

(2013) 04 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 8471 of 2011

R. Govindarajan

APPELLANT

Vs

Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Citation : (2013) 5 MLJ 617

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Balan Haridas, for the Appellant; S.V. Duraisolaimalai, A.G.P. and R. Jayaseelan, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioner seeks for issuance of a writ of certiorarified mandamus to quash the order passed by the second respondent/the

Board of Directors, Tamil Nadu Housing Board, Chennai, in proceedings No. DC4/11276/2002-9, dated 31.5.2007, as well as the order of the

first respondent/the Secretary, Housing and Urban Development Department, Chennai, in G.O. (D). No. 504, Housing and Urban Development

(HB(1) Department, dated 20.12.2012, by calling for the records connected thereto and consequently, to direct the respondents to pay the

amount recovered from his pension along with interest. Learned counsel appearing for the petitioner submitted that while the petitioner was

working as Divisional Accountant in the second respondent department, he was issued with a charge memo dated 11.3.2005, containing five

charges, for the alleged irregularities committed while he was working as a Divisional Accountant at Coimbatore. On the receipt of the charge, the

petitioner has submitted his explanations denying the allegations. Thereafter, the second respondent, finding that the explanations offered by the petitioner was not satisfactory, ordered for an enquiry. The Enquiry Officer, on completion of the enquiry, found him guilty of all charges, except charge No. 1. The Disciplinary Authority, on getting a report from the enquiry officer, without even discussing the findings of the enquiry officer, erroneously found him guilty and thereby, passed an order dated 31.5.2007, withholding a sum of Rs. 1,462/- per month for a period of 20 months from the pension payable. As against the same, when the petitioner preferred an appeal, it was pleaded that, unfortunately, the appellate authority, without even giving notice to the petitioner calling his explanations as to why the appellate authority should not take a different view from the disciplinary authority, again wrongly held him guilty in respect of first charge also. Therefore, it was contended that when the disciplinary authority has not demonstrated anywhere in the impugned order imposing the punishment of recovery of Rs. 1,462/- per month for a period of 20 months by applying his independent mind on the explanations furnished by the petitioner to the findings given by the enquiry officer, the said order passed by the disciplinary authority cannot be legally sustainable. It was further pleaded that when the respondent department has initiated disciplinary proceedings under service regulation, they cannot recover any amount from the monthly pension of the petitioner without resorting to the provision of Tamil Pension Rules. When these vital facts have not been taken into account, the impugned orders passed by the respondent are liable to be interfered with.

2. Learned counsel appearing for the second respondent, by filing a counter, while attempting to support the impugned order, was unable to give any explanation to the points urged by the learned counsel for petitioner, particularly, to the argument that there was no proper application of mind by the disciplinary authority before passing the impugned order. Though the learned counsel for the second respondent has reiterated the same reasons mentioned in the impugned order, he was unable to explain with any single reason from the findings of the disciplinary authority in relation to the explanation furnished by the petitioner, as to how the evidence adduced and the explanation submitted were properly discussed by the

disciplinary authority.

3. Secondly, as rightly argued by the learned counsel for the petitioner, the disciplinary authority, after receiving the report submitted by the enquiry

officer and a written representation from the petitioner, nowhere independently discussed the case of the petitioner, either on the basis of the report

of the enquiry officer or independently discussing along with the explanation offered by the petitioner. Indeed, a perusal of the order passed by the

disciplinary authority imposing punishment of recovery does not show any reason whatsoever. Again, when order passed by the appellate authority

is perused by this Court, it could be seen that the appellate authority has committed serious error in reversing the findings of the enquiry officer in

respect of charge No. 1, without even giving any notice to the petitioner, and especially when the appeal filed by the petitioner challenging the

findings relating to Charge Nos. 2 to 5 and the charge No. 1 was not even subject matter of the appeal, as it was already found not guilty by the

enquiry officer. It is settled law that an executive action must be informed by reason. Any executive action can only survive for a potent reason.

Moreover, any action which is simply unfair or unreasonable would not be sustained, for a reason that a charged employee should also be given

fair and reasonable opportunity to defend his case by the disciplinary authority and even the order passed by the disciplinary authority should be

fair and reasonable. In the present case, the impugned orders do not fall within the purview of the above principle. Therefore, for the reasons

stated above, this Court has no option except to set aside the impugned orders passed by the respondents and accordingly, they are set aside.

Consequently, the writ petition is allowed. Needless to mention that if any recovery has been made by the respondents, the same shall be refunded

back to the petitioner within a period of two months from the date of receipt of a copy of this order. No Costs.