IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM :

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.972 of 2023
and
C.M.P.Nos.9643 of 2023 & 16743 of 2023

1.The Commissioner,
Tribunal for Disciplinary Proceedings,
Coimbatore

2.The Secretary to Government,
Home (Transport-II) Department,
Fort St.George, Chennai-9. ... Appellants

Vs.

V.Srikanth ... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 03.08.2021 passed by the learned Judge in W.P.No.5158 of 2017.

For Appellants : Mr.P.Kumaresan,
Additional Advocate General
assisted by Mr.S.Yashwanth
Additional Government Pleader

For Respondent : Mr.K.Venkataramani
Senior Advocate for
Mr.M.Muthappan

JUDGMENT

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

The Government authorities are the appellants herein. This writ appeal is directed against the order dated 03.08.2021 passed by a learned Judge in W.P.No.5158 of 2017.

2. Brief facts of the case are as follows:

2.1. The respondent was appointed as Junior Assistant on compassionate grounds, on account of death of his father, who served in the Public Works Department; after regularisation of his service, the respondent was promoted as Assistant. While he was working as such, he was subjected to disciplinary proceedings on two occasions by issuance of two separate charge memos.

2.2. As far as the first charge memo dated 13.08.2007 (T.D.P.Case No.78/2008) is concerned, the respondent was alleged to have been involved in preparation of Registration Certificates for 54 new vehicles without verifying the genuineness of the receipt for payment of fees such as Lifetime tax, Registration fee, and fee for reservation of Advance numbers, as required by Rule 81 of the CMV Rules, TNMV Taxation Act, and Rule 132 of the TNMVR 1989, thereby causing loss to the Government to the tune of Rs.1,42,180/-. Additionally, the charges include the alleged use of bogus receipts, registration of vehicles based on such receipts and allotment of Advance Registration numbers using forged Government Orders provided by the parties. The proceedings relating to first charge memo, culminated in the order of punishment of stoppage of increment for a period of two years without cumulative effect *vide* G.O.(2D)No.388 Home (Transport II) Departmentdated 06.08.2010. Challenging the said order, the respondent filed W.P.No.25314 of 2011, which was allowed by the learned Judge, by order dated 13.12.2012, observing that the role of the respondent in preparing registration certificates was only clerical in nature and he was not responsible for verification of documents or collection of the required fees. Consequently, the second appellant implemented the said order passed in the writ petition *vide* G.O.(D) No.1069 Home (Transport-II) Department, dated 20.12.2013.

2.3. Regarding the second charge memo dated 28.01.2010 (T.D.P.Case No.110/2008), it was alleged that while the respondent was working as Assistant in the office of the Regional Transport Office, Tiruppur, he along with Kalyanasundaram, Superintendent, had misappropriated a sum of Rs.5,000/- and Rs.3,000/- on 19.03.2001 and 19.04.2001 on the pretext of allotting advance registration numbers to the vehicles bearing Regn. Nos. TN-39-P-5900 and TN-39-P-7755 respectively without giving receipt and not remitting the amount of Rs.8,000/- into the Government account and affixing the advance registration numbers in Form 24 and using the challan numbers paid for other purpose to show as if the said challans belong to the above said two vehicles. This proceedings culminated in the order of punishment of stoppage of increment for four years with cumulative effect, *vide* G.O.(D)No.529, Home (Transport-II) Department, dated 30.12.2016. The respondent challenged this order by filing the instant writ petition bearing no.5158 of 2017, contending *inter alia* that the proceedings arising out of the second charge memo was not maintainable in the light of the order dated 13.12.2012 passed in WP. No. 25314 of 2011; the two charge memos related to the same set of facts and alleged delinquency; and there was inordinate delay of 7 years in initiating the disciplinary proceedings on the second occasion.

2.4. By order dated 03.08.2021, the learned Judge allowed the above writ petition by setting aside the order dated 30.12.2016 passed by the second appellant, observing that though the charges in two charge memos are different , they arise out of the same delinquency; and when the punishment awarded in the earlier disciplinary proceedings has been dropped by the appellant by way of acceptance of the order dated 13.12.2012 passed in WP. No. 25314 of 2011, the second disciplinary proceedings, which culminated in the order of punishment dated 30.12.2016 also, should have been dropped by the authorities.

2.5. Challenging the aforesaid order dated 03.08.2021 passed by the learned Judge in WP. No. 5158 of 2017, the appellants have filed the present appeal.

