BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15400 of 2020
and
W.M.P.(MD)No.12933 of 2020

V.Selvakumar ... Petitioner

Vs.

1.The State of Tamilnadu,
Rep.by its Principal Secretary to Government,
Revenue Department, Secretariat,
Chennai -600 009.

2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai -600 005.

3.The District Collector,
Tuticorin District,
Tuticorin. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings G.O(2D)No.368 Revenue and Disaster Management, dated 08.12.2017 confirming the order of punishment passed by the 2nd respondent vide his proceedings Se.Mu.Aa.No.Pani3(4)/30911/2015 dated 07.06.2016 confirming the punishment order passed by the 3rd respondent vide his proceedings Na.Ka.A7/42518/2013 dated 18.05.2015 and quash the same as illegal.

For Petitioner : Mr.Ajmal Khan, Senior Counsel
For M/s.Ajmal Associates.

For Respondents : Mr.K.Balasubramani,
Spl. Government Pleader.

ORDER

Heard the learned senior counsel for the petitioner and the learned Special Government for the respondents.

2.The writ petitioner joined the Revenue Department as Junior Assistant in the year 1989. He became Assistant in the year 2006. He became Deputy Collector in the year 2018. When the petitioner was working as Special Tahsildar in the year 2013, he was issued with charge memo under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge against the petitioner was that he had sanctioned old age pension in favour of one Sornagandhi and 45 others, even though they were ineligible. The charge memo was later altered on 21.10.2013 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. An enquiry officer was appointed. The petitioner offered his explanation. Enquiry was conducted. The enquiry officer submitted report dated 28.07.2014 holding the charges to be proved. The enquiry report was served on the petitioner and his further representation was obtained. Thereafter, the disciplinary authority imposed the punishment of stoppage of increment for a period of six months without cumulative effect. Aggrieved by the same, the petitioner preferred an appeal before the second respondent. The second respondent vide order dated 07.06.2016 confirmed the order passed by the disciplinary authority. Aggrieved by the same, the petitioner filed revision before the Government. The revision petition was dismissed vide impugned G.O.(2D)No.368, Revenue and Disaster Management Department, dated 08.12.2017. Questioning the same, the present writ petition came to be filed.

3.The learned senior counsel for the writ petitioner took me through the averments and contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned orders and allow the writ petition as prayed for.

4.The respondents have filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. The learned Special Government Pleader would argue that the enquiry officer found the charges framed against the petitioner to be proved and this was endorsed by as many as three authorities. He would point out that the disciplinary authority was none other than the District Collector. The Commissioner of Revenue Administration as well as the Secretary to Government also concurred with the said findings. This Court exercising jurisdiction under Article 226 of the Constitution of India ought not to re-appreciate the facts and interfere in the matter. He also would point out that standard of proof obtaining in departmental enquiry is only "proof on some evidence" and it is not "beyond reasonable doubt or even proof based on preponderance of probability". He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The charges framed against the petitioner are basically two fold. (a) Sanction of old age pension for Sornagandhi. (b) Sanction of old age pension for 45 ineligible persons.

6.In my view, the respondents cannot maintain the first charge. This is primarily in view of the order dated 16.07.2013 made in W.P.(MD)No.11196 of 2013 filed by Sornagandhi. When old age pension for Sornagandhi was sanctioned on 02.01.2013 with effect from 01.07.2012, for certain reasons, it was not given effect to. Therefore, Sornagandhi filed the said writ petition. The writ petition was disposed of only on 16.07.2013. On the said date, admittedly the petitioner was not the Special Tahsildar (Social Security Scheme) of Vilathikulam Taluk. Nothing stopped the District Collector, Thoothukudi from contending that the order dated 02.01.2013 is proposed to be cancelled. On the other hand, the Writ of Mandamus filed by Sornagandhi was allowed and pension was directed to be paid. When this Court had directed payment of old age pension to Sornagandhi and the said order has not been put to challenge before the Hon'ble Division Bench and when the authorities did not take any stand that the order dated 02.01.2013 was illegally issued, it is not open to the disciplinary authority to now maintain the charge that sanctioning of old age pension to Sornagandhi is bad in law. An order that was ordered to be implemented by this Court cannot be labelled as an illegal order or one that is bad in law warranting initiation of disciplinary proceedings.

7.Coming to the other charge regarding old age pension for 45 ineligible persons, I have to necessarily to hold that it suffers from the vice of vagueness. If according to the authorities, 45 ineligible persons were granted pension, the authorities are bound to list out their names and also show as to how they are ineligible. The learned senior counsel has drawn my attention to the old age pension scheme set out in G.O.(Ms)No.265, Revenue Department, dated 10.09.2011. Clause (ஈ) deals with the grant of old age pension. It states that the beneficiary must have completed the age of 60 years and must be incapable of engaging in physical labour on account of old age and that they should be without any support. If they have any son or daughter, they should be without their support. The authorities are obliged to show that all these three conditions were not fulfilled in the case of the 45 persons in whose favour old age pensions had been sanctioned. I carefully went through the enquiry report as well as the orders passed by the three authorities. I find only general and sweeping statements that all the 45 persons are ineligible. No where has there been any attempt to catalogue or particularize the details. The authority was obliged to do so because the petitioner had taken a specific plea that in view of vague nature of said charge, he is unable to defend himself. Therefore, I find the second charge also to be without any basis.

8.There are also few other grounds on which I can rest this order. The charge was originally framed only under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Without giving any opportunity to the petitioner, it was converted into one under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. My attention has been drawn to the order dated 11.04.2022 made in W.P.(MD)No.24366 of 2013 in which a learned Judge of this Court citing earlier precedents had held that since altering the charge to one under Rule 17 (b) involves civil consequences, the official concerned must be given due opportunity. In this case, without giving such an opportunity, the alteration was done.

9.There is yet another aspect to be noted. It appears that the disciplinary authority had directed the enquiry officer to complete the enquiry within a time frame. The petitioner was of course heard by the enquiry officer. But then, after closing the enquiry, some more witnesses appear to have been examined. This is also referred to in the impugned government order passed by the Government in the last but one paragraph. But even without dealing with the said contention, the revision filed by the petitioner came to be straightaway rejected. The impugned government order is liable to be set aside also for the reason that it does not deal with the contentions urged by the petitioner. In normal circumstances when without dealing with the contentions of the aggrieved party an order is passed, this Court would only set aside and remand the matter. But in this case, in view of the reasons already given, there is no need to make an order of remand. All the orders impugned in this writ petition are set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Principal Secretary to Government,
Revenue Department, Secretariat,
Chennai -600 009.

2.The Additional Chief Secretary and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai -600 005.

3.The District Collector,
Tuticorin District,
Tuticorin.

G.R.SWAMINATHAN, J.

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