BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2023

PRONOUNCED ON : 06.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.12224 of 2021

S.Senguttuvan ... Petitioner

Vs.

1.The Principal Secretary to Government,
State of Tamil Nadu,
Commercial Tax and Registration (K) Department,
Fort St. George,
Chennai – 600 009.

2.The Inspector General of Registration,
Office of the Inspector General of Registration,
Chennai – 28. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Government order in G.O.(T).No.68, Commercial Tax and Registration (K) Department, dated 06.05.2019 on the file of the respondent no.1 and quash the same as illegal and consequently for a direction, directing the respondents to provide notional promotion to the post of District Registrar and to the post of Deputy Inspector General of Registration by placing the petitioner above his junior notionally and provide all other consequential benefits to the petitioner.

For Petitioner : Mr.Aswin Rajasimman,
Lajapathi Roy and Associates

For RR 1 & 2 : Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

The prayer in the writ petition reads as follows:-

The Writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned Government order in G.O.(T).No.68, Commercial Tax and Registration (K) Department, dated 06.05.2019 on the file of the respondent no.1 and to direct the respondents to provide notional promotion to the post of District Registrar and to the post of Deputy Inspector General of Registration by placing the petitioner above his junior notionally and provide all other consequential benefits to the petitioner.

2.Heard Mr.Aswin Rajasimmon, learned counsel for M/s.Lajapathi Roy Associates, appearing for the petitioner, Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents 1 and 2 and perused the entire materials available on record.

The case of the petitioner is as follows:-

3.The petitioner was working as Sub Registrar of Kariyapatti, Virudhunagar District during the period of 2008. While so, he was visited with a charge memo dated 31.12.2008 levelling 10 charges, pertaining to the fraud committed by various parties while registration of their documents. A departmental enquiry was initiated and enquiry was conducted stating that all the charges as against the petitioner were proved. Accordingly, a second show cause notice was issued on the petitioner for which, he presented a detailed reply along with documents, rejecting his explanation a punishment of stoppage of increment of three years with cumulative effect came to be imposed by the second respondent vide proceeding dated 30.11.2009.

4.Assailing the said order of punishment dated 30.11.2009, the petitioner preferred an appeal to the first respondent and the appellate authority/first respondent passed an order dated 20.06.2013 rejecting the petitioner's appeal and further modified the punishment from stoppage of increment for three years with cumulative effect without including the leave period to stoppage of increment for three years with cumulative effect including the leave period. The said rejection order was made relying on the report of the Tamil nadu Public Service Commission dated 03.04.2013 without providing the petitioner with an opportunity. Since the said order was a non speaking order which was not in terms of Rule 23 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, the petitioner filed a Writ Petition in W.P.(MD)No.13487 of 2014 before this Court against the said order. This Court on 07.12.2018 was pleased to quash the order passed by the appellate Authority/first respondent and remanded the matter for fresh consideration as follows:-

> *"5.The learned Additional Government Pleader appearing for the respondents submits that the first respondent has taken into consideration in the explanation offered by the petitioner and has passed the impugned order and is therefore, is sustainable. The learned Additional Government Pleader further submits that 10 charges were framed against the petitioner and in 7 charges, he has been found guilty and therefore, the punishment inflicted by the second respondent and as affirmed by the 1st respondent is to be sustained and the writ petition has to be dismissed.*
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> *6.It is noticed that the impugned order has been passed by the respondent in a mechanical manner without proper discussion. The 1st respondent as an appellate authority ought to have discussed the grounds raised by the petitioner and thereafter passed the order on merits, instead of mechanically*

reproducing the recommendation of the TNPSC to uphold the order passed by the 2nd respondent. Therefore, on this limited ground alone, the impugned order of the 1st respondent is liable to be set aside.

7.Accordingly, the above writ petition is allowed by way of remand and the impugned order is quashed and the case is remitted back to the 1st respondent to dispose of the petitioner-s appeal within a period of 8 weeks from the date of receipt of a copy of this order. Needless to state such exercise shall be carried out after following principle of natural justice."

