

(2014) 06 MAD CK 0316

In the Madras High Court

Case No : W.P.(MD) No. 9785 of 2014 and M.P.(md). No. 1 of 2014

N. Mahalakshmi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0316

Hon'ble Judges : K. Ravichandra Babu, J

Bench : Single Bench

Judgement

K. Ravichandra Baabu, J.—Since the writ petition can be disposed of on a short ground, without going into the merits of the matter, the writ petition itself is taken up for final disposal.

2. The petitioner was appointed as Junior Employment Officer on 06.04.1990. He was promoted as District Employment Officer and further promoted as Assistant Director and posted at the Directorate of Employment and Training, Guindy, Chennai. On 30.08.2011, the second respondent issued a charge-memo under Rule 17(a) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955, making certain allegations. The said departmental proceedings ended by passing an order of punishment by the second respondent on 08.01.2013, the order impugned in this writ petition. Through the said impugned order, the petitioner was imposed with a punishment of stoppage of increment for a period of three months without cumulative effect. The said order of punishment was challenged by the petitioner before the first respondent by filing an appeal. The first respondent rejected the appeal, on 26.05.2014, the other impugned order in this writ petition without assigning any reason. Challenging those two impugned orders, the present writ petition is filed before this Court.

3. Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioner submitted that the second respondent has not applied his mind to the explanation given by the petitioner properly. He further submitted that the appellate authority rejected the appeal filed by the petitioner once again by not applying his mind to the facts

and circumstances and giving any finding independently on the appeal filed by the petitioner. Therefore, he contended that the impugned orders are liable to be set aside solely on the ground of non-application of mind. He also submitted that Rule 23 of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955 contemplates that the appellate authority also being the fact finding authority shall consider all the facts and circumstances and pass a speaking order.

4. Per contra, the learned Government Advocate appearing for the respondents justified the impugned orders and stated that the first respondent has passed the order in appeal, only after getting and considering the opinion from the Tamil Nadu Public Service Commission.

5. As I am disposing of this writ petition on the ground that is not arising out of the merits of the charges levelled against the petitioner, I am not discussing the same in this writ petition. The petitioner was imposed with an order of punishment by the second respondent dated 08.01.2013. The second respondent has given some reasons in the last but one paragraph of the impugned order. According to the learned Senior Counsel, those reasons are not an outcome of application of mind, since they are stated without reference to the explanation given by the petitioner. Admittedly, the petitioner has preferred an appeal before the first respondent, aggrieved against the said order passed by the second respondent. Certainly, the petitioner is entitled to canvass the correctness or otherwise of the order passed by the second respondent by raising all grounds. Needless to say that the first respondent being the appellate authority is also a fact finding authority. Moreover Rule 23 of the above said rules also contemplates that the appellate authority shall consider as to whether the facts on which the order was based have been established; whether the facts established would afford sufficient ground for taking action and whether the penalty is excessive, adequate or inadequate. Therefore, the role of the appellate authority cannot be confined only to seek the view of the recruiting agency namely Tamil Nadu Public Service Commission and to follow the same to confirm the order of the original authority. On the other hand, the appellate authority has to apply his mind independently to the facts and circumstances of the case and give a reasoning either to confirm the order or to deviate from the same. Here, in this case, a perusal of the order passed by the appellate authority would show that except extracting the view expressed by the Tamil Nadu Public Service Commission, the said authority has not shown his independent application of mind in the impugned order. He has not given any independent reasonings for rejecting the appeal. Therefore, I am of the view that the order of the appellate authority cannot be sustained. Since, I am inclined to set aside the order of the appellate authority and remit the matter back to him for reconsidering the appeal afresh and pass a reasoned and speaking order, I am not expressing any view on the order passed by the second respondent as it is for the appellate authority to consider it on merits and in accordance with law.

6. Accordingly, this writ petition is allowed in part, by setting aside the order of

the first respondent dated 26.05.2014 alone and remitting the same for passing fresh orders on merits and in accordance with law. Such exercise shall be done by the first respondent within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.