



WEB COPY



WA No. 475 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.475 of 2023
and
CMP.No.4508 of 2023

The Director of Town Panchayats
Kuralagam, Chennai - 600 108.
Presently at
7th and 8th Floor
Urban Administrative Office Campus,
No.75, Santhome High Road
MRC, Nagar, R.A.Puram
Chennai - 600 028

.. Appellant

Versus

Kousalya Sankaralingam

.. Respondent

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 29.06.2021 made in WP No. 19771 of 2008.

For Appellant : Mr. Silambanan
Additional Advocate General
assisted by Mr. S. Yashwanth,
Additional Government Pleader

For Respondent : Mr. V. Vijayashankar



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JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

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The appellant has filed this writ appeal challenging the order dated 29.06.2021 passed by the learned Judge in WP No.19771 of 2008 filed by the respondent herein.

2. The necessary facts leading to the filing of this writ appeal are as follows:

2.1 During the course of employment of the respondent as Executive Officer in Nelliyalam Town Panchayat, Pandalur Taluk, Nilgiris District, the Director of Vigilance and Anti Corruption received a complaint against her that without prior permission and intimation from the employer, she had purchased land measuring 0.21 cents in S.F.2297/1 at Pandalur for a sale consideration a sum of Rs.1,05,000/- and the same was registered in the joint names of respondent and her sister Janaki, thereby she violated Rule 7 (1) (a) of the Tamil Nadu Government Servants Conduct Rules, 1973. It is also alleged that pursuant to the sale deed, the sister of the respondent namely Janaki had applied for planning permission for construction of house and the same was granted by the respondent, in her capacity as Executive Officer of



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Nelliyalam Town Panchayat vide Rc.No.BA.8/2000, dated 23.11.2000. Based on the complaint, a preliminary enquiry was conducted on 11.09.2001 and a report dated 26.03.2002 was submitted by the Vigilance and Anti Corruption, Chennai recommending to initiate departmental proceeding against the respondent. On the basis of such report, the Government issued G.O.(2D) No.66, Municipal Administration and Water Supply (TP1(2) Department, dated 20.08.2002, with direction to initiate departmental disciplinary proceedings against the respondent. Accordingly, the appellant issued the charge memo dated 26.04.2003 to the respondent. On 27.06.2003, the respondent submitted her explanation stating that her mother, who had sufficient source of income, purchased the property in her name without her knowledge or consent. Therefore, it was explained that there was no occasion for her to communicate the purchase of the immovable property to the department. Not satisfied with the explanation offered, an Enquiry Officer was appointed, who, after conducting enquiry, held that the charges are proved. Based on report of the enquiry officer, the appellant, in his proceedings in RC.No.6017/2003/A4, dated 18.01.2008, had imposed the punishment of censure. Aggrieved by the same, the respondent has filed WP No. 19771 of 2008 praying to quash the Order of punishment dated 18.01.2008.



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2.2. The learned Judge, by the order dated 29.06.2021, allowed the writ petition mainly on the ground that the registration of sale deed does not require the presence of the person in whose name it was registered. The purchase was made by mother of the respondent by paying the entire sale consideration to the vendor and the vendor had executed the sale deed. In that view of the matter, it was an unilateral deed executed by the vendor. The money was paid by the mother of the respondent without her consent and knowledge. Further, totally 21 cents were purchased out of which, only two cents with demarcation was purchased in the name of the respondent. During the enquiry it was clearly established that the respondent had no knowledge about the transaction, she had not given any money, she was not present at the Registrar's office at any point of time in respect of the said transaction. In the absence of any material in this regard, framing of charges based on sale deed alone is vague and bereft of specific details and unsustainable. Therefore, it was held that entire disciplinary proceedings stands vitiated for non application of mind, lack of evidence and for want of jurisdiction. Accordingly, the learned Judge, while setting aside the impugned order of punishment, directed the appellant to confer all attendant and monetary benefits to the respondent from the date on which, her immediate junior was promoted. As against the said order, the present writ appeal is filed.



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3.1. Mr. Silambanan, learned Additional Advocate General appearing for the appellant would contend that the respondent had purchased the property by way of a registered sale deed and it was proved during the enquiry. The respondent cannot therefore, feign ignorance of the sale transaction by which two cents of land was purchased in her name. It is well settled by the service Rules that a Government Servant is bound to disclose the purchase of immovable property in her name or in the name of his or her spouse and to get prior permission for the same. As long as the respondent failed to get prior permission, she is liable to be punished. In such circumstances, the learned Judge ought not to have interfered with the order of punishment imposed by the disciplinary authority. Furthermore, the respondent challenged only the order of punishment however, the learned Judge, while setting aside the said order, issued direction to confer her all attendant and monetary benefits from the date on which her immediate junior was promoted. According to the learned Additional Advocate General, the State level seniority list was drawn for promotion to the post of Selection Grade Executive Officer for the year 2003-2004, in which the respondent was placed in Serial No. 252. However, in the year 2003-2004, she was given promotion to the said post and subsequently, she was promoted to the post of Director of Municipal Administration with effect from 06.10.2004. Thereafter, on 31.05.2009, the



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respondent retired from service on attaining the age of superannuation. While so, the direction issued by the learned Judge to confer her all monetary benefits on par with her immediate junior will not arise.

