IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2024

Coram:

THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P. No.23830 of 2012

A.Jaisankar ... Petitioner

Vs.

1. The Government of Tamil Nadu represented
by The Secretary to Government
Commercial Taxes and Registration Department
Fort St. George, Chennai - 600 009

2. The Inspector General of Registration
100, Santhome High Road, Santhome
Chennai - 600 028

3. The District Registrar
Thiruvannamalai
Thiruvannamalai District ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the First respondent in G.O.(D) No.328, Commercial Taxes and Registration (K) Department dated 20.10.2011 confirming the order of the second respondent in proceedings No.31375/A3/2007 dated 20.01.2010 and quash the same and direct the respondents to grant all consequential benefits to the petitioner.

For Petitioner	: Mr.P.Manojkumar
For R1	: M/s.N.Senthil Selvi Government Advocate
For R2 and R3	: Mr.K.Neethi Perumal Additional Government Pleader

ORDER

This Writ Petition is filed to call for the records relating to the impugned order of the First respondent in G.O.(D) No.328, Commercial Taxes and Registration (K) Department dated 20.10.2011 confirming the order of the second respondent in proceedings No.31375/A3/2007 dated 20.01.2010 and quash the same and direct the respondents to grant all consequential benefits to the petitioner.

2. The learned counsel for the petitioner would submit that the petitioner was working as an Assistant in the office of the District Registrar, Thiruvannamalai, Thiruvannamalai District. A charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the petitioner by the Inspector General of Registration, Chennai (the Second Respondent herein) in Memo No.31375/R2/2007 dated 12.07.2007. The charge framed against the petitioner is that by Annual Audit Report while he

was working as Joint-II Registrar in-charge, Thiruvannamalai, he failed to credit an amount of Rs.1,672/- in the Government account towards deficit stamp fee in respect of documents mentioned in the annexure to the charge memo and that by noncredit of Rs.1,672/- in the Government account, he violated the Standing Order No.1521 and Rule 182 (i) of Register Manual. It was confirmed in the audit Inspection that the credit of Rs.1,672/- in the Government account and violating the Standing Order No.1521 and Rule 182(i) of Register Manual, he violated Rule 20(i) of the Tamil Nadu Government Servant Conduct Rules. On receipt of the said charge memo, he submitted a representation to the second respondent on 09.08.2007 requesting them to furnish the petitioner the details of the audit objections and the relevant documents mentioned in the annexure to the charge memo. Since the details and documents sought for by the petitioner in his representation dated 09.08.2007 were not furnished, he again submitted a representation to the second respondent on 04.08.2008 requesting him to furnish those details so as to enable him to give his explanation. Thereafter, the second respondent sent a communication to the Deputy Inspector General of Registration, Vellore, in No.31375/R/2/07 dated 17.11.2008 directing him to furnish the petitioner the details required by him. Even thereafter, copies of the document sought by was not furnished to the petitioner. Thereafter, the petitioner received a copy of the communication sent by the District Registrar (Audit), Thiruvannamalai to the Joint Regsitrar-II, Thiruvannamalai in No.555/A1/09 dated 17.02.2009 directing him to furnish the copy of the details sought for by the petitioner. Ultimately the documents sought for by the petitioner were furnished to him on 23.03.2009 and thereafter, the petitioner submitted his explanation to the second respondent on 04.04.2009 denying the said charge and requesting to drop further proceedings.

3. The learned counsel for the petitioner would further submit that not being satisfying with his explanation, one Mr.V.Ramamoorthy, District Registrar (Administration), Thiruvannamalai was appointed as enquiry officer to enquire into the charge framed against the petitioner. The petitioner was directed by the enquiry officer to attend the enquiry on 29.06.2009. Accordingly, the petitioner appeared before him on the said date and participated in the enquiry. Thereafter, the enquiry officer submitted his report in No.2157/A1/09 dated 27.07.2009 holding that the charges framed against the petitioner were not proved. Thereafter, the second respondent issued a letter to the petitioner in No.31375/A3/07-2 dated 06.11.2009 directing him to appear for personal enquiry on 17.11.2009 in respect of the charge framed against him. On the same day, the second respondent issued another letter in Memo No.31375/B3/2007-1 dated 06.11.2009 stating that he disagreed with

