BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.S.RAMESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

W.A.(MD)No.1447 of 2022
and C.M.P.(MD)No.11650 of 2022
and Cross Obj.(MD)No.29 of 2023

W.A.(MD)No.1447 of 2022

1.The Government of Tamil Nadu,
Through its Secretary,
Registration Department,
Fort St. George, Chennai – 9.

2.The Inspector General of Registration,
Mandhaveli, Chennai – 28. .. Appellants

Vs.

M.Chellaiah .. Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 29.09.2021 passed in W.P.(MD)No.13738 of 2014.

For Appellants : Mr.J.Ashok,
Additional Govt. Pleader

For Respondent : Mr.T.S.R.Venkatramana,
Sr. Counsel
for Ms.V.Janaki Devi

Cross. Obj.(MD)No.29 of 2023

M.Chellaiah .. Cross Objector/
Respondent

Vs.

1.The Government of Tamil Nadu,
Through its Secretary,
Registration Department,
Fort St. George, Chennai – 9.

2.The Inspector General of Registration,
Mandhaveli, Chennai – 28. .. Respondents/
Appellants

For Cross Objector : Ms.V.Janaki Devi

For Respondents : Mr.J.Ashok,
Additional Govt. Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by M.S.RAMESH,J.)

Two charges were framed against the first respondent herein, by the Commissioner of Disciplinary proceedings, through a charge memo dated 20.03.2007. The first charge was that in the surprise inspection conducted on 18.02.2005, a sum of Rs.83,000/- was found in the possession of the respondent herein, while he was working as a Joint – 1 Sub Registrar, at Palayamkottai and a shortage of a sum of Rs.2,642/- in the collected fees. The second charge was that he has not obtained prior permission for construction of a building in the land in R.S.No.67/2, Oormelazhagian Village, Tenkaksi and thereby violated Rule 7(1)(b) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

1.2. The Tribunal for disciplinary proceedings had conducted an enquiry on the charges and had held both the charges as 'proved' and the second appellant had imposed the punishment of removal from service through an order dated 30.04.2008. The respondent's appeal to the first appellant was also rejected on 10.12.2010. When the original order of punishment, as well as the appeal order were challenged before the Writ Court in W.P.(MD)No.13778 of 2014, the Writ Petition was allowed and the appellants herein were directed to permit the respondent herein to retire from service, since he had reached the age of superannuation and disburse his retirement benefits, but without arrears of salary. The Government has preferred the present appeal against the order of the learned Single Judge.

1.3. Since the learned Single Judge had denied the arrears of salaries, while allowing the Writ Petition, the respondent herein had preferred the present cross objection, seeking for disbursement of the arrears of salaries also.

2. The learned Additional Government Pleader submitted that the charges against the respondent / writ petitioner are very serious in nature, wherein he was found to be in possession of unaccounted money of Rs.83,000/- and since he was holding the post of Joint Registrar, there was every possibility of the money being ill-gotten money. He further submitted that the Tribunal had considered all the objections of the respondent herein and rejected the same by rendering detailed reasons. Insofar as the second charge is concerned, the learned Additional Government Pleader submitted that under Rule 7(1)(b) of the Tamil Nadu Government Servants Conduct Rules, 1973, the respondent ought to have obtained the permission of the Government before putting up any construction and the non-compliance of such rule position entitles the appellants to initiate departmental action. He further stated that the respondent had obtained permission only for purchasing the plot and not for putting up any construction.

3. Insofar as the cross objection is concerned, the learned Additional Government Pleader submitted that since the charges against the respondent have been proved in the enquiry and in view of the seriousness of the misconduct imputed against the respondent, he would not be entitled for such arrears.

4. Mr.T.S.R.Venkatramana, the learned Senior Counsel for the respondent / Writ petitioner submitted that there is no infirmity in the order of the learned Single Judge. According to him, the only objection raised by the Department before the learned Single Judge was that there was a circular of the Government dated 23.09.2009, which regulates handling of cash and possession of private money during duty hours. Since the Government circular was passed only after the charges were levelled against the respondents, the same cannot be relied upon. He also submitted that the respondent had already obtained permission of the Government for putting up construction and hence, the second charge itself is baseless.

5. The learned Single Judge had referred to the circular dated 23.02.2009 of the first respondent herein and rendered a finding that this circular was not in existence when the inspection was conducted in the year 2005 and that there was also no other circular regulating handling of personal cash during office hours and hence, the possession of the cash cannot be termed to be an ill-gotten money. Insofar as the second charge is concerned, the learned Single Judge had stated that the requirement of the prior intimation for putting up a construction is not so serious so as to impose a major punishment as was already done in a similar case.

6. We have carefully considered the submissions of both the learned counsel appearing for the appellants as well as the respondent.

