



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P(MD).No.1376 of 2019

and

W.MP(MD)Nos.1188 of 2019 and 9093 of 2021

A.Govindan

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Secretary to Government,
School Education Department,
Chennai.

2.The Director of School Education,
O/o.The Director of School Education,
DPI Complex,
College Road,
Chennai.

3.The Joint Director of School Education(Personnel)
O/o.The Director of School Education,
DPI Complex,
College Road,
Chennai.

4.The Chief Educational Officer,
O/o.The Chief Educational Office,
Ramanathapuram,
Ramanathapuram District.

5.The District Educational Officer,
O/o.The District Educational Office,
Paramakudi,
Ramanathapuram District.

... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 3rd respondent in his proceedings Na.Ka.No.60570/A3/E3/2012, dated 28.12.2018 impugned order was served to the petitioner only on 21.01.2019 and quash the same as illegal.

For Petitioners : Mr.C.Venkateshkumar
for M/s.Ajmal Associates



For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

The show cause notice issued by the third respondent pursuant to the direction issued by the first respondent Government in proceedings dated 28.12.2018 is under challenge in the present writ petition.

2.The petitioner was appointed as a Junior Assistant and promoted up to the post of Superintendent. The allegations were raised against the petitioner is that he had demanded and accepted the bribe, while he was working as Superintendent in the office of the Assistant Elementary Educational Officer, Mandapam Union, Ramanathapuram District. A charge memo was issued to him and the petitioner defended the allegations. The punishment of stoppage of increment for three years with cumulative effect was imposed with reference to the allegations of demand and acceptance of bribe by the petitioner. The petitioner preferred an appeal and the matter was remanded back to the original authority. Again the punishment of stoppage of increment was imposed for a period of two years with cumulative effect. The petitioner preferred an appeal, which is pending before the Director of School Education. During the pendency of the said appeal before the Director of School Education, the third respondent now issued the impugned show cause notice stating that the authorities have taken a decision to review the punishment by invoking Rule 36 of Tamil Nadu Civil Service(Discipline and Appeal) Rule, and further stating that it is proposed to impose the punishment of compulsory retirement.

3.The learned counsel for the petitioner mainly contended that the third respondent has no jurisdiction to issue show cause notice, as the appeal is pending before the Director of School Education against the order of punishment. Secondly, the punishment was already imposed by the third respondent against the petitioner, appeal preferred before the second respondent Director of School Education, which is pending and the third respondent has no authority to issue show cause notice to review the order of punishment originally passed by him, in view of the power under Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Thirdly, the learned counsel for the petitioner contended that there is no reason for review and on that ground also the show cause notice is liable to be set aside. In this regard, the learned counsel for the petitioner relied on the order passed by this Court in ***W.A.No.1047 of 2011, dated 06.07.2017***. The relevant paragraphs are extracted hereunder:

*"14.If the reasons are not spelt out, the employee concerned will not be able to furnish an effective reply.
The show cause notice is not intended to be an empty*



formality. It is squarely intended to convey to the man concerned the reasons for which the proposed action is either taken or initiated. When show cause notice spells out the reasons, the employee concerned will have an effective opportunity to neutralize those reasons that weighed with the Authority which has drawn the show cause notice. Therefore, a bald, laconic or non reasoned show cause notice reduces itself to a mere empty formality and in substance, they will not be providing a meaningful or truthful opportunity for the person concerned to set forth his objections in respect thereof. When no such opportunity is thrown to the employee, the very exercise of drawing a show cause notice reduces its utility and effectiveness. It becomes an un-productive exercise for lack of substance and meaning.

15. For sheer lack of reasons in the show cause notice, the final Appellate Order passed on 14.10.2010 cannot be sustained because when the substratum collapses, the superstructure has to necessarily come down. We have therefore, no hesitation to hold that the show cause notice drawn in the instant case on 14.06.2010 by the Appellate Authority is not sustainable.

4. The learned Additional Government Pleader objected the contentions raised on behalf of the petitioner by stating that the allegations against the petitioner was demand and acceptance of bribe, which was proved and the original authority imposed the punishment of stoppage of increment for three years, which was subsequently, modified as stoppage of increment for two years. Thus, the Government found that the punishment is not in proportionate with the gravity of the allegations of corruption which was proved and accordingly, initiated the review proceedings under Rule 36 of Tamil Nadu Civil Service(Discipline and Appeal) Rules.

