
(2014) 10 MAD CK 0132

In the Madras High Court

Case No : W.A. (MD) No. 1325 of 2011 and M.P. (MD) No. 1 of 2011

A. Basheer Ahamed

APPELLANT

Vs

The Principal Secretary to Government

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 MAD CK 0132

Hon'ble Judges : V.M. Velumani, J;V. Dhanapalan, J

Bench : Division Bench

Judgement

V. Dhanapalan, J.—Heard Mr. R.R. Kannan, learned Counsel for the appellant and Mr. A.K. Baskarapandian, learned Special Government Pleader for the respondents.

2. This writ appeal is directed against the order passed by the learned single Judge in W.P. (MD) No. 12733 of 2011, dated 10.11.2011, whereby the learned single Judge dismissed the writ petition, with a liberty to the appellant herein to approach the appellate authority.

3. Brief facts leading to the filing of this writ appeal, are as follows:

3.1. The appellant, a Special Tahsildar (Land Acquisition), National Highways No. 45 at Dindigul, was proceeded departmentally for certain allegations and issued with a charge memo on 03.10.2009 by the third respondent, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, [hereinafter referred to as "the Rules"]. The appellant submitted his explanation to the charge memo on 19.10.2010. Thereafter, an enquiry had been contemplated and after enquiry, the Enquiry Officer found the appellant guilty of the first three charges and exonerated him from the fourth charge and filed the report before the disciplinary authority, the third respondent herein, who issued the Memorandum in Na.Ka. No. 36394/2009/A1, dated 05.01.2011, along with the copy of the enquiry report, calling for the further explanation of the appellant. However, the

third respondent being not satisfied with the further explanation submitted by the appellant on 10.01.2011, passed the order dated 11.10.2011, imposing two major penalties reducing his rank for one year and also passing another order recovering 1/4th amount of Rs. 12,36,395/- (Rupees Twelve Lakhs Thirty Six Thousand Three Hundred and Ninety Five only) with interest from his salary, on monthly instalments. Aggrieved by the order passed by the third respondent, the appellant filed the writ petition.

3.2. Upon consideration of the rival submissions, the learned single Judge found that the appellant had by-passed the statutory appeal remedy and accordingly, rejected the writ petition with a liberty to the appellant to approach the appellate authority in accordance with law. Challenging the same, the appellant is before this Court.

4. The learned Counsel for the appellant has mainly contended that this Court can exercise the writ jurisdiction in spite of availability of alternative remedy in the following contingencies, namely, (i) Whereas the writ petition seeks enforcement of any fundamental right; (ii) Where there is a failure of principles of natural justice; and (iii) Whereas the proceedings are wholly without jurisdiction or vires of the Act, and therefore, the learned single Judge without looking into the above principles, dismissed the writ petitions.

5. On the other hand, the learned Special Government Pleader for the respondents contended that the learned single Judge has rightly dismissed the writ petition when there is an effective alternative remedy available to the appellant to redress his grievance as against the punishment imposed by the disciplinary authority and particularly, in the matter of reduction in rank for one year and recovery of the amount. He also submitted that the appellate authority may be in a position to interfere with the punishment inflicted on the appellants by the disciplinary authority.

6. We have considered the submissions made by the learned Counsel for the parties and perused the records.

7. It is seen that the appellant was proceeded departmentally for various allegations mentioned in the charge memo issued on 03.10.2009 under Rule 17(b) of the Rules. On conclusion of the enquiry, the report was submitted by the Enquiry Officer, finding the appellant guilty of three of the charges and exonerating him from the fourth charge and thereafter, the appellant has submitted his detailed explanation to the disciplinary authority on 10.01.2011 with a request to exonerate him from all the charges levelled against him. The third respondent, being the disciplinary authority, after receipt of further representation from the appellant and on being not satisfied with the explanation offered by the appellant, proceeded to impose the aforesaid punishment in the impugned proceedings in Na.Ka. No. 36394/2009-1/A1, as against which, the appellant has gone before the writ Court and challenged the proceedings.

8. On hearing the learned Counsel for the parties, the learned single Judge has

come to the conclusion as there is an effective statutory appeal remedy available to the appellant and challenge to the correctness of the order passed by the disciplinary authority would not absolve the appellant from waiving the appeal remedy and therefore, dismissed the writ petitions.

9. It is true, the legal principles are settled as to the waiver of the appeal remedy, in the circumstances, where there is a violation of fundamental right or in violation of the principles of natural justice and also in case, where there is anything without jurisdiction or in contravention of the Rule of Law.

10. In such circumstances, the Court is empowered to waive the appeal remedy and go into the merits of the case and decide the matter in accordance with law. But, in the instant case, in the absence of any such grounds available to the appellant, it may not be appropriate to seek waiver of such appeal remedy which is statutorily provided for effective redressal of the grievance of the appellant. It may be the appellate authority to take note of the charges and that too, on the exoneration of fourth charge. The appellate authority may decide as to what would be the position, if the appeal is preferred by the appellant. On the contrary, in the absence of any such legal rights of waiver of such appellate remedy, it would not be proper for the appellant, to straightaway to approach the writ Court under Article 226 of the Constitution of India.

11. In our considered opinion, the views taken by the learned single Judge that in the absence of any such grounds to waive the appeal remedy, the writ petition is not maintainable, holding that there was an effective statutory remedy available to the appellant and giving liberty to the appellant to approach the appellate authority, are sustainable in law. Therefore, the writ appeal deserves no merit consideration. However, as there was an interim order all along as to the recovery of the amount in 1/4th of the sum of Rs. 12,36,395/- (Rupees Twelve Lakhs Thirty Six Thousand Three Hundred and Ninety Five only), we feel that till the appellant moves the appellate authority and the appeal is decided on merits, the said recovery proceedings shall be kept in abeyance.

12. Accordingly, we dispose of the writ appeal, with a direction to the appellant to move before the appellate authority, within a period of four weeks from the date of receipt of a copy of this judgment and thereafter, the appellate authority shall dispose of the said appeal, within a period of eight weeks on merits and in accordance with law, thereafter. In the meanwhile, the respondents are directed to maintain status quo as on date, till the appeal is disposed of by the appellate authority. Consequently, the connected miscellaneous petition is closed. No costs.