(2010) 12 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 40857 of 2006 (O.A. No. 7444 of 2000)

K. Marimuthu APPELLANT

Vs

The Special Commissioner and Commissioner of Revenue Administration and The Collector RESPONDENT

Date of Decision : 09-12-2010

Acts Referred:
Government Servants Conduct Rules, 1960 — Rule 26
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 7

Citation : (2010) 12 MAD CK 0052

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Mohanraj, for the Appellant; R. Murali, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner filed O.A. No. 7444 of 2000, seeking to challenge the order dated 10.08.2000 passed by the first

Respondent, Special Commissioner for Revenue Administration. By the aforesaid order dated 10.08.2000,the first Respondent dismissed the

appeal filed by the Petitioner dated 03.02.2000 and confirmed the order of penalty imposed by the second Respondent, District Collector dated

30.11.1999. The Petitioner by the said order was imposed with the penalty of stoppage of increment for a period of one year with cumulative

effect. Challenging the said penalty which was confirmed by the Appellate Authority''s order, the Petitioner preferred O.A. No. 7444 of 2000

before the Tribunal.

2. Notice of motion was ordered on 13.10.2000. On notice from the Tribunal, the second Respondent, District Collector had filed a reply affidavit

dated 28.02.2002.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 40857 of 2006.

4. The facts leading to the filing of the case are as follows:

The Petitioner, while he was working as Head Assistant in the office of the Special District Revenue Officer (Land Acquisition) TACID,

Cuddalore was issued with a charge memo under Rule 17(b) of the Tamilnadu Civil Services (D & A) Rules. The charges levelledagainst the

Petitioner were three-fold. Firstly, the Petitioner got lands assigned in the name of his wife to the extent of 1.52 acres in U. Kolapakkam Village.

Further in Periyanesalur Village of Vridhachalam Taluk, similarly lands were assigned in the name of his wife to the extent of 4.85 acres. Thus, 1.52

acres of wet lands and 4.85acres of dry lands were assigned in the name of his wife. It was stated that by getting assignment of as much as 5acres,

the Petitioner deprived the landless poor persons from getting assignment. The lands purchased were not shown in his property statement and even

the land in respect of U. Kolapakkam Village which was got assigned in the name of his wife was sold to one Anthony Amy in the year 1995 and

no prior permission of the Government was obtained for selling the land. Therefore, by not obtaining prior permission and not showing the lands in

the property statement, it was alleged that the Petitioner had contravened Rule 7 of the Tamil Nadu Government Servant''s Conduct Rules, 1973.

The second charge against the Petitioner was that he constructed arouse in No. 94, Periyar Nagar without obtaining permission and also had not

shown the same in his property statement.

5. The Petitioner gave an explanation stating that there was no ban order for assignment of land either in favour of Government servants or their

relatives and that the lands were assigned as early as in the year 1970. In respect of charge that he had not shown the house in his property

statement, he stated that the house constructed by him was mortgaged with the Tamil Nadu Housing Board and mortgage was effected even

before the Tamil NaduGovernment Servants'' Conduct Rules came into effect from18.08.1973. He further stated that the said house has been

shown in his property statement filed for the year ending 31.12.1994 with the office of the Tahsildar,Chidambaram.

6. The District Statistical Officer was appointed as the Enquiry Officer. The Enquiry Officer by his report dated 12.05.1999 found that the

Petitioner was guilty of the charges. On the basis of the report submitted by the Enquiry Officer, the District Collector passed a detailed order and

found that charge No. 1 was proved beyond doubt. It was found that the Petitioner had submitted the property statement only on 01.07.1997 and

whereas in that return, it was indicated that the land in U. KolapakkamVillage was sold as early as 17.07.1995 to one Anthonysamy. Therefore,

the Petitioner by filing such a subsequent return was attempting to escape regarding the property dealt with by him. The Petitioner was imposed

with a penalty of postponement of increment for one year with cumulative effect. The Petitioner was also advised that if he is aggrieved, he can

prefer an appeal to the first Respondent.

7. Accordingly, the Petitioner preferred an appeal to the first Respondent vide his appeal dated 03.02.2000. The Appellate Authority after

considering the appeal, by an order dated 10.08.2000 dismissed the appeal. The Appellate Authority agreed with the competent authority''s

finding and held that by the time the appeal was taken up, the Petitioner had become Deputy Tahsildar and his act of getting assignment of more

than 5 acres in the name of his wife is against Rules and he did not disclose the lands in his property statement for more than 10years and even

after selling a portion of the land in the year 1995, the same was not reflected in the property statement and such a sale was done without prior

permission or intimation to the Government. Therefore, there was no reason to interfere with the penalty imposed on the Petitioner. In the last

paragraph of the order, the authority also observed that the punishment is not proportionate to the guilt recorded against the Petitioner and it

requires a severe punishment on the Petitioner.