3. The first and foremost contention of the learned Additional Advocate General appearing for the appellants is that the charges framed in the first charge memo (TDP Case No.78/2008) and in the second charge memo (TDP Case No.110/2008) were different and not the same. According to the learned Additional Advocate General, there was vicarious liability on the part of the respondent in verifying the cash receipts, while working as Assistant in the Regional Transport Office. The inquiry reports in the two proceedings were based on different charges. It is also submitted that merely because punishment in the first proceedings was set aside, the appellants are not precluded from conducting disciplinary proceedings in respect of separate charges framed on the second occasion. Without properly considering all these factors, the learned Judge erred in allowing the writ petition, by setting aside the order of punishment inflicted on the respondent, by the order impugned herein, which will have to be set aside.

4. Per contra, the learned counsel appearing for the respondent would submit that the respondent was previously subjected to disciplinary proceedings in the year 2007, resulting in the order dated 06.08.2010 imposing punishment of stoppage of increment for a period of two years without cumulative effect. Challenging the said punishment, the respondent filed W.P.No 25314 of 2011 and the learned Judge, *vide* order dated 13.12.2012, allowed the writ petition, observing that the respondent's role was only clerical in nature and following the

same, the authorities dropped the disciplinary proceedings. Despite the same, fresh proceedings were once again initiated against the respondent in TDP Case No.110/2008, leading to the order dated 30.12.2016 imposing the punishment of stoppage of increment for four years with cumulative effect. The charges in the fresh proceedings are argued to be substantively the same as in the earlier 2007 proceedings, which were dropped by the authorities as per the order of the learned Judge passed in WP. No. 25314 of 2011. Therefore, continuing with the fresh proceedings and passing the order of punishment, are considered to be contrary to the order passed in the said W.P.No.25314 of 2011 and are not sustainable in law. It is also submitted that there was huge delay in initiation of the disciplinary proceedings on the second occasion, which is highly arbitrary. That apart, according to the Government guidelines dated 20.05.1999, only Motor Vehicle Inspectors are responsible for document verification and fee/tax collection for registration and the role of the respondent being an Assistant, was only clerical in nature. Taking note of all these aspects, the learned Judge has rightly allowed the writ petition filed by the respondent, by the order impugned herein, which does not warrant any interference at the hands of this court.

5. Heard the learned counsel on either side and also perused the materials available on record.

6. Concededly, during the relevant point of time, the respondent was working as Assistant in the Regional Transport Office, Tiruppur; and he was subjected to the disciplinary proceedings on two occasions through separate charge memos. The first charge memo, dated 13.08.2007 (T.D.P.Case No.78/2008) for the alleged irregularities in preparing Registration Certificates for 54 new vehicles, resulted in the order of punishment of stoppage of increment for two years without cumulative effect, by G.O.(2D) No. 388, Home (Tr-II) Department, dated 06.08.2010. However, the said order was set aside and the disciplinary proceedings were dropped by G.O.(D)No.1069, Home (Transport-II) Department, dated 20.12.2013, as per the order dated 13.12.2012 made in WP No. 25314 of 2011. In respect of the second charge memo dated 28.01.2010 (T.D.P.Case No.110/2008), relating to misappropriation of Rs.8000/- on the pretext of alloting advance registration numbers to two vehicles, the respondent was imposed with the punishment of stoppage of increment for four years with cumulative effect by order dated G.O.(D)No.529 Home (Tr.II) Department, dated 30.12.2016, which was set aside by the learned Judge in the writ petition filed by the respondent herein, placing reliance on the earlier order dated 13.12.2012 in WP. No. 25314 of 2011, by the order impugned in this appeal.

7. The appellant authorities questioned the order passed by the learned Judge in the writ petition mainly on the ground that the charges framed in the

two charge memos were not connected with each other, but were entirely different and distinct and hence, the order of the learned Judge in setting aside the order of punishment inflicted on the respondent on the second occasion, based on the order passed in the writ petition in respect of the first disciplinary proceedings, is not sustainable in law. In this connection, it is useful to refer to the charges framed in the two charge memos against the respondent herein. The 1st Charge Memo (T.D.P Case No.78/2008) dated 13.08.2007, contains two charges, which read as follows:

