(2006) 06 MAD CK 0240

In the Madras High Court

Case No : Writ Petition No. 32502 of 2005 (O.A. No. 2788 of 2002)

M. Krishnappa APPELLANT

Vs

The Sub Collector, The District Revenue Officer, The Special Commissioner and Commissioner for Revenue Administration and The Secretary to Government, Revenue Department RESPONDENT

Date of Decision : 21-06-2006

Acts Referred:

Citation : (2006) 3 MLJ 773

Hon'ble Judges : K. Suguna, J

Bench : Single Bench

Advocate : M.K. Shahul Hameed, for the Appellant; V. Subbiah, AGP, for the Respondent

Judgement

K. Suguna, J.—Initially, the petitioner had filed O.A. No. 2788/2002 on the file of the Tamil Nadu Administrative Tribunal challenging the

punishment imposed on him by the order of the 1st respondent dated 11.7.97 and confirmed by the order of the 2nd respondent dated 9.12.97

and further confirmed by the order of the 3rd respondent dated 13.8.98 and the same has been transferred to the file of this Court and renumbered

as W.P. No. 32502 of 2005.

2. While the petitioner was working as a Village Administrative Officer, Pattaravalli Village, by the proceedings of the 1st respondent in No.

1065/95/A dated 13.11.95, a charge memo was issued against the petitioner. For the said charges, an enquiry was conducted. Since all the

charges were held proved, by the order of the 1st respondent dated 11.7.97, punishment of stoppage of increment for 5 years with cumulative

effect was imposed and also the period of suspension was directed to be treated as punishment period. As against this, the petitioner filed an

appeal to the 2nd resondent. But, the same was rejected by order dated 9.12.97 and the further appeal tothe 3rd respondent was also rejected by

order dated 13.8.98. As against that, the petitioner preferred an appeal to the 4th respondent on 5.6.99. Since, no orders were passed on the said

appeal by the 4th respondent, the petitioner filed the above O.A./W.P challenging the orders of respondents 1 to 3.

3. According to the learned Counsel for the petitioner, the charge levelled against the petitioner is that he had not remitted the land revenue and

ground rent collected from the pattadhars on 10.1.95 and also without intimating the authorities concerned, he stayed away from duty from

11.1.95. For the above allegation levelled by charge memo dated 13.11.95, two punishments were imposed, namely, suspension period to be

treated as punishment period and stoppage of increment for 5 years with cumulative effect. According to the learned Counsel for the petitioner, the

punishment imposed is disproportionate to the allegations levelled against the petitioner. Apart from that, the learned Counsel submitted that the

appeal submitted by the petitioner has been dismissed by the 2nd and 3rd respondents mechanically, without proper application of mind. That

apart, according to the learned Counsel for the petitioner, since the petitioner met with an accident on his way to Taluk Office for remittance, he

was admitted in a private hospital on 10.1.95 and he was discharged from the hospital only on 25.1.95. Soon after his discharge from the hospital,

the petitioner met the Tahsildar and remitted the amount. Since, the petitioner was in an unconscious condition, he could not intimate the same to

the 1st respondent. Apart from that, learned Counsel for the petitioner has contended that after conducting an enquiry, the petitioner was called on

9.12.96 and furnished with the Enquiry Officer''s Report and without giving sufficient time, the 1st respondent compelled the petitioner to give his

reply on the same day itself. The act of the 1st respondent, according to the learned Counsel for the petitioner, is violative of the law laid down by

the Honourable Supreme Court. As such, the learned Counsel prayed that the orders of respondents 1 to 3 may be set aside.

4. On the other hand, learned Addtitional Government Pleader appearing for the respondents submitted that by charge memo dated 13.11.95,

chargeson 3 counts were levelled against the petitioner. Since, the petitioner did not submit his explanation to the charges, the 1st respondent, by

his proceedings dated 27.3.96, directed the petitioner to submit his reply. Subsequent to this alone, the petitioner submitted his reply. According to

the learned Counsel for the respondents, the allegations levelled against the petitioner is non-remittance of the Government money,which was

collected on 10.1.95 and staying away from duty without informing the superiors from 11.1.95. These allegations are grave in nature. In the

enquiry conducted, the said allegations have been held proved. Apart from that, according to the learned Counsel for the respondents, the

petitioner had remitted the amount collected by him on 10.1.95 only on 25.1.95 i.e., the petitioner had temporarily misappropriated the amount

collected by way of land revenue. As such, the punishment imposed by the authorities is a reasonable one and the orders of the respondents have

to be confirmed and the writ petition has to be dismissed.

