



WA(MD).No.1282 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND

THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1282 of 2014
and MP(MD).No.2 of 2014

The Special Commissioner and
Secretary to Government
Animal Husbandry, Dairying and Fisheries
(AHI) Department,
Fort.St.George
Chennai -9

... Appellant

Vs.

G.Jeyapaul

....Respondent

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 27.02.2014 made in W.P(MD).No.6107 of 2009 on the file of this Court.

For Appellant :Mr.S.Shaji Bino
Special Government Pleader

For Respondent :Mr.A.K.Baskarapandian



WA(MD).No.1282 of 2014

JUDGMENT

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

The present writ appeal has been filed by the State challenging the order passed by the writ Court on 27.02.2014 quashing the order of punishment imposed upon the respondent herein.

2.The respondent herein was appointed as a Veterinary Assistant Surgeon on 10.03.1972 and he was promoted as Assistant Director of Animal Husbandry in the year 1998. In 2002, he was appointed as Clinician, Veterinary Polyclinic, Madurai. He attained superannuation on 31.01.2007. While, the writ petitioner was working at Madurai, a charge memo was issued on him on 25.05.2004 alleging that while he was functioning as Assistant Director of Animal Husbandry, Sivagangai, as a member of purchasing committee, he had failed to adopt the purchase guidelines issued by the Director of Veterinary Services, Chennai and thereby he has failed to maintain absolute integrity and duty.

3.The writ petitioner had submitted his explanation disputing the charges. An enquiry was conducted by the Commissioner for



WA(MD).No.1282 of 2014

Disciplinary Proceedings, Ramanathapuram. The petitioner was discharged from charges by the enquiry report dated 10.01.2005.

4.The Disciplinary Authority intended to take a divergent view and issued a show cause notice to the writ petitioner on 09.05.2005. The writ petitioner had submitted his explanation on 03.06.2005. The respondent in the writ petition has passed an order in G.O(2D).No.82 dated 02.09.2005 that he is satisfied that the charges framed against the writ petitioner are proved. He proceeded to impose the penalty of stoppage of increment for a period of six months without cumulative effect.

5.The writ petitioner filed an appeal to the Secretary to Government on 28.11.2005. The said appeal was rejected by G.O(2D).No.241, Animal Husbandry Dairying and Fisheries (AH1) Department, dated 10.08.2007. Challenging both the orders, the writ petitioner had filed W.P(MD).No.6107 of 2009 seeking to set aside the order of punishment and to grant promotion, consequential arrears, re-fixation of pension and other terminal benefits.



WA(MD).No.1282 of 2014

WEB COPY

6.The respondent had filed a counter contending that the writ petitioner had not strictly followed the guidelines issued by the Director of Veterinary Science while purchasing the Siddha and Ayurvedic Medicines and therefore, the Disciplinary Authority was right in taking divergent view from that of the Enquiry Officer.

7.The Writ Court after considering the submissions made on either side, arrived at a finding that the Disciplinary Proceedings have been initiated only as against one of the members of the Purchasing Committee and thereby resulting in discriminatory Disciplinary Proceedings. The writ Court proceeded to quash the punishment and allowed the writ petition. Challenging the same, the State has filed the present appeal.

8.The learned Special Government Pleader appearing for the appellant had contended that the writ petitioner was a member of the Purchasing Committee and he was entrusted with the responsibility of the life saving drugs. He had not strictly adhered to the guidelines issued by the Head of the Department as well as the Government while purchasing the medicines. He had further contended that the co-delinquents have



WA(MD).No.1282 of 2014

also been imposed with punishment by three different orders dated 02.09.2005 and two different orders dated 02.12.2005 and 14.03.2006. Therefore, there is no discrimination as far as the writ petitioner is concerned. Hence, he prayed for allowing the writ appeal.

9.Per contra, the learned counsel appearing for the respondent /writ petitioner had contended that the Enquiry Officer has categorically found that the charges as against the writ petitioner have not been proved and no reasons have been assigned whatsoever by the Disciplinary Authority by taking divergent view. In fact, there is a specific finding of the Enquiry Authority that no financial loss has incurred to the Government. The learned counsel had relied upon the enquiry report to contend that the violation of the guidelines are not so serious in nature and the members of the purchasing committee have shown good faith and sincerity in discharging the duties. He further contended that the disciplinary authority has not recorded any reason for taking a divergent view or for imposing punishment. Hence, he prayed for sustaining the order passed by the writ Court.



WA(MD).No.1282 of 2014

WEB COPY

10. We have given anxious consideration to the submissions made on either side and perused the material records.

11. The charge as against the writ petitioner is extracted as follows:

“That the said Dr.G.Jeyapaul, Assistant Director of Animal Husbandry, Sivagangai while functioning as member of the Purchase Committee for the purchase of Siddha and Ayurvedic medicines for Sivagangai Region, during the year 2001-2002, has failed to adopt the purchase guidelines issued by the Director of Veterinary Services, Chennai and thereby he has failed to maintain absolute integrity and devotion to duty.”