> Charge - I
>
> During the tenure as Assistant in the Reginal Transport Office, Tiruppur, it has been found that Lift time tax, Registration fees and fee for reservation of Advance number for new vehicles registered during the period were not actually paid in the office. But vehicles were registered and Advance Registration numbers have been allotted, based on bogus receipts as from Regional Transport Office prepared using some cash track machine.
>
> You have prepared the Registration Certificates of 54 new vehicles without verifying the genuineness of the fee for registration, life time tax paid as per Rule 81 of CMV Rules, TNMV Taxation Act and the fee for reservation of Advance numbers as per Rule 132 of TNMVR 1989.
>
> As per Para 41 and 42 of the TN Govt Office Manual, it was your duty to bring the irregularities to the notice of the section Head and Head of the Office, by putting up a notice.
>
> Your failure to verify the genuineness of the receipt and failure to report the irregularities to the Section Head and Head of the Office has resulted in pecuniary loss to to the Government tune of Rs.1,46,180/- for which you along with others working in that office during the above period are collectively responsible.
>
> Charge-II
>
> Advance registration numbers were allotted based on the fake government orders, produced by the parties. The numbers should have been allotted only after the receipt of such orders directly from the Government without relying on the copies of Government Orders submitted by the parties themselves. Non adherence to these procedures has therefore facilitated allotment of advance registration numbers base don forced Government Orders.

> You have thus failed to verify the genuineness of the Government Orders produced for allotment of Advance registration numbers and have entertained forged copies of order produced by the individual themselves. This shows gross negligence to duty.

8. The 2nd charge memo (T.D.P Case No.110/2008) dated 28.01.2010, contains four charges and Charge No.IV is in respect of the respondent herein, which reads as follows:

> Charge-IV
>
> You (Accused Officer No.3), Thiru.M.Kalyanasundaram, Superintendent and you (Accused Officer No.4) Tr.V.Srikant, Assistant Serving on 19.03.2001 and 19.04.2001 at RTO, Tiruppur, on both dates Accused Officer No.3 Kalyanasundaram has received a sum of Rs.5,000/- and Rs.3,000/- respectively from the owners of vehicle Nos.TN39 P 5900, TN 39 P 7755 for the purpose of granting Advance number and did not issue receipt and did not remit the above sum of Rs.8,000/- into the Government account and misappropriated the funds. Accused Officer No.3 Kalayanasundaram and Accused No.4 Srikanth have endorsed the details in Form No.20 and Form No.24 showing as if the challan has been prepared for sum of other purpose, thereby, you have committed unbecoming conduct of a Government servant."

9. On a reading of the above, it is clear that the charges framed in the first and second disciplinary proceedings against the respondent are substantively different and not the same. Moreover, the nature of allegations in the two cases was fundamentally separate. The first charge memo related to procedural lapses in the process of document verification and failure to report irregularities to the Head of Office, resulting in pecuniary loss to the Government. In the said charge memo, the respondent and other delinquents were collectively responsible for the loss caused to the exchequer. On the other hand, the second charge memo directly accuses the respondent in collecting a sum of Rs.5,000/- and Rs.3,000/-

on 19.03.2001 and 19.04.2001 respectively along with the Superintendent Kalyanasundaram, for granting advance registration numbers to two vehicle owners without issuing receipts, which amounts to misappropriation.

10. In view of the above discussion, this court is of the view that considering the nature of the allegations levelled against the respondent, the authorities initiated fresh disciplinary proceedings on the second occasion by issuance of charge memo dated 24.10.2008, despite the fact that the first disciplinary proceedings initiated against the respondent, were dropped by the authorities by G.O.(D)No.1069 Home (Transport-II) Department, dated 20.12.2013, pursuant to the order of the learned Judge dated 13.12.2012 in W.P.No.25314 of 2011 in setting aside the order of punishment imposed on the respondent. Therefore, the order of the learned Judge setting aside the punishment imposed in respect of the second disciplinary proceedings, on the premise that the charges framed in both the first and second disciplinary proceedings are one and the same, is liable to be set aside. Furthermore, the argument made by the learned counsel for the respondent that there was inordinate delay in initiation of the second disciplinary proceedings, is untenable, for the reason that mere argument that there is delay without showing real prejudice cannot be a ground to thwart disciplinary proceedings, especially when distinct charges of misconduct are involved.

11. Therefore, the order passed by the learned Judge in the writ petition, is set aside and this writ appeal is accordingly, allowed. The appellants are directed to implement the order of punishment inflicted on the respondent, pursuant to the second charge memo, if not implemented earlier. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] **[M.S.Q, J.]**
13.03.2024

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Index: Yes / No.
Speaking order/ Non-speaking order
Neutral Citation: Yes / No.

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