the findings of the enquiry officer and that the charge held not proved by the enquiry officer is also proved for the reasons stated in the annexure to the said memo and directed the petitioner to submit his further explanation within fifteen days from the date of receipt of the memo. Accordingly, the petitioner appeared in person on 17.11.2009 and submitted his further explanation to the second respondent. However, without considering his explanation, the second respondent passed an order in No.31375/A3/2007 dated 20.01.2010 imposing the punishment of stoppage of increment for six months without cumulative effect. Against the said order, the petitioner preferred an appeal to the Secretary to Government, Commercial Taxes and Registration Department, Fort St.George, Chennai-600009 (the First Respondent herein) on 29.03.2010. However, the petitioner's appeal has been rejected by the first respondent in G.O.(D).No.328, Commercial Taxes and Registration (K) Department dated 20.10.2011 (the impugned order herein).

4. Aggrieved by the above said orders, the petitioner has come forward with the present writ petition.

5. The learned counsel for the petitioner would further submit that as per Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the appellate authority shall consider whether the facts on which the order was pased have been established and whether the facts established affording

sufficient ground for taking action and whether the penalty is excessive, adequate of inadequate and pass orders confirming, enhancing, reducing, or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any authority with such direction as it may deem fit in the circumstances of the case. However, in this case, the appellate authority has not at all considered the appeal as per the requirement of the said Rule, but on the other hand, rejected the appeal mechanically by a non speaking order. Thus, impugned order of the first respondent is therefore liable to be set aside as having been passed in violation of the said Rule 23.

6. The learned counsel would further submit that the first respondent has issued the impugned order only on the basis of the views of the Tamil Nadu Public Services Commission in Letter dated 08.08.2011. The first respondent relied entirely on the said views of the TNPSC. However, the petitioner was not furnished with a copy of the said TNPSC letter before taking a decision and he was not given an opportunity to show cause, why the said views should not be relied on to punish him. The said TNPSC letter was enclosed along with the impugned order. This is in violation of the principles of natural justice and the impugned order is therefore liable to be set aside.

7. The learned counsel would further submit that the Enquiry Officer in his report dated 27.07.2009, specifically gave a finding that the charge framed

against the petitioner was held not proved. The second respondent being the Disciplinary Authority disagreed with the findings of the enquiry officer. It is settled law that the disciplinary authority can arrive at a different conclusion, but before arriving at a different conclusion, he must issue a show cause notice indicating that he proposed to arrive at a different conclusion for the reasons stated in the notice and calling upon the delinquent employee to show cause, why he should not arrive such different conclusion, even before issuing a notice to the petitioner. In the notice issued to the petitioner on 06.11.2009, he stated that the charge which the enquiry officer had held as not proved was also proved. The notice issued by the second respondent is not in accordance with the principles of natural justice.

8. The counter affidavit is also filed by the second respondent on 20.09.2018. It is stated that the petitioner while working as Assistant in the office of the Joint II Sub Registrar Office, Thiruvannamalai, has failed to collect proper fees from the parties for the encumberance certificates and certified copies applied by them, thereby caused revenue loss to the Government to the tune of Rs.1,672/-. It is submitted that this delinquency was pointed out during the course of internal audit and on the basis of audit report and relevant documents, disciplinary proceedings were initiated by the second respondent against the petitioner and a charge under Rule 17(b) of the

Tamil Nadu Civil Services (Discipline and Appeal) Rules was framed on the petitioner, for causing loss of revenue to the Government. After the completion of the enquiry and following due procedures laid down under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, for the proven charges, the petitioner was awarded punishment of stoppage of increment for six months without cumulative effect by the second respondent in Proc.No.31375/A3/2007 dated 20.01.2010. Aggrieved by the order of the second respondent, the petitioner preferred an appeal before the first respondent, and the first respondent rejected the appeal and confirmed the order of the second respondent in G.O.(D).No.328, Commercial Taxes and Registration (K) Department, dated 20.10.2011.

9. The learned Government Advocate appearing for the respondents submitted that though the enquiry officer gave findings that the charges framed on the petitioner as not proved, the enquiry officer’s finding was solely based on the assumption that the petitioner was working only as Assistant in that office and that he was not discharging the functions of the Sub Registrar. However, the second respondent, while taking a deviating view from the findings of the inquiry officer, has relied on the circular of the second respondent in No.4011/C1/2002 dated 24.01.2002, in which it has been categorically instructed that the Assistants working in Sub Registrar Offices,

who deal with the work of admitting applications for issue of encumberance certificates and certified copies of documents, are responsible for proper collection of fees and issue receipts for such collection of fees.