5.A counter affidavit was filed by the second respondent and the learned Special Government Pleader for the respondents submitted that the following disciplinary proceedings were initiated against the petitioner other than the impugned orders;-

"i. Recovery of the loss amount to the tune of Rs. 4,53,398/- from the pension of the petitioner was imposed vide Inspector General of Registration Order No.15055/B1/2019, dated 24.01.2020.

ii. Charges were framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules vide Inspector General of Registration Charge Memo NO.43384/B3/2005 dated 03.08.2005 in which recovery of the loss amount to the tune of

Rs.1,55,841/- from the pension of the petitioner and a cut in pension to the tune of Rs.100/- per month for two years was proposed to be imposed on the petitioner. As the petitioner did not give consent for the same, it has been forwarded to Tamil Nadu Public Service Commission as Rule 9 of Tamil Nadu Pension Rule."

6.Pursuant to the order passed by this Court in the aforesaid writ petition, the first respondent once again mechanically rejected the petitioner's appeal vide impugned G.O.(D)No.68 Commercial Taxes and Registration (K) Department dated 06.05.2019. Assailing the said order, this writ petition came to be filed.

Submissions :-

7.The learned counsel for the petitioner Mr.Ashwin Rajasekar, vehemently submitted that the petitioner has been waiting for nearly 17 years after the original penalty imposed on him and currently the petitioner is aged about 79 years. Further he insisted that the Appellate Authority while considering appeal, ought to have considered as to whether such facts established aforesaid sufficient grounds so as to take action against the delinquent and above all, he must come independently to a conclusion as to whether the penalty imposed was excessive, adequate or inadequate. However in this case, the Appellate Authority exclusively on the basis of the report of the Tamil Nadu Public Service Commission has once again without application of mind, has rejected the petitioner's appeal. The Appellate Authorities cannot be insensible to the duties cast upon them under Rule 23 of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

8.In normal circumstances, when the Appellate Authority has not properly considered and exercised their power while passing an order, this Court would be inclined to remand back the matter to the Appellate Authority for fresh consideration. However, in this case, already the matter has been remanded to the Appellate Authority by this Court's order for fresh consideration. Even then the Appellate Authority has not dealt with the same independently and once again fully on the basis of the Tamil Nadu Public Service Commission's report, has rejected the petitioner's appeal for the second time.

9.The learned counsel for the petitioner contended that non furnishing of TNPSC recommendation clearly vitiates their punishment order of stoppage of increment for three years with cumulative effect including the leave period in view of the law laid down in Hon'ble Apex Court in ***Union of India and others v. R.P.Singh*** reported in ***2014 7 SCC 340***.

10.Hence, under the facts and circumstances of this case, the impugned order needs to be quashed and the petitioner is entitled to notional promotion to the post of District Registrar and to the post of Deputy Inspector General of Registration by placing him above his junior notionally. On this basis, he pressed for allowing the writ petition.

11.The second respondent has filed a counter affidavit and the learned Special Government Pleader Mr.N.Muthu Vijayan submitted that while the petitioner was working as Sub Registrar at Kariyapatti, Virudhunagar District, he registered certain documents violating the provisions of Registration Act, 1908 and the orders of the Inspector General of Registration. Hence, the charges under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules were framed against him. Only after an elaborate disciplinary proceeding, charges framed against him came to be proved and punishment of stoppage of increment for 3 years with cumulative effect was imposed on him vide proceedings of the second respondent dated 30.11.2009.

12.Assailing the same, the petitioner preferred an appeal before the first respondent and the Government rejected the appeal of the petitioner vide G.O.(D)No.322/Commercial Taxes and Registration (K) Department dated 20.06.2013. Aggrieved by the said rejection order, the petitioner filed W.P.(MD)No.13487 of 2014, in which, this Court in order dated 07.04.2018 set aside the aforesaid G.O.(D)No.322 dated 20.06.2013 and remanded the matter back to the first respondent for reconsideration. Duly in terms of the order passed by this Court on 07.12.2018, the first respondent once again examined the appeal of the petitioner and all the other connected records in detail and only after that, rejected the appeal made by the petitioner by way of a detailed speaking order in G.O.(D)No.68 Commercial Taxes and Registration (K) Department dated 06.05.2019. While passing the impugned order on appeal preferred by the petitioner, the first Government has duly considered all the relevant grounds of appeal and facts of the case and only after that, has passed a reasoned order vide G.O.(D)No.68 dated 06.05.2019. Apart from the punishment imposed on the petitioner vide impugned rejection order, two more disciplinary proceedings were initiated against the petitioner.

