



WEB COPY



W.P.No. 16230 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.16230 of 2020

D.Baskaran

...

Petitioner

Vs.

1. The State of Tarpil Nadu,
Rep. by its Additional Chief Secretary
to Government, Revenue and Disaster
Management Department,
Secretariat, Fort St. George,
Chennai-600 009.

2. The Principal Secretary/Commissioner
of Revenue Administration,
Chepauk, Chennai - 600 005.

3. The Commissioner,
Directorate of Adi Dravidar Welfare,
Chepauk, Chennai - 600 005.

4. The District Collector,
Vellore District, Vellore.

...

Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India , to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the impugned Government Order issued by the 1st Respondent in G.O(2D).No.52 Revenue and Disaster Management



W.P.No. 16230 of 2020

Department, Services Wing, Service.2(3) Section, dated 20.02.2020 and to QUASH the same and consequently directing the Respondents to reinstate the Petitioner into service in the post of Superintendent with all consequential and other attendant benefits, including arrears of salary, within a time frame to be fixed by this Hon'ble Court and to pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.A.Nedunchezhiyan

For Respondents : Mr.P.Sanjai Gandhi, Govt.Advocate

ORDER

This petition has been filed to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the impugned Government Order issued by the 1st Respondent in G.O(2D).No.52 Revenue and Disaster Management Department, Services Wing, Service.2(3) Section, dated 20.02.2020 and to QUASH the same and consequently direct the Respondents to reinstate the Petitioner into service in the post of Superintendent with all consequential and other attendant benefits, including arrears of salary, within a time frame to be fixed by this Court.

2. Heard, Mr.A.Nedunchezhiyan, learned counsel for the petitioner and Mr.P.Sanjai Gandhi, learned Government Advocate for the respondents and perused the materials available on record.



W.P.No. 16230 of 2020

WEB COPY 3. The petitioner is said to be working as a superintendent in Adi

Dravidar Welfare Department / 3rd respondent and his superior officer is the District Adi Dravidar Welfare officer and the said officer has got the power of transferring both the teaching and non teaching staff to fall under the Adi Dravidar Welfare Department. In one occasion, the Adi Dravidar Officer happened to pass orders against three persons who are the non teaching staff and they have been transferred from Kudiyaatham, Vaniyampadi and Katpadi to Vaniyampadi, Katpadi and Kudiyaatham respectively.

4. According to the transfer policy, normally transfers will be made through counseling; if any transfer order is specially made without the individual's participation in the counseling, such transfers should be made after getting approval from the 3rd respondent/ the Commissioner of Adi Dravidar Welfare. The petitioner who had to prepare the note file did not mention about G.O.Ms.96 dated 25.02.2013 which mandates the prior approval from the 3rd respondent. This had resulted in the direct transfer of the above three persons and that had caused embarrassment to the officer. Due the lapse on the part of the petitioner, he was given with a charge



W.P.No. 16230 of 2020

memo and at the conclusion of the disciplinary proceedings the petitioner was found guilty and was imposed with a punishment of compulsory retirement.

5. Now the learned counsel for the petitioner submitted that the punishment of compulsory retirement for the alleged lapse on the part of the petitioner is disproportionate and for that the transferring authority did not effect the order of transfer and the concerned individuals have been reinstated based upon their representations; so it can not be strictly called as a transfer.

6. Even from the counter filed by the respondents, it is mentioned that there was a lapse on the part of the petitioner, is not bringing of the guidelines of G.O.Ms.96 dated 20.05.2013 to the notice of the concerned authority. Curiously the officer who had passed the transfer order on the incomplete office note was not given with any charges for the lapse on his part in not knowing the guidelines for transfer.

7. There is no disagreement that the charges framed as against the petitioner were proved. The only contention of the petitioner is that



W.P.No. 16230 of 2020

punishment was given to him was disproportionate.

