



WA No.1467 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

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- 1.The State of Tamil Nadu
Rep. by its Secretary,
Department of School Education,
Fort St. George, Chennai 600 009.
 - 2.The Director of School Education,
College Road,
Chennai 600 006.
 - 3.The Joint Director of School Education (Personnel),
College Road,
Chennai - 600 006.
 - 4.The Chief Educational Officer,
Vellore and District.
- : Appellants

versus

A.Dhayanithi : Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge in WP No.18485 of 2015, dated 01.02.2022.

For the Appellants : Mr.J.C.Duraiaraj,
Additional Government Pleader

For the Respondents : Mr.S.Sathia Chandran



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JUDGMENT

(Made by D. KRISHNAKUMAR, J.)

The State has preferred this writ appeal, aggrieved by the order of the learned Single Judge in WP No.18485 of 20215, dated 01.02.2022, wherein the Writ Court has allowed the writ petition filed by the respondent/original writ petitioner herein and directed the State to reinstate the respondent into service with full back wages and other attendant benefits.

Brief facts:-

2. The respondent/ original writ petitioner while working as teacher in Government School, Jangalapalli, Vellore District, was charged for the offences of kidnapping a minor girl studying in tenth standard and sexually assaulting her. He was issued with a charge memo by the fourth appellant. After enquiry, the Disciplinary Authority/3rd appellant had imposed the punishment of removal from service, vide order dated 15.06.2012. The appeals preferred by the respondent, were rejected on 02.05.2013 and 12.12.2014 by appellants 2 and 1, respectively. Challenging the order of punishment



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and other consequential orders, the writ petition was filed.

3. The learned Single Judge after considering the arguments advanced on both sides and on perusal of documents, held that the grounds raised by the respondent at appellate stage was not properly considered and that the documents sought for by the respondent were also not provided to him. Ultimately, the writ petition was allowed, the order of dismissal was set aside and the Department was directed to reinstate the respondent with all benefits. Challenging the said order, the present appeal has been filed.

Contentions :-

4. Mr.J.C.Durairaj, learned Additional Government Pleader, appearing for the appellants/ Department would vehemently contend that the respondent was given fair opportunity of hearing at all stages and he has indeed given a statement in writing that he was fully satisfied with the manner of conduct of enquiry.

5. Learned Additional Government Pleader further submitted that



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acquittal in criminal case would have no bearing on the departmental proceedings, since the yardstick of proof is different in both the proceedings. In a departmental proceeding, the principle, 'preponderance of probabilities' is followed; while in a criminal case, the accused is deemed to be innocent until his crime is proved beyond all reasonable doubts. Therefore, learned Single Judge ought not to have allowed the writ petition by relying upon the acquittal in the criminal case.

6. Mr.S.Sathia Chandran, learned counsel appearing for the respondent reiterated the contentions raised before the Writ Court and submitted that the respondent was not provided with necessary documents, based on which the authorities have taken the decision to impose the punishment of removal from service.

7. Learned counsel submitted that the appellate authority has not acted in accordance with the spirit of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore, the order of the Writ Court need not be disturbed.

Analysis :-



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8. The short point that falls for consideration in this appeal is, whether the appellate authorities, viz., appellants 1 and 2 herein have passed orders in consonance with Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

9. The Hon'ble Supreme Court and this Court have, in an umpteen number of cases held that any order passed by authorities should be well reasoned. Cryptic and non-speaking orders have always drawn flak from the Courts.

10. Appellate authorities in this case, viz., appellants 1 and 2 are governed and guided by the Tamil Nadu Civil Services (Discipline and Appeal) Rules, more especially, Rule 23.

11. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is usefully extracted hereunder:

“23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was



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based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders--

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties



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specified in clauses (iv), (v) (c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall , after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case.”

12. A bare reading of the appellate orders dated 02.05.2013 and 12.12.2014, passed by appellants 2 and 1 respectively, would reveal that the authorities have passed orders in a casual manner. Mere confirmation or rejection of the order under challenge would not



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suffice. Appellate authorities should state reasons for arriving at such a conclusion.

13. The writ petition was filed mainly on two grounds viz.,

(i) Firstly, the domestic enquiry itself was not conducted in a fair and proper manner and that, though the fourth respondent had relied on certain documents in the charge memo, in spite of repeated requests made by the respondent, the same were not furnished to him. Similar request made at the appellate stage was also negatived. No witnesses were examined during the course of enquiry and the respondent was not given an opportunity to cross examine them.

(ii) The criminal case filed on similar charges had ended in acquittal based on the evidence adduced before the Court.

On these two grounds, the respondent sought for setting aside the



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order of removal from service.

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14. The State submitted that the respondent was given opportunity at every stage and principles of natural justice was followed right from the beginning. However, no record has been shown to prove the said submission.

15. The respondent has specifically alleged that the documents he sought for have not been furnished to him and for that reason, he could not prove his innocence. The appellate authorities have chosen to ignore his request and have passed an order confirming the order of removal from service.

16. In ***K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382*** in para 7, this Court has held as follows :

“It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity



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available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside.”

17. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in ***Narinder Mohan Arya Vs. United India Insurance Company Ltd., (2006(4) SCC 713)***, wherein the Apex Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder:

“An appellate order if it is in agreement with that of the disciplinary authority may not be a



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speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules.”

18. This Court had on occasion to deal with a similar issue in the case of ***C.Devendhiran vs. Deputy Inspector General of Police, Villupuram Range, Villupuram (2020 (2) W.L.R. 332).***

19. The petitioner therein challenged the order of the appellate authority on the ground that the appellate authority has not followed the due process of law and his appeal has been rejected by a cryptic order.

20. This Court has allowed the writ petition holding thus:

“16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to assess the evidences available on record by due application of mind and also record the reasons even though not



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elaborately, but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this Court cited supra, this Court with no hesitation, has come to the conclusion that the second respondent/appellate authority has passed a cryptic order/ non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority/ 2nd respondent is not in conformity with the rule 6(1) of TNPSS (D&A) Rules.

21. Since this Court was bombarded with number of cases where



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the appellate authorities have passed cryptic and non-speaking orders, the Court has made the following observation in **C.Devendhiran**:

“20. Before parting with the case, now several writ petitions are being filed challenging the rejection order of the appellate authority and the same are being quashed on the ground that the said orders are cryptic in nature and passed without assigning any reason/ finding/ discussion and without following the relevant procedures and Rules. Therefore, the Chief Secretary to Government of Tamil Nadu is directed to issue necessary circular to the appellate authority, who deal with the statutory appeals, to strictly follow the procedure and Rules, while deciding the appeals in future, without fail. The Chief Secretary to Government shall also send circular to the Appellate Authorities of other departments concerned with regard to the same and file a compliance report before this Court, within a period of four (4) weeks from the date of receipt of a copy of this Order.”

22. Indeed, the Registry was directed to mark a copy of this order to the Chief Secretary to Government of Tamil Nadu, Secretariat, Chennai for further action. It is not known what further action has



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been taken at the Government's end.

Conclusion:

23. This Court is of the view that the appellate authorities have passed orders in a mechanical manner without adhering to the true spirit of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, this Court has no hesitation to set aside the appellate orders passed by appellants 1 and 2.

24. The matter is remitted back to the second respondent for passing fresh orders on the appeal filed by the respondent.

25. The order of the learned Single Judge is set aside and this writ appeal is allowed. There shall be no order as to costs. Consequently, CMP No.9605 of 2022 is closed.

(D.K.K., J.) (K.B., J.)
02.07.2024

Index : Yes/No
Neutral Citation : Yes/No



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To

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AND

K.KUMARESH BABU, J.

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