BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.A(MD)No.1448 of 2021
and
C.M.P(MD)Nos.5943 & 6943 of 2021

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of Hindu Religious and
Charitable Endowments,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 34.

2.The Commissioner,
The Commissioner Office,,
Department of Hindu Religious and
Charitable Endowments,
Chennai – 34.

3.The Joint Commissioner,
Joint Commissioner Office,
HR & CE Department,
Near Hotel Temple Tower,
Thanjavur District. ... Appellants/Respondents

vs.

V.Kumaresan ... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 10.12.2019 passed in W.P(MD)No.12588 of 2017, on the file of this Court.

For Appellants : Mr.P.Subbaraj
Special Government Pleader

For Respondent : Mr.J.Gunaseelan Muthiah

JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN, J.)

This intra Court appeal arises from the order, dated 10.12.2019 passed by the learned Judge in W.P(MD)No.12588 of 2017.

2.Originally, the respondent herein, while working as Assistant Commissioner in the HR&CE Department, was issued with charge-memo, dated 13.09.2013, which ended in punishment of stoppage of increment for two years without cumulative effect, by G.O.No.72 TC&RE (2-2) Department, dated 24.04.2017. Challenging the same, the respondent filed a writ petition viz., W.P(MD)No.12588 of 2017. This Court, by order, dated 10.12.2019, which is impugned herein, allowed the said Writ Petition by setting aside the order of punishment passed by the first appellant.

Aggrieved by the same, the appellants / officials of the HR&CE department, are before this court with this appeal.

3.The learned Special Government Pleader appearing for the appellants submitted that though the charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the respondent was imposed with minor penalty by the disciplinary authority. Therefore, the order of the learned Judge in completely exonerating the delinquent from the proven charges, merely on the ground that major penalty procedure was followed, is liable to be set aside.

4.Per contra, the learned counsel appearing for the respondent submitted that the learned Judge, after analysing the facts and circumstances of the case in the light of the legal principles, has rightly set aside the order of punishment imposed on the respondent by the order impugned in the writ appeal and hence, the same does not call for any interference by this Court.

5.Heard both sides and perused the records.

6.Admittedly, the respondent was issued with charge memo, dated 13.09.2013, under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, to the effect that in the first count, he has not attended the review meeting held on 20.07.2013 conducted by the second appellant; the second count charge is that he has not attended the review meeting held on 08.08.2013 conducted by the second appellant; and the third count charge is that by considering the said two charges, he has acted against integrity and devotion to duty, dereliction of duties and responsibilities in violation of Rule 20 of the Tamil Nadu Government Servant Conduct Rules. The said charge memo ended in punishment of stoppage of increment for two years without cumulative effect, which was questioned by the respondent by filing W.P(MD)No.12588 of 2017.

7.The learned Judge allowed the writ petition by setting aside the order of punishment imposed on the respondent, by the impugned order herein, the relevant passage of which is profitably extracted below:

> "5.The charges levelled against the petitioner revolve around the petitioner's failure to participate in the review meetings. Apparently, the charges itself may not warrant a major penalty of dismissal for removal from service. As pointed out by the petitioner, Guideline No.3 of the

respondent / Department circular, dated 02.02.2017 states that failure to attend the review meetings should not be proceeded against under 17(b) of said Rule. While that being so, the conduct of the respondents in treating the charges to be serious in nature and proceedings under Rule 17(b) itself may not be proper.

6.This Court in the case of ***S.Kannan Vs., State of Tamil Nadu, rep., by its Secretary to the Government, Home Transport-II Department, The Transport Commissioner and the Joint Transport Commissioner, Chennai Zone, Transport Department*** reported in ***(2009) 8 MLJ 217*** had held that unless a major punishment is really warranted, the framing of charges under 17(b) of the Rules is not necessary and should be avoided.

7.The relevant portion of the order reads as follows:

> .....
>
> 14.The only point that arises for determination in this case is, whether the charges framed against the petitioner attract Rule 17(a) or Rule 17(b) of the Rules ?
>
> 15.For deciding the charges to be framed under Rule 17(b), the Government, vide Circular No. 14353, P&AR; (Per.N)/93-1, dated 11.03.1993, has framed certain guidelines, which read as under:
>
> Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption etc., charges under Rule 17(b) have to be framed in the following types of cases for imposing any one of the major penalties:
>
> (1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the

evidence forthcoming is not sufficient for prosecution in a Court of Law, e.g.

(a) possession of assets disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification ;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc;

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive.

(emphasis supplied)

(4) Misuse of official position for personal gain.

(5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

(6) Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills etc. Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.

(emphasis supplied)

11. On a perusal of the above guidelines, what comes to be known is that none of the charges framed against the petitioner comes under the above category of cases. Though the charges are framed against the petitioner under Rule 17(b) as if there is irregularity or negligence in the discharge of official duties, as adumbrated in clause 3 of the guidelines referred to supra, the

said negligence, alleged by the respondents, does not contain the dishonest motive, which is a crucial factor for deciding the category of the charge i.e., under 17 (a) or under 17 (b).

12. The very object of framing of the guidelines is that unless a major punishment is really warranted, namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.'

8.The aforesaid decision was followed by another learned Single Judge of this Court in ***W.P(MD).No.12725 of 2011***, ***dated 22.03.2013*** in the case of ***M.Sampoornam Vs., State of Tamil Nadu, rep., by its Secretary to Government, Revenue Department, Secretariat, Chennai-9 and another*** and held thus:

'12.In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17(a) and not under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding.'

9.The aforesaid orders are self explanatory in nature.

> 10.In view of the same, the very conduct of the respondents in proceedings against the petitioner under 17(b) of said Rule for the minor charges and also in view of their own Circular No.4342/2017/L1, dated 02.02.2017, there was no justification on their part and as such, the entire disciplinary proceedings itself would stand vitiated.
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> 11.For all foregoing reasons, the impugned order in G.O.(Pa) No.72 (Tourism, Culture and Religious Endowments (Aa.Ni 2-2) Department), dated 24.04.2017 on the file of the first respondent stands quashed. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

8.This Court is of the opinion that the learned Judge, having regard to the nature of the charges framed against the respondent, which are minor delinquency, and taking into consideration the guidelines issued by the Government for framing charges against the delinquent as well as the earlier orders of this court, wherein, it was categorically held that "unless a major punishment is warranted, the framing of charges under 17(b) of the Rules is not necessary and should be avoided", has rightly set aside the order of punishment passed by the first appellant against the respondent herein, as not maintainable. Therefore, the appellants have not made out any ground much less valid ground to interfere with the order of the learned Judge.

9.Accordingly, the intra court appeal is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[R.M.D.,J.] & [J.S.N.P.,J.]
16.11.2022

Index : Yes / No
Internet : Yes
ps

To

1.The Principal Secretary,
Department of Hindu Religious and
Charitable Endowments,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 34.

2.The Commissioner,
The Commissioner Office,,
Department of Hindu Religious and
Charitable Endowments,
Chennai – 34.

3.The Joint Commissioner,
Joint Commissioner Office,
HR & CE Department,
Near Hotel Temple Tower,
Thanjavur District.

R.MAHADEVAN,J.

and

J.SATHYA NARAYANA PRASAD,J.

ps

ORDER MADE IN
W.A(MD)No.1448 of 2021

16.11.2022