
(2011) 07 MAD CK 0322

In the Madras High Court

Case No : Writ Petition No. 19668 of 2009 and M.P. No. 1 of 2009

C. Rajendran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 07 MAD CK 0322

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; M.K. Subramanian, Spl. G.P. (F) for R1 and V. Subbiah, Spl. G.P. for R2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The Petitioner has come forward to file the present writ petition, challenging an order of the first Respondent State made in G.O.(3D) 86, Agriculture Department, dated 19.06.2009. By the impugned order, the first Respondent concluded that part of the first charge made against the Petitioner was held to be proved and for the proved charge, he was imposed with the penalty of "Censure". The Petitioner had sent a representation for grant of promotion and when the same was not forthcoming, he has filed the present writ petition, seeking to challenge the said order imposing the penalty of "Censure" and also for a direction to the first Respondent to include his name in the panel for promotion to the post of Assistant Conservator of Forests, for the year 2008-2009 with all consequential benefits.

2. The writ petition was admitted on 06.10.2009. Pending the writ petition, this Court by an order dated 24.11.2009 observed that any promotion made will be subject to the result of the writ petition.

3. On behalf of the Respondents, a counter affidavit dated 09.05.2011 has been filed.

4. Mr. M. Ravi, learned Counsel for the Petitioner submitted that in respect of the very same charge, a Junior Engineer by name Perumal was let off accepting his explanation. The Government by G.O.(2D) 52, Agriculture Department dated 22.02.2007 dropped the charges including the first charge made against the Petitioner.

5. The first charge against the Petitioner was that he had not followed the specifications as per Madras Detailed Standard Specification (for short MDSS) at the time of execution of work in respect of 513 check dams. It was stated that the estimate for 513 check dams were sanctioned upto Rs. 5000/- per check dams to the tune of Rs. 14.49 lakhs. But on actual observation at site, it was seen that such type of work can be done within 60% of the cost i.e. Rs. 3000/-. Though the Petitioner gave an explanation, an enquiry was ordered to be held.

6. The Enquiry Officer after analysis of the entire issue had come to the conclusion that the Petitioner had constructed 252 dams without following the MDSS specifications and held that a portion of the first charge was proved. Accepting the report of the Enquiry Officer, the State Government, after calling for an additional explanation from the Petitioner, issued the impugned GO.(3D) No. 86, Agriculture dated 19.06.2009. In the Government Order, the State Government agreed with the findings of the Enquiry Officer viz., portion of the first charge was proved and imposed the penalty of "Censure".

7. A perusal of the Government Order issued in favour of the said Perumal vide G.O.(2D) 52, Agriculture Department dated 22.02.2007 showed that a very same charge was made against the said Perumal, who was Junior Engineer (Agriculture Engineering). The Government by the said GO accepted his explanation viz., that the work was done on the basis of the Project Officer's advise and instead of putting Wodders Rate, they have put Masons Rate rate and estimates were prepared and there was no intention of causing loss to the Government and dropped the charge in respect of the Junior Engineer (Agricultural Engineering). There is no reason why the Petitioner should be found fault with the said charge that too for a portion of the said charge.

8. The Petitioner in his affidavit in Paragraph 6(j) had raised this issue specifically. In the counter affidavit, there is no denial for the said issue. It was merely stated that the said averment is not acceptable and that the Petitioner was punished for the proved charges. In effect, the Respondents have not answered to the allegation made by the Petitioner.

9. This Court is of the opinion that since an identical charge was dropped on the basis of the explanation submitted by the said Perumal and that the Petitioner had also raised similar defence in the enquiry, the contention raised by the Petitioner has to be accepted.

10. In support of his contention, the learned Counsel for the Petitioner relied upon the judgment of the Supreme Court in Man Singh Vs. State of Haryana and Others, , wherein the Supreme Court held that if two individuals are dealt with

for identical charges, the State cannot discriminate between the two in the matter of penalty. In such circumstances, equitable clause enshrined under Article 14 of the Constitution will be available. In Paragraph 22, it was held as follows:

22. In the backdrop of the abovementioned facts and circumstances of the case, we are of the view that the order of the disciplinary authority imposing punishment upon the Appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the Appellant before it and dismissed the second appeal by an unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The Appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle.

11. In the light of the above, the writ petition stands allowed and the impugned order stands set aside. However, with reference to the request for promotion made by the Petitioner, for which a representation was made on 14.07.2009 (a copy of which is enclosed in Pages 37 and 38 of the typed set), the Respondents are directed to pass orders on the said request within a period of eight weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.