10. It is further submitted that in this case, the first respondent while disposing the appeal of the petitioner, has categorically stated that the order passed after perusing the entire records.

11. Heard both sides and perused the materials available on record.

12. In the case on hand, the petitioner was not working as Joint II Sub Registrar as per charge memo and he was working only as Assistant in the Office of Joint II Sub Registrar Officer, Thiruvannamalai. But in the charge memo issued to the petitioner, it was stated that a sum of Rs,1,672/- was not remitted in the Treasury. However, in the counter affidavit, it is stated that there was a shortage of collection fees for issuance of Encumberance Certificates and certified copies of the documents. The charge memo mentioned that Rs.1,672/- was not remitted before the Treasury.

13. It is stated that the petitioner was working only as Assistant in Joint II Sub Regsitrar Office, Thiruvannamalai. The impugned order passed by the First respondent in G.O.(D) No.328, Commercial Taxes and Registration (K) Department dated 20.10.2011 confirming the order of the second respondent in proceedings No.31375/A3/2007 dated 20.01.2010, is liable to be quashed

on the following grounds:-

(i) the petitioner was working only as Assistant in the office of the Joint II Sub Registrar and not as Joint II Sub Registrar in-charge as stated in the charge memo.

(ii) According to the Registration Manual – II, Departmental Orders No.1521, it is the Joint Sub Registrar or the Senior Sub Registrar shall be responsible for the remittance into the Treasury for the collection of funds.

(iii) In the charge memo, it is stated that the deficit stamp fee collected to the tune of Rs.1,672/- was not remitted in the treasury, but in the counter affidavit, it is stated that there is a shortage of collection of fees and the petitioner alone is responsible, which is contrary to the charge memo dated 12.07.2007 issued by the second respondent.

(iv) The enquiry Officer has submitted a report dated 27.07.2009 holding that the charges are not proved. But the second respondent/ Disciplinary Authority did not accept the said report, disagreed with the findings of the enquiry officer. But no proper reason is given for differing.

(v) As per Rule 23 of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules, the Appellate Authority has not followed the provisions envisaged in 17(b) of Tamil Nadu Civil Services Appeal Rules, 1978.

(vi) The charge memo dated 12.07.2007 and the impugned order passed by the Disciplinary Authority dated 20.01.2010 are contrary to each other for the reasons set out above. In the charge memo, it is mentioned that the deficit stamp fee amount to the tune of Rs.1,672/- which was collected was not remitted in the Treasury. But, in the impugned order, it is stated that the petitioner collected the deficit stamp fee and the same was not remitted in the Treasury.

(vii) The Appellate Authority order dated 20.10.2011 is a non speaking order and the same is in violation of Rule 23 of Tamil Nadu Civil Services Disciplinary and Appeal Rules, 1978. (ix) The information of the Tamil Nadu Public Service Commissioner dated 08.08.2011 was not furnished to the petitioner and the same was furnished only along with the impugned order passed by the first respondent dated 20.10.2011.

(viii) There is a categorical finding of the enquiry officer that the petitioner stated that he was not working as Joint II Registrar as alleged in the charge memo.

(IX) It was also proved in the enquiry that the petitioner has not worked as Sub Registrar in-charge for the alleged period as alleged in the charge memo and held that the charges were not proved by neither the Disciplinary Authority nor the Appellate Authority and they did not give any valid reasons or supporting documents for differing with the findings of the enquiry officer.

14. In the result, this writ petition is allowed and the respondents are directed to grant all consequential benefits to the petitioner within a period of six weeks from the date of receipt of a copy of the order. No costs.

07.02.2024

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Index : Yes / No
Neutral Citation Case : Yes/No

To

1. The Secretary to Government
   Commercial Taxes and Registration Department
   Fort St. George, Chennai - 600 009

2. The Inspector General of Registration
   100, Santhome High Road, Santhome
   Chennai - 600 028

3. The District Registrar
   Thiruvannamalai
   Thiruvannamalai District

J.SATHYA NARAYANA PRASAD.J

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