8. The learned Counsel for the Petitioner submitted that the assignment of land was made in the year 1970 and during that period there was no ban

for assignment of lands in favor of Government Servants or their family members. He also submitted that in the property statement, sale of property

was reflected. In any event, having regard to his long tenure, the imposition of penalty with cumulative effect will have a cascading effect over the

entire life time. Therefore, the Court should interfere with the penalty.

9. In the counter affidavit, it was stated that the lands were assigned by the then Tahsildar, who was not competent to assign lands on collection of

market value and if at all any market value were collected, it has to be fixed by the Government. The Petitioner also not produced any evidence

that he had paid the market value for the assignment of lands given to him and that he had managed to get assignment of large extent of lands prior

to 1978 by using his official position as his employment was in the revenue department. The Petitioner''s conduct was unbecoming of a

Government Servant as he had contravened the Tamil Nadu Government Servant''s Conduct Rules, 1973. It is also stated that the Petitioner had

retired from service on 30.06.2003.

10. With reference to the infraction of Tamil NaduGovernment Servant''s Conduct Rules, Rule 7 stipulates that a Government servant shall only

after notice to the prescribed authority, acquire or dispose of any immovable property standing either in his name or in the name of any member of

his family. Such a notice is necessary even where any immovable property is acquired by any member of the family of the Government servant out

of the resources of the Government servant. Even before enactment of 1973Rules, the Government servants'' were controlled by the Government

Servant''s Conduct Rules 1960. In Rule 26, it''s clearly stated any order made or action taken under the Rules so repealed shall be deemed to

have been made or taken under the corresponding provisions of these rule and further that such repeal will not prevent the authorities from taking

action even under the corresponding present rules. Therefore, the Petitioner''sdefence that he has filed property return will not be accepted with a

pinch of salt as such a return was filed in the year 1977 and the sale was taken place in1970 and admittedly no permission of the Government was

obtained.

11. On this fact alone, it is unnecessary to go into other issues, namely, whether he had a right in getting assignment in the name of his wife before

ban was imposed on such assignment. Considering the fact that the Petitioner though had issued with a charge memo under Rule 17(b) of the Tamil

Nadu Civil Services (D & A)Rules, ultimately, he was let off with a minor penalty of postponement of increment for one year with cumulative

effect. In such circumstances, the last paragraph of the order of the Appellate

Authority assumes significance, wherein, the authority observed that

the Petitioner wallet off with a minor penalty and that a major penalty should have been given.

12. In this context, it is not out of place to refer to the judgment of the Supreme Court in Praveen Bhatia Vs. Union of India (UOI) and Others, .

The Supreme Court more or less dealt with a similar situation as can be seen from the following passage found in paragraph 9:

9. Challenging the order of compulsory retirement the writ petition was filed. It was the Appellant''s stand that the court of inquiry has exonerated

him on all counts except late filing of property returns. According to the Appellant the same was not of serious nature which would warrant

compulsory retirement. The stand of the Respondent before the High Court was that the transactions were between 1981 to 1986 and the return

was belatedly filed after about six years on 23.3.1992 therefore the conduct was most unbecoming of an officer of the Air Force. Therefore the

order of compulsory retirement was legal and valid. The High Court accepted the stand of the Respondent and dismissed the petition. The stand

taken before the High Court is reiterated in the present appeal.

13. The Supreme Court in paragraph 12 dealt with the definition of misconduct. What was referred in sub-paragraph 23 is the reproduction of the

similar Rule found in the Tamil Nadu Government Servants Conduct Rules.

14. In paragraphs 13 and 14, on the question of penalty for such misconduct, the Supreme Court indicated as follows:

13. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been

considered the court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can

only be in very rare cases.

14. It is evident from the record that the prescribed period for filing property return is six months and though the Appellant was aware of the

requirements he did not choose to file any return; even during the course of enquiry no return was filed and ultimately after show-cause notice was

issued it was filed. That being so there is no merit in this appeal which is accordingly dismissed.

15. In the light of the above, the impugned order does not suffer from any

infirmity or illegality. Hence, the writ petition stands dismissed. No costs.