before the expiry of the period of limitation for an appeal, or

(b) Where an appeal has been preferred, before the disposal of such appeal.

(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."

5.3 Plain reading of the above would indicate that, when the notice was issued on 16 June 2011, the time limit prescribed was

<https://hcservicesadvisors.gov.in/services/5/> from record, it also does not transpire, that the



appeal was decided. On the contrary, the reference in the final dismissal order or the so-called notice which preceded, does not refer to any order, by which the appeal filed by the employee was decided. It is not the case on behalf of the authorities before this Court, even in this appeal that, the appeal was decided. Rejection of appeal can not be a deeming fiction. On facts also, it has transpired that, the employee was continued under suspension for all those years. In totality, on facts we find that, the dismissal order passed by the Reviewing Authority dated 25 July 2011 was unsustainable on more than one grounds.

5.4 For the above reasons, we hold that the dismissal order impugned in the writ petition dated 25 July 2011 needs to be quashed and set aside.

6. For the above reasons, the following order is passed.

6.1 This appeal is allowed.

6.2 The order dated 26 March 2021 recorded on W.P.(MD) No.11606 of 2011 is set aside.

6.3 The order impugned in the writ petition i.e the dismissal order dated 25 July 2011 passed by the second respondent is quashed and set aside.

6.4 The petitioner / appellant would be entitled to all consequential benefits, as per his entitlement. No costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary,
Secretary to Government,
Most Backward Class and Backward Class Welfare Department,
Secretariat,
Chennai.



2. The Commissioner,
Most Backward Class and Denotified Communities Welfare,
Chepauk,
Chennai - 5.

3. The District Backward Class and Minorities Welfare Officer,
Collectorate Complex,
Kokkirakulam,
Tirunelveli - 9.

+1 CC to M/s.SPL GP (SR-6183[F] dated 15/02/2022)

W.A.(MD) No.1132 of 2021
14.02.2022

SMV(CO)

GC(25.02.2022) 6P 5C