BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2022

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.(MD).No.13802 of 2019

S.Dilip ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Secretariat,
Department of Finance (Local Fund),
Fort St.George,
Chennai.

2.The Director,
Local Fund Audit,
Combined Financial Building,
Nandhanam, Chennai-35.

3.The Assistant Director,
Local Fund Audit,
Collectorate Campus,
Nagercoil-629 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the second respondent in Na.Ka.No.28559/O.Na.1/2013, dated 17.11.2017 as well as the consequential impugned order passed by the first respondent in G.O.(Pa)No.285 Finance (Local Fund) Department, dated 25.09.2018 and quash the same.

For Petitioner : Ms.K.Siva Tharsana
for Mr.MP.Senthil

For Respondents : Mr.M.Siddharthan,
` Additional Government Pleader.

ORDER

The charges against the petitioner are to the effect that the petitioner was absent on certain working days, but had given contrary diary entries as if he was available on the said days. The further allegations/charges were that he had submitted an audit report after a prolonged delay and had misguided the employees of the department in connection with the resolutions passed under the Tamil Nadu Local Fund Audit Association. The charges No.1, 2 and 4 were held to be proved and the disciplinary authority had imposed a punishment of stoppage of increment for a period of two years which would affect the petitioner's future increments.

2. The petitioner had filed an appeal against the punishment to the Government and through G.O.(Pa).No.291 Finance (L&F) Department dated 10.08.2017, the punishment was set aside. However, since the enquiry report was not furnished on the petitioner, the matter was remitted back to the disciplinary authority for the purpose of furnishing the copy of the enquiry report and granting liberty to him to render his further explanation. In this background, the enquiry report was furnished on the petitioner and accordingly, the present impugned order has been passed, whereby, the punishment of stoppage of increment for a period of one (1) year with cumulative effect was imposed through the impugned order in G.O.(Pa)No.285 Finance (L&F) Department dated 25.09.2018. The petitioner herein has challenged the punishment in the present Writ Petition.

3. Ms.K.Siva Tharsana, learned counsel appearing for the petitioner predominantly raised two grounds. Firstly, she would submit that during the course of enquiry, the petitioner was not furnished with the relevant documents on which the charges were laid. Secondly, she submitted that no sufficient opportunity was extended to the petitioner in the enquiry. On the basis of such submission, the learned counsel stated that the enquiry proceedings itself is in violation of the principles of natural justice and therefore, the consequential punishment cannot be sustained.

4. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the original authority had imposed a punishment of stoppage of increment for a period of two (2) years with cumulative effect and on appeal, the appellate authority had found that the enquiry report was not furnished to the petitioner and therefore, had set aside the punishment and remanded the same to the disciplinary authority. Since the petitioner was given opportunity to render his further explanation after furnishing of the enquiry report, the enquiry is deemed to have been in conformity with the principles of natural justice and therefore, the present punishment cannot be found fault with.

5. I have given careful consideration to the submissions made by the respective counsels. The main ground raised by the learned counsel for the petitioner is that the principles of natural justice was not followed during the course of enquiry. After framing of the charges, the petitioner herein, through his representation dated 17.10.2013, had sought for furnishing of 11 documents. It is his case that all those documents were not furnished to him.

6. The respondents in their counter affidavit have stated that the enquiry officer had conducted the enquiry on 04.04.2014 at the Local Fund Audit Office, Nagercoil, where all the documents were available and since the petitioner was working in the same office, it was well within his purview and knowledge and he could have gone through the documents any time during the pendency of the charges. It is also stated in the counter that the petitioner had given written submissions in the questionnaire format during the enquiry in his defence.

7. I am not in agreement with the statements made by the respondents in their counter affidavit. When the disciplinary authority places reliance on certain documents, which could be used against the petitioner during the course of enquiry, there is a duty cast on them to furnish such documents in advance. A mere presumption that the petitioner is employed in the same office where the documents are available will not be sufficient to hold that furnishing of such documents are not necessary. In this background, the ground raised by the learned counsel for the petitioner seems to be acceptable, since the respondents have not denied the claim of the petitioner that the documents were not furnished to him. Thus, when those documents have not been furnished to the petitioner, it can be said that sufficient opportunity was not extended to the petitioner and therefore, as rightly pointed out by the learned counsel for the petitioner, the proceedings itself is in violation of the principles of natural justice and thus, would stand vitiated.

8. In this background, I am of the view that if the matter is remitted back to the disciplinary authority for conducting a fresh enquiry after affording due opportunity to the petitioner, the ends of justice could be secured.

9. Accordingly, the impugned order passed by the second respondent dated 17.11.2017 and the impugned order passed by the first respondent dated 25.09.2018 are quashed and the matter is remitted back to the third respondent herein for conducting a fresh enquiry. It is open to the third respondent to either drop the disciplinary proceedings or conduct a fresh enquiry based on the charge memo dated 06.09.2013. In case the third respondent is of the view that they intend to conduct a fresh enquiry, they shall furnish the copies of the relevant documents sought for by the petitioner in his representation dated 17.10.2013 and during the course of enquiry, shall afford due opportunity to the petitioner to cross-examine any of the witnesses examined during the course of enquiry. On completion of the enquiry, the disciplinary authority shall furnish a copy of the enquiry report and thereafter, pass necessary final orders after affording an opportunity to the petitioner to give his further representation pursuant to the charge memo.

10. The Writ Petition stands ordered accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Department of Finance (Local Fund),
Fort St.George,
Chennai.

2.The Director,
Local Fund Audit,
Combined Financial Building,
Nandhanam, Chennai-35.

3.The Assistant Director,
Local Fund Audit,
Collectorate Campus,
Nagercoil-629 001.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-24540[F] dated 08/06/2022)

+1 CC to M/s.SPL.GP (SR-24893[F] dated 09/06/2022)

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RD(15.06.2022) 4P 6C