



WEB COPY



W.A.No.846 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM :

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.A.No.846 of 2020

M.Mahaboob Sheriff (Died)

- 1.Shamsunnisa
- 2.Khaja Sheriff
- 3.M.Iqbal Sheriff
- 4.M.Arifunnisa

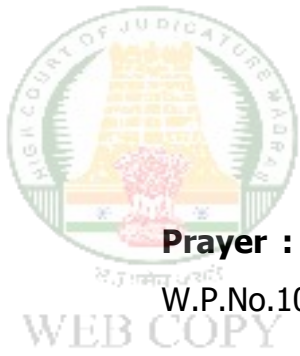
(Appellants 1 to 4 substituted in the place of deceased appellant viz., Mahaboob Sheriff vide court order dated 19.11.2021 made in CMP No.17848/21 in WA 846 of 2020)

... Appellants

-Vs-

- 1.The Principal Secretary to Government
Rural Development & Panchayat Raj Department
Secretariat, Chennai 600 009.
- 2.The Secretary to Government
Personnel and Administrative Reforms
Department, Secretariat, Chennai 600 009.
- 3.The Commissioner
Directorate of Rural Development and
Panchayat Raj, Panagal Buildings
Saidapet, Chennai 600 015.
- 4.The District Collector
Cuddalore District, Cuddalore.

... Respondents



W.A.No.846 of 2020

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.10534 of 2012 dated 09.03.2020.

For Appellants : Mr.A.R.Nixon
For Respondents : Mr.K.V.Sajeev Kumar
Special Government Pleader

J U D G M E N T

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

This appeal has been directed against the order passed by the writ Court dated 09.03.2020 in W.P.No.10534 of 2012. The appellant (deceased) was the writ petitioner, who filed the said writ petition, in fact after retirement at the age of 67 years, where he had challenged the punishment awarded against him in the disciplinary proceedings, which ended in punishment of recovery.

2. He in fact sought to quash such punishment and to give promotion to him as Assistant Director of Rural Development for the panel year 1999-2000, which was considered and negated by the learned Judge in the impugned order. The reason being that, as against the appellant / writ petitioner there has been a punishment of stoppage of increment by order dated 08.09.1998 and second time also, he earned a punishment of stoppage of increment for three months without cumulative effect by the proceedings of the District Collector dated 11.10.1998. That apart, thirdly there was a charge framed against him under Rule 17(b) of the Tamil Nadu Civil Servants (Discipline and Appeal) Rules on 11.04.1997 which in fact ended in a punishment of



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recovery and such order had been passed on 27.11.2003. After three days ie., on 30.11.2003, he retired from service on superannuation.

3. These are all the reasons which have been considered by the learned Judge. Therefore, the prayer sought for by the appellant was rejected by the learned Judge, against which the present appeal has been preferred.

4. Mr.A.R.Nixon, learned counsel appearing for the appellants submitted that, insofar as the promotion for the panel year 1999-2000 is concerned, the crucial date is 31.03.2000 and till his superannuation the disciplinary proceedings initiated in the year 1997 was not completed and assuming that it was concluded and recovery was ordered against the appellant, that cannot be construed as punishment for withholding the very promotional avenue of the appellant. Hence, the learned counsel submits that the order impugned before the writ Court as well as the present impugned order passed by the learned Judge are liable to be interfered with.

5. Per contra, Mr.K.V.Sajeev Kumar, learned Special Government Pleader would contend by relying upon the following averments that has been made in the counter affidavit filed before this Court that the disciplinary proceedings under Rule 17(b) since was continuing, which ended in punishment by order dated 27.11.2003 and within three days thereafter since he retired due to superannuation, for the relevant year ie., 1999-2000 he was not at all entitled to be considered for



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promotion. Therefore, that plea raised by the petitioner is liable to be rejected, accordingly, it is rejected. This position has been considered by the learned Judge in proper perspective. Learned Special Government Pleader submits that it does not warrant any interference.

6. Para 5 of the counter affidavit reads thus,

" 5) It is further submitted that the Collector, Cuddalore District, the 4th respondent herein, issued charge memo Roc No.PA1/5604/1997 dated 11.04.1997, under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, charges were framed against the individual for the irregularities in the purchase of steel chairs while he was working as Block Development Officer, Cuddalore Panchayat Union. In the above disciplinary proceedings, final orders were issued by the Collector of Cuddalore District in Proceedings No.22169/2000/PA1 dated 01.04.2003. Under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, review was taken up by the Director of Rural Development ad Panchayat Raj. In Proceedings No.9477/97/VC2.2 dated 27.11.2003, final orders were issued to recover Rs.1921/- being 40% of the total loss of Rs.4804/- caused to Cuddalore Panchayat Union as he was on the verge of retirement ie., 30.11.2003. Against the above punishment order the Appellant / Petitioner submitted an appeal petition."

7. We have considered the said submissions made by the learned counsel appearing for both sides. The prime contention of the learned counsel for the appellant is that the proceedings for recovery cannot be construed as a penalty /



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punishment against the appellant. The said submission made by the learned counsel is liable to be rejected for the simple reason that, what are all the type of penalties that can be imposed, both major as well as minor, is enumerated under Rule 8 of the said Discipline and Appeal Rules, wherein Rule 8(v) reads thus,

" 8(v) : Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or, to any Government Company or Organisation or Local Authority or to a Local body, while on deputation, by negligence or breach of orders."

8. Therefore, recovery is one of the punishments enumerated under the Rule. Hence, it cannot be stated on any stretch of imagination that the recovery proceedings which was ultimately issued by the disciplinary authority cannot be construed as a punishment and therefore, based on which the promotion ought not to have been withheld.

9. In fact, as against the punishment of recovery proceedings, the appellant had filed an appeal to the Government, which was rejected on 14.11.2008 as against which, a review has been filed and that was also rejected on 08.11.2011. Therefore, it has been concluded that the punishment of recovery awarded against the appellant has become final and by virtue of such a punishment, as the crucial date falls during the disciplinary proceedings, where the charge was pending consideration, which ended in punishment, there was no occasion for the authority



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concerned to consider the candidature of the appellant for promotion for the relevant year and after the punishment was awarded against him, immediately he retired from service on attaining superannuation. Therefore, there was no occasion to consider his candidature at any point of time for further promotion as Assistant Director, as claimed by him. Hence, there is no merit in the plea that has been raised by the petitioner before the writ Court, which in fact was rightly rejected by the learned Judge through the impugned order. Hence, such order does not warrant any interference at the hands of this Bench. Accordingly, the appeal fails and it is dismissed. No costs.

(R.S.K.,J.) (K.B.,J.)
02.01.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
KST



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To

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