WEB COPY

8. It is apparent on the records that the officer who did not have any knowledge about the transfer guidelines and he was not found fault with. Though the omission on the part of the petitioner by making the office note by mentioning the relevant rules which had resulted in the transfer order.

9. According to the submissions made by Mr.Sanjai Gandhi, learned Government Advocate for the respondents, the commissioner/Director of Adi Dravidar Welfare Department is the competent to issue Transfer Order and that too only after a general counsellings. In case the District Welfare Officer got misled and wrongly issued the transfer order, the 3rd respondent who is the superior officer could have either ratify or cancel the same. Since the Transfer Order were not recalled or cancelled by the 3rd respondent, the individuals provided with transfer orders were allowed to join in the respective places.

10. It is probably because the individuals have already been suspended and against whom, certain disciplinary proceedings has been pending and they were reinstated subsequent to their representations. So far as the limited scope for this Court for interfering with the punishment order



W.P.No. 16230 of 2020

passed by the appropriate authority is only in the following circumstances:

WEB COPY

- a) Incompetence and lack of jurisdiction
- b) Violations of principle of natural justice
- c) Punishment is disproportionate to the charges contemplated and
- d) Error on the face of the records.

11. In this regard, it is pertinent to refer the judgment of the Hon'ble Supreme Court held in the case of **SYED YAKOOB Vs. K.S. RADHAKRISHNAN AND OTHERS** [reported in 1963 SCC OnLine SC 24]. The relevant portion is extracted hereunder:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily



WEB COPY



W.P.No. 16230 of 2020

means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmad Ishaque Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam and Kaushalya Devi v. Bachittar Singh

“

12. Without any doubt, a person who is handling the transfer section files has to work with at most responsibility. But in the charges against the petitioner it has not been stated whether the petitioner committed the lapse with any malicious intention or on receiving any bribes.



W.P.No. 16230 of 2020

13. On perusal of the impugned order, it is seen that the punishing authority did not consider to give any reason as to why compulsory retirement alone is the appropriate punishment for the petitioner. As stated already the wrongful orders were not rectified by issuing any revised order by the 3rd respondent. The clerical lapse on the part of the petitioner should not have been ended with a very severe punishment of compulsory retirement. The impugned order does not show that the petitioner had ever been punished for any other lapses during his service and that he is in the habit of always handling the files negligently.

14. The punishment order is just extracted the findings of the enquiry officer. It does not speak about the suitability of imposing punishment of compulsory retirement. Since the charges against the petitioner was proved, the punishing authority ought to have been giving a punishment suiting to the lapses. Accordingly, the compulsory retirement imposed by the 3rd respondent vide his order dated 19.03.2020 is modified to reduction of three increments cut with three years cumulative effect.

15. In the result, this Writ petition is **allowed** and the impugned Government Order issued by the 1st Respondent in G.O(2D).No.52



W.P.No. 16230 of 2020

Revenue and Disaster Management Department, Services Wing,

Service.2(3) Section, dated 20.02.2020 is set aside and the punishment is modified to reduction of three increments with cumulative effect for three years.

16. Consequently, the Respondents are directed to reinstate the Petitioner without back wages into service in the post of Superintendent with other attendant and consequential benefits, but by operating the punishment modified as above and issue necessary orders within a period of two weeks from the date of receipt of the copy of this order. The said exercise shall be executed within period of 6 weeks from the date of receipt of copy of this order.

16.11.2023

jrs

Internet :Yes/No

Speaking: Non speaking

Neutral:Yes/ No



WEB COPY



W.P.No. 16230 of 2020

R.N.MANJULA, J.

jrs

To

1. The State of Tamil Nadu,
Rep. by its Additional Chief Secretary
to Government, Revenue and Disaster
Management Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Principal Secretary/Commissioner
of Revenue Administration,
Chepauk, Chennai - 600 005.
3. The Commissioner,
Directorate of Adi Dravidar Welfare,
Chepauk, Chennai - 600 005.
4. The District Collector,
Vellore District, Vellore.

W.P.No.16230 of 2020

16.11.2023