12. The relevant portion of the enquiry report is extracted as follows:

“ The amount allotted has been utilised for the purpose for which allotment was made. The public interest has been taken care of. There is no monetary loss to the Government. The procedure and the guidelines have been followed to the extent possible and wherever there is violation, the decision was taken consciously. The violation had occurred while doing the exercise with all good intentions. No malafide can be attributed to any of the Accused Officers in this case. They were all in a great



WA(MD).No.1282 of 2014

hurry as the financial year was fastly coming to a close. Whatever was done in a transparent manner. So that each one knew what the others were doing and nothing was done behind the back of someone The Accused Officers have all acted in unison, in good intention to achieve the common goal, viz., purchase of medicines within the shortest time available without allowing the budge allocation to lapse and without sacrificing the interest of both the Government and the public.

In view of the position set out above, there is no stronger basis to proceed further against Dr.T.V.Shanmugavelu (Accused Officer-1), Dr.G.Jeyapaul (Accused Officer-2), Dr.S.Devadoss (Accused Officer-3), Dr.S.Jaisankar (Accused Officer-4), Dr.K.Krishnamurthy (Accused Officer-5) and Dr.R.Thirunavukkarasu(Accused Officer-6).”

13.The Disciplinary Authority was not satisfied with the enquiry report and he had issued a show cause notice to the petitioner on 09.05.2005 for taking divergent view for which an explanation has been offered by the writ petitioner on 03.06.2005. The Disciplinary Authority in his impugned order dated 02.09.2005 has extracted the charge memo,



WA(MD).No.1282 of 2014

explanation offered by the delinquent officer to the charge memo, findings of the Enquiry Officer, deviation show cause notice of the Government and representation of the delinquent officer. After extracting the above facts, the following order has been passed by the Disciplinary Authority which is extracted as follows:

“3.The Government have examined the charge framed against Dr.G.Jeyapaul, formerly Assistant Director of Animal Husbandry, Sivagangai, his explanation on the charge, the report of the Inquiry Officer and the further representation of the Delinquent Officer on the decision of the Government, with connected records carefully and independently and decided that the charge framed against him is held as proved. Accordingly, the Government have decided to impose the penalty of stoppage of increment for a period of six months without cumulative effect, on the said Dr.G.Jeyapaul, formerly Assistant Director of Animal Husbandry, Sivagangai, for the charge held as proved against him and issue orders accordingly. The above punishment is exclusive of any leave availed by him during the period of punishment and it will not affect his pension.”

14.The Reviewing Authority had simply confirmed the order of the Disciplinary Authority by his proceedings dated 10.08.2007. The

8/12



WA(MD).No.1282 of 2014

Disciplinary Authority has got ample power to take a divergent view from that of an enquiring authority. At the time of issuing show cause notice, reasons have to be assigned by the Disciplinary Authority why he is constrained to take a divergent view. This will enable the Delinquent Officer to submit his explanation. Once an explanation is offered by the Delinquent Officer, the Disciplinary Authority is duty bound to consider the said explanation and pass a reasoned order for taking a divergent view for imposing punishment.

15.The Hon'ble Supreme Court in a judgement reported in (2017) 2 SCC 308 (*Allahabad Bank and others Vs. Krishna Narayan Tewari*) in Paragraph No.7 has held as follows:

“ 7.....Non-application of mind by the Enquiry Officer or the Disciplinary Authority, non-recording of reasons in support of the conclusion arrived at by them are also grounds on which the writ courts are justified in interfering with the orders of punishment. The High Court has, in the case at hand, found all these infirmities in the order passed by the Disciplinary Authority and the Appellate Authority. The respondent's case that the enquiry was conducted without



WA(MD).No.1282 of 2014

giving a fair and reasonable opportunity for leading evidence in defence has not been effectively rebutted by the appellant. More importantly the Disciplinary Authority does not appear to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority.....”

16.A perusal of the impugned order passed by the Disciplinary Authority clearly reveals that there is no independent discussion for imposing punishment. The Disciplinary Authority cannot impose punishment without assigning reasons especially when the Delinquent Officer has been exonerated in the enquiry by way of reasoned report. That apart, the explanation offered by the Delinquent Officer to the deviation show cause notice has also not been considered and mechanically the order impugned in the writ petition has been passed. Therefore, we are of the considered opinion that the Disciplinary Authority having not recorded any reason whatsoever for imposing punishment, the Writ Court was right in setting aside the order of punishment.

10/12



WA(MD).No.1282 of 2014

WEB COPY

17.In view of the above said discussion, we are of the considered opinion that the writ Court was right in allowing the writ petition. There are no merits in the Writ Appeal and the same stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

[A.S.M.J.] & [R.V.J.]
20.09.2023

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

The Special Commissioner and
Secretary to Government
Animal Husbandry, Dairying and Fisheries
(AHI) Department,
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11/12



WEB COPY



WA(MD).No.1282 of 2014

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