5. I have considered the above submissons of the respective counsel.

6. Admittedly, by charge memo dated 13.11.95, charges on 3 counts have been framed and the allegations levelled on these 3 counts have been

held proved. The gist of the allegations levelled against the petitioner is that he had temporarily misappropriated the amount collected on 10.1.95

and stayed away from duty with effect from 11.1.95. But, according to the petitioner, since he met with an accident on his way for remitting the

amount, he was admitted in the hospital and that he was unconscious from 11.1.95 to 25.1.95 and after his discharge on 25.1.95, he immediately

remitted the amount. Basing on this, the learned Counsel for the petitioner has contended because of the above said reason alone, the amount

collected could not be remitted and as such, this cannot be termed as temporary misappropriation. But, according to the averment of the petitioner,

he met with an accident on his way for remittance and he was admitted in the hospital and he was unconscious from 10.1.95 to 25.1.95. If really,

he was unconscious upto 25.1.95, certainly, he could not have been discharged on 25.1.95 and the question of remitting the amount collected on

25.1.95 also does not arise at all. Apart from this, before the Enquiry Officer, to substantiate his contention that he met with an accident and that

he was admitted in the hospital, the petitioner produced a medical certificate.

But, as per the said certificate, the petitioner had undergone treatment

in a private hospital namely, Sumanth Nursing and Maternity Home, Bangalore and it is further stated that the petitioner was treated for

hypertension from 11.1.95 to 25.1.95. If the petitioner had been actually admitted for treatment of injuries sustained by him due to the accident,

then that would have been mentioned. As such,the stand taken by the petitioner is a false one. That apart, along with the O.A., the petitioner had

produced another medical certificate from another hospital wherein it has been stated that the petitioner was admitted in that hospital as he met

with an accident. If this fact is true, nothing prevented the petitioner from producing this certificate before the Enquiry Officer. Apart from this, as

per the certificate produced before the Enquiry Officer, the disease for which treatment was given is mentioned as hypertension. As such, before

the Enquiry Oficer, the reason stated by the petitioner for non-remittance of the amount collected is a false reason. Consequently, the charges

levelled against the petitioner were held proved.

7. As far as the contention of the learned Counsel for the petitioner that without giving sufficient time, the petitioner was compelled to offer his

explanation to the Enquiry Officer is concerned, it has been specifically averred in the counter affidavit filed by the respondents that the Enquiry

Officer''s Report was served on the petitioner on 19.11.96, the petitioner had submitted his further explanation on 25.11.96 and appeared before

the 1st respondent for personal hearing on 9.12.96. For this, no reply affidavit has been filed. Hence, the above contention of the learned Counsel

for the petitioner that no sufficient time was given to the petitioner for submitting his reply to the Enquiry Officer''s Report will not stand.

8. As far as the punishment imposed is concerned, by the impugned order, two punishments have been imposed, (i) treating the period of

suspension as punishment period and (ii) stoppage of increment for 5 years with cumulative effect. In respect of the allegations levelled against the

petitioner, he was placed under suspension with effect from 1.2.95 and he was reinstated in service only by the proceedings of the Sub-Collector,

Hosur dated 27.6.95. This period of suspension for nearly 6 months has been treated as punishment period. As far as stoppage of increment is

concerned, admittedly, the petitioner had remitted the amount on 25.1.95. For the allegations levelled against the petitioner, two punishments

cannot be imposed. The punishment of stoppage of increment as well as treating the period of suspension as punishment period will have a bearing

on his pension. Hence, I am of the opinion that the punishment imposed on the petitioner is disproportionate. Therefore, the matter is remitted back

to the 3rd respondent to reconsider the entire issue and to pass orders with regard to the quantum of punishment, taking into account the gravity of

the charges levelled, within a period of 3 months from the date of receipt of a copy of this order. On the above terms, the writ petition is disposed

of. No costs.