13.In view of those disciplinary proceedings, it is not only because of the punishment in the impugned order but also because of other disciplinary proceedings initiated against the petitioner, his case is not considered for promotion.

14.In view of the same, the learned Special Government Pleader insisted that the impugned order is legally sustainable and need not be interfered with and pressed for dismissal of writ petition.

Analysis:-

15.This Court in the case of P.Sundar and Others v. The Special Tahsildar, Adi Dravidar Welfare, Sriperumbudur Taluk at Ambattur and others reported in CDJ 2012 MHC 855, has held that "*the inefficient scrutiny of the documents or purposefully omitting efficient scrutiny of the documents by the concerned, resulting in registration of documents by the officials at the Registrar Offices, in order to pave way for the unscrupulous persons to register their illegal and fictitious transactions, is also one of the reasons for docket explosion in legal for a. Therefore, it is right time that such black sheep in the Registration Department are dealt with iron hand.*"

16.In the case on hand, 10 charges have been framed as against the petitioner vide charge memo dated 31.12.2008 for various irregularities and illegalities in registration of documents made by the petitioner while his service as Sub Registrar at Kariyapatti. Hence, the contention of the petitioner that he should not held liable for the fraud committed by the parties concerned while executing the registration of documents cannot be taken lightly.

17.The contention of the petitioner that the Register Officer is not mandated to verify the title and ownership of the person, who alienates the property in terms of Section 52 of Registration Act, 1908, cannot be accepted. The Register Officer is bound to register the document not only in terms of Section 52 of the Registration Act, 1908 but also he should diligently exercise his duty in terms of Section 32(3) of the Registration Act, 1908. Hence, to understand the duties of the Registering Officer, Section 52 of the Registration Act, 1908 has to be read along with other Sections including Section 34(3), which mandates that the Register Officer shall enquire whether or not such document was executed by the persons by whom it purports to have been executed and that the Register Officer should satisfy himself as to the identity of persons appearing before him and alleging that they have executed the documents and in the case of any person appearing and representative, assign or agent, satisfy himself of the right of such person so to appear. In fact the petitioner has been imposed with punishment only for violating various provisions of Registration Act especially Sections 52 and 34(3) of the Registration Act, 1908 and hence, the contention of the petitioner is not sustainable in law.

18.That apart the learned Special Government Pleader rightly contended that the case of the petitioner was not considered for promotion not because of the order impugned in this writ petition but also due to another charge memo and currency of punishment discussed supra. Even on that count, the prayer of the petitioner to provide him notional promotion to the post of District Registrar and Deputy Inspector General of Registration as contended by the learned Special Government Pleader could not be accepted as per Part A in Schedule 11 in Section 7(1) of the Tamil Nadu Government Servants Conditions of Service Act, 2016. The Hon'ble Apex Court in the case of State of Andhra Pradesh v. C.Venkata Rao reported in AIR 1975 (SC 2151) has held as follows:-

> "*The Court is concern ed to determine whether the*

enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authorities entrusted with the duty to hold the enquiry has accepted and which evidence may reason ably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226."

19.It is pertinent to mention here that the impugned order itself would reveal that the report of the Tamil Nadu Public Service Commission dated 03.04.2013 has been forwarded to the petitioner for his perusal. Even otherwise if the petitioner had not received the opinion of the Tamil Nadu Public Service Commission, he could have sought for copy of the same. That apart normally in a judicial review, the Courts will not interfere with the punishment imposed in a disciplinary proceedings unless the same is shocking the conscience of this Court. In the case in hand, I am of the considered view that the punishment invoked for various irregularities alleged is not out of proportion and in view of the same, this Court is not inclined to interfere with the impugned order.

20.Accordingly, the Writ Petition stand dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Commercial Tax and Registration (K) Department,
Fort St. George,
Chennai – 600 009.

2.The Inspector General of Registration,
Office of the Inspector General of Registration,
Chennai – 28.

L.VICTORIA GOWRI, J.

Mrn

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