7. Before the learned Single Judge, the only objection that seems to have been raised by the appellants is that the circular dated 23.02.2009 prohibits the Sub Registrar from holding personal money on them during office hours. It is not in dispute that there was no such circular prior to 23.02.2009. While that being so, placing reliance on a circular of the year 2009 for a delinquency that happened in the year 2005 is impermissible in law. In this regard, the reasoning adopted by the learned Single Judge to reject the findings of the Tribunal for Disciplinary proceedings holding first charge as proved cannot be found fault with. This apart, we have also perused the enquiry report. There are no guidelines for possession of personal money by the Sub-Registrar during the office hours in existence in the year 2005. The explanation rendered by the respondent herein before the Tribunal was that he had produced documents to prove that a sum of Rs. 46,000/- was obtained under due sanction of the Assistant Elementary Educational Officer by his wife, which money was kept by him in his bag, apart from a quotation obtained from the jewelry shop for purchase of jewelry. These documents were rejected by the Tribunal on the ground that the sanction of Rs.46,000/- was on 08.12.2004 and the amount was seized on 18.02.2005 and therefore, the sanctioned amount cannot be linked to the seized amount. We are not in agreement with such a finding. The period between the sanction and seizure was about two months only and we are unable to appreciate the reasoning adopted by the Tribunal to discredit the source of a portion of the amount which was allegedly seized. Even otherwise, it is not the finding of the Tribunal that a sum of Rs.83,000/- was ill-gotten money by the respondent herein. In the absence of any circular or other regulations of the Registration Department for guidelines to possess personal money during office hours, this finding of the Tribunal would stand vitiated. Thus, the finding of the Tribunal, holding the first charge as proved cannot be sustained.

8. Insofar as the second charge is concerned, the same relates to failure on the part of the respondents to obtain prior permission before putting up a construction of his house. In service jurisprudence, such a charge cannot be clubbed together with a totally distinct and different delinquency relating to corruption. While, the first charge is required to be enquired into by the Tribunal for disciplinary proceedings, the second charge is not at all related to the first charge and is required to be proceeded under Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Clubbing of different and distinct charges together has been held to be impermissible in law in several decisions of this Court. Even otherwise, the departmental action to be initiated only under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, cannot be proceeded with by the Tribunal for Disciplinary Proceedings, which is empowered with the jurisdiction of handling charges of corruption, etc. On this ground, the entire enquiry conducted in relation to the second charge is without authority of law.

9. For all the foregoing reasons, we do not find any reason to interfere with the findings of the learned Single Judge. Accordingly, the Writ Appeal stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

10. Ms.V.Janaki Devi, the learned counsel appearing for the cross objector, submitted that the learned Single Judge ought not to have denied the arrears of salaries, while setting aside the punishment. She vehemently argued that no reasons have been assigned by the learned Single Judge for such denial and that the respondent, who is now aged about 69 years, has been deprived of his legitimate claim.

11. As rightly pointed out by the learned counsel appearing for the cross objector, whenever a punishment of dismissal is held to be illegal, the concerned employee is deemed to have continued in service from the order of dismissal, till attaining his age of superannuation. This Court in several of its decision had taken such a view.

12. I had an occasion to place reliance on the decision of the Hon'ble Supreme Court for grant of the arrears of salaries in a case of this nature. The relevant portion of the said decision in the case of ***R.Gopalsamy vs. The District Manager (Retail Selling), TASMAC Limited, Tirupur District***

passed in ***W.P.No.9031 of 2016, dated 03.01.2023***, reads as follows:-

"8. I am not in agreement with such a submission made by the learned counsel for the respondent. When the termination itself is held to be illegal, the other service and monetary benefits would automatically flow, as laid down by the Hon'ble Supreme Court in the case of ***Educational Society, Tumsar and others Vs. State of Maharashtra and others*** *reported in* ***(2016) 3 SCC 512,*** *wherein, it was held as follows:-*

"11.... It cannot be defined that as per the normal principle, whenever a terminated employee of an aided school challenges the termination and termination is held to be illegal by a competent judicial forum/court and order is passed for payment of back wages, etc., the Government is supposed to bear the said burden. The reason for the same is that such back wages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earn these benefits had he remained in service. In that eventuality, obviously, the Government/Education Department would have paid those benefits in terms of financial aid provided to such a school. However, if there is a specific provision contained in any statute which contains contrary position, then such provision would prevail upon the aforesaid general rule. Likewise, if there is any administrative order which is contrary to the aforesaid general rule,

the said administrative order shall prevail as in that situation, it would be treated that the aid is given subject to the conditions contained in such administrative order."

9. By applying the principle laid down in the aforesaid decision, this Court, exercising its power under Article 226 of the Constitution of India, would be justified in granting the relief sought for and extend all the service and monetary benefits."

13. In the earlier portion of the order, we had substantiated that the entire departmental proceedings, commencing from the framing of the charges, till the order of the punishment was not in accordance with law and hence, the punishment itself is illegal. While that being so, the cross objector would be entitled for all the arrears of salaries from the date of his dismissal, till the age of his superannuation, together with continuity of service and all other attendant benefits.

14. In the light of the above, the Cross Objection of the respondent is allowed. Consequently, there shall be a direction to the appellants herein to forthwith pass orders, retiring the respondent/cross objector notionally on the date of his superannuation and disburse the entire back wages, together with continuity of services and other attendant benefits, within a period of four weeks from the date of receipt of a copy of this order. No costs.

(M.S.R.,J.)   (M.N.K.,J.)
26.09.2023

NCC:Yes
Index:Yes
Speaking order
vsm/hvk

M.S.RAMESH, J.
and
M.NIRMAL KUMAR, J.

vsm/hvk

To

1.The Secretary,
Government of Tamil Nadu,
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