5. Pursuant to the directions issued by the first respondent Government, the third respondent issued a show cause notice. Therefore, the petitioner has to submit his objections/explanations, if any and thereafter, final orders will be passed by the first respondent, Government in accordance with the rules in force. Thus, the question of jurisdiction does not arise at all, as the show cause notice has been issued only pursuant to the directions issued by the Government and it is not suo motu review proceedings by the third respondent and it is the suo motu review proceedings by the first respondent Government.

6. Considering the arguments as advanced by the respective learned counsels appearing on behalf of the parties to the lis on hand, let us consider the scope of Rule 36 of Tamil Nadu Civil Service (Discipline and Appeal) Rules. The State Government is empowered to initiate suo motu review proceedings at any point of



time and there is no time limit for initiation of suo motu proceedings by the Government. However, the Head of the Department is empowered to initiate review proceedings within a period of six months from the date of passing of the final order by the disciplinary authority. Sub-Class(2) of Rules 36, enumerates that:-

"(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."

No proceeding for revision shall be commenced, in case where an appeal is pending before the authority.

7.The very purport of Rule ensure that the Head of the Department or the Government, as the case may be, shall initiate revision proceedings only if no appeal is pending before the said authority. The purpose and object of the Rule is to ensure that no power of revision is exercised, during the pendency of the appeal before the said authority.

8.In order to remove the ambiguity to clarify the Rule in a clear manner, it is to be noted that if the Head of the Department proposes to initiate revision proceedings within a period of six months, then no appeal should be pending before the Head of the Department, at the time of invoking power under rule 36 of the Rules for revision. Simultaneously, if any appeal is pending before the Government, then the Government cannot invoke the powers under rule 36 for revision. However, if no appeal is pending before the Government and if any appeal is pending before the Subordinate authorities, the said pendency would not be a bar for the Government to invoke the power of revision conferred under Rule 36 of Tamil Nadu Civil Service (Discipline and Appeal) Rules. The Government is the ultimate authority for invoking Rule 36 and no time limit has been prescribed. Therefore, pendency of an appeal before any subordinate authority will not be a bar for the Government to invoke Rule 36, as the pendency of the appeal or decision taken in an appeal would not affect the revision proceedings, if any initiated by the Government under Rule 36 of Tamil Nadu Civil Service (Discipline and Appeal) Rules. In other words, even in case, an appeal is pending before the Head of the Department and a decision is taken in a particular manner, those decisions will not bind on the Government, as the Government is the final authority in disciplinary proceedings, as far as the Government employees are concerned.

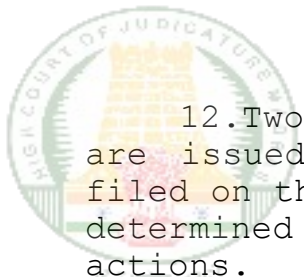
9.Thus, the very intention of the Rule is to ensure that the right of appeal by aggrieved persons is protected. In order to protect the right of appeal, restriction is imposed for exercising



the power of revision, if at all an appeal is pending before the Head of the Department, then he has to decide the appeal and thereafter, if necessary invoke the power of revision under Rule 36. In the event of not deciding the appeal and invoking the revision power, the right of an appeal conferred under Rules, is taken away and therefore, Rule 36 contemplates certain restriction for invoking the power of Rule 36, during the pendency of the appeal before the Head of the Department. However, the pendency of the appeal before the Head of the Department cannot be a bar for the Government to invoke the power of revision which is otherwise provided independently to the State Government under Rule 36 (1) of Tamil Nadu Civil Service (Discipline and Appeal) Rules. Restrictions imposed in Sub Class(2) of Rule 36 is independent, however, Rule 36 (1) provides the State Government to exercise the power of revision not interfering with the order of punishment passed by any authority. The only ground is that before passing final order in the revision proceedings, an opportunity must be provided to the employee concerned.

10. In the present case, the petitioner has challenged the show cause notice. The show cause notice *per se* would not provide a cause of action for filing the writ petition. This apart, the contention of the petitioner is that the third respondent has no jurisdiction, is irrelevant. In view of the fact that the impugned show cause notice was issued based on the directions issued by the first respondent, which is clarified by the respondent in their counter statement itself. Thus, the Joint Director is not at all the authority to invoke the power of revision under Rule 36 of the Discipline and Appeal Rules. He is the only authority, who issued the show cause notice, pursuant to the directions issued by the Government and on receipt of any explanation from the petitioner along with documents, he has to place the file before the first respondent Government for taking an appropriate decision on merits and in accordance with law. This being the procedure adopted, this Court do not find any infirmity as such.