3.2. The learned Additional Advocate General further contended that the learned Judge erred in observing that the appellant has no power to impose the punishment as disciplinary authority and such power is vested with the Commissioner of Municipal Administration. However, as per G.O. Ms. No. 118, Municipal Administration and Water Supply Department dated 21.08.2007, all the Executive Officers of Grade - III Municipalities are reverted back to the Town Panchayats and the Director of Town Panchayats continued to exercise his power as disciplinary authority in respect of the Executive Officers of Town Panchayats. In view of G.O. Ms. No. 118, the appellant is the competent authority to impose such punishment on the respondent. The learned Judge, without considering the above aspects in proper perspective, allowed the writ petition filed by the respondent, thereby set aside the order of the disciplinary authority. Stating so, the learned counsel sought to allow this appeal by quashing the order impugned herein.

4. Mr. V. Vijayashankar, learned counsel appearing for the respondent would submit that the respondent was imposed with the penalty of



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"Censure" by the disciplinary authority without any material evidence.

Therefore, taking note of the fact that the respondent was grossly discriminated in the matter of imposition of punishment, the learned Judge has rightly allowed the writ petition filed by her, by setting aside the order of punishment, which does not require any interference at the hands of this court.

5. We have heard the learned Additional Advocate General appearing for the appellant as well as the learned Counsel for the respondent and also perused the materials placed before us.

6. It is an admitted fact that while the respondent was working as an Executive Officer in Nelliyalam Town Panchayat, a charge memo dated 26.04.2003 was issued to her for having purchased 2 cents of land in her name without getting prior permission from the employer. After receipt of explanation of the respondent dated 27.06.2003, an enquiry officer was appointed. The enquiry officer submitted his report holding that all the charges are proved against the respondent. Notwithstanding such report, the disciplinary authority decided to drop all further action in the disciplinary proceedings initiated against the respondent. At the same time, the disciplinary authority imposed the punishment of "Censure" in his proceedings



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dated 18.01.2008. Aggrieved by the same, the respondent has filed the Writ
Petition.

7. The learned Judge interfered with the order of punishment imposed by the appellant mainly on the ground that when once the disciplinary authority decided to drop all further action against the respondent, the punishment of censure imposed against her is legally not sustainable. The learned Judge also reasoned that for imposing such a punishment of censure, the disciplinary authority has not assigned any reason, but passed a cryptic order, which cannot be sustained. Above all, it was noticed that Censure is not one of the punishments contemplated under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore, the learned Judge interfered with the order of punishment. We are also in entire agreement with the conclusion arrived at by the learned Judge that when the punishment imposed is not contemplated under the Statute, the Disciplinary authority is not justified in imposing such a punishment against the respondent. That apart it is settled law that the punishment not prescribed under the statutory Rules cannot be imposed. Therefore, we see no reason to interfere with the order passed by the learned Judge in so far as it relates to setting aside the order imposing the punishment of censure on the respondent.



8. Another notable point to be looked in to in the order impugned herein is that, while setting aside the order of punishment of censure imposed against the respondent, the learned Judge went one step further and directed the appellant to confer all the attendant and monetary benefits to her from the date on which her immediate junior was promoted to the post. According to the learned Additional Advocate General, the respondent has filed the writ petition only for the relief of Writ of Certiorari to quash the order dated 18.01.2008 of the disciplinary authority in imposing the punishment of censure and she did not seek for consequential monetary benefits. While so, the direction issued by the learned Judge to confer all consequential attendant and monetary benefits to the respondent is beyond the scope of the writ petition. We find force in such submission of the learned Additional Advocate General. The respondent herself has filed the writ petition only to quash the order dated 18.01.2008. As such, after quashing the order dated 18.01.2008, the learned Judge ought not to have issued a direction to the appellant to confer all attendant and monetary benefits to the respondent from the date on which, her immediate junior was promoted. Therefore, such a direction issued by the learned Judge in para No.19 of the order is liable to be interfered with. Accordingly, we set aside the direction issued by the learned Judge in para No.19 of the order dated 29.06.2021, to the appellant to "confer all attendant



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and monetary benefits to the respondent from the date on which, her immediate junior was promoted to the post". However, liberty is given to the respondent to approach the appellate authority for any other claim.

9. In the result, the writ appeal stands disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D., J] [M.S.Q., J]

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Index : Yes / No

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