11. With reference to the judgment cited by the learned counsel for the petitioner regarding the scope of Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, has not been considered by the Hon'ble Division Bench in the said case. The said case is relatable to CCS(CCA) Rules, 1965 and it is no way connected with the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The Central Government and the State Government are having different and distinct Service Rules and therefore, the said judgment delivered in respect of the Central Rules cannot be of any avail to the petitioner for the purpose of interpreting the Rule 36 of the Discipline and Appeal Rules. Further the judgment states that the show cause notice cannot be an empty formality and it must be contained with reasons.



12.Two views are possible, in cases where show cause notices are issued by the competent authorities. The writ petitions are filed on the ground that the competent authorities have already pre-determined the issues by stating the proposed views or proposed actions. The other set of writ petitions are filed on the ground that the authority has not assigned any reason in the show cause notices, thereby depriving the rights of the aggrieved persons to submit their explanations. If the questions are raised in the absence of any reason, the employee may not be in a position to submit his explanations. In both the cases, this Court is of the considered opinion that the nature of details and the proposed actions pointed out by the competent authorities are to be considered. Even in cases where no reasons are stated, the Court has to consider every factors, whether already the proceedings were progressed and those factors are to be made available to the employees or otherwise. Therefore, all the facts and circumstances relevant to the show cause notices are to be considered before forming of an opinion.

13.Thus, in cases where reasons are stated for revision, such revisions are to be construed as proposed reasons and the delinquent employee is entitled to submit his explanations/objections regarding the reasons stated in the show cause notices. However, all such reasons stated in the show cause notices are proposed reasons or actions or proposed punishments. Such proposal is subject to the consideration of the explanations/objections, if any, filed by the delinquent Officers. However, those reasons stated in the show cause notices by the competent authorities cannot be a ground to quash the show cause notice. In certain cases, show cause notices are issued after completion of enquiry and enquiry report, in such cases, much reasons may not be required to be furnished in the show cause notices, as the delinquent employees are aware of the facts and circumstances. Such show cause notices are issued for a limited purpose of providing further opportunity to the delinquent employee. The delinquent employee is entitled to submit his explanation/objection in respect of the other left out grounds or any new grounds for the purpose of defending his case. Thus, it is not necessary that the show cause notices must be issued with all the relevant factors and all the reasons. The show cause notices are not to be compared with the final orders and it is only an opportunity provided with reference to the facts already placed between the parties. If at all any doubt arises, the aggrieved persons may seek clarifications or submit his explanations denying the allegations or otherwise, in order to establish his innocence.

14.In the present case, the petitioner has already imposed with the punishment and preferred an appeal and the punishment was modified and again the said modified punishment was confirmed and an appeal is filed. Therefore, the entire facts and findings of the enquiry report are available with the petitioner and he is fully



grounds are untenable. This apart, show cause notice contained certain reasons, In fact it is stated in the show cause notice that the documents, deposition of witness and arguments were considered and a finding was arrived that the allegations of demand and acceptance of corruption is partly proved against the petitioner and such finding was given by the Tribunal for Disciplinary proceedings. When the Tribunal for disciplinary proceedings have made a finding that the allegations of demand and acceptance of corruption is partly established and the punishment of stoppage of increment was considered as a lesser punishment, the Government has initiated suo motu revision against the petitioner. Therefore, this Court is of the considered opinion that there is no infirmity as such and the reasons furnished in the show cause notice are sufficient enough for the petitioner to defend his case or to submit his explanation or objections if any.

15.Regarding the allegations of demand and acceptance of bribe, the petitioner had participated in the trial conducted by the Tribunal for disciplinary proceedings. When he is fully aware of the trial proceedings and aware of the findings of the Tribunal, no further reasons are necessary to quash the show cause notice invoking the power of revision under Rule 36 of the Discipline and Appeal Rules. This being the factum, the petitioner is at liberty to submit his explanation/objection if any, to the respondent, who in turn has to place the files to the competent revisional authority under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules/first respondent and final decision is to be taken by the first respondent on merits and in accordance with law, by considering the explanations or otherwise, if any submitted by the petitioner. The respondents are directed to complete the said exercise as expeditiously as possible.

16.With these observations, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
School Education Department,
Chennai.



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O/o.The Director of School Education,
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5.The District Educational Officer,
O/o.The District Educational Office,
Paramakudi,
Ramanathapuram District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-13370[F] dated
22/03/2022)

+1 CC to M/s.SPL GP (SR-13521[F] dated 22/03/2022)

W.P (MD) .No.1376 of 2019

and

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RD(18.04.2022) 8P 8C