(2006) 02 MAD CK 0291

In the Madras High Court

Case No : Writ Petition No. 27027 of 2005

R.N. Purushothaman APPELLANT

Vs

The Principal Commissioner and Commissioner for Revenue Administration RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Constitution of India, 1950 — Article 311
Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 — Rule 10, 8
Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 19, 36
Tamil Nadu Ministerial Service Rules — Rule 10

Citation : (2006) 02 MAD CK 0291

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : V. Ramasubramaniam, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—In this writ petition, petitioner seeks to quash the impugned memo dated 8.11.1996 issued by the respondent herein.

2. The brief facts as narrated in the affidavit filed by the petitioner are as follows,

(a) The petitioner, while working as Village Administrative Officer at Perumanallur Village, a complaint was given against him on 12.12.1 988 alleging that he demanded illegal gratification, which was followed by a trap on 13.12.1988. Since the charge relates to corruption, the Tribunal for Disciplinary Proceedings conducted an enquiry and concluded its proceedings on 13.4.1993 and submitted a report on 5.5.19 93 holding that the petitioner is guilty of the charge of demand and acceptance of illegal gratification. Based on the enquiry report, the respondent on 18.5.1994, directed the petitioner to show cause as to why the penalty of compulsory retirement should not be imposed against him. On 29.6.1994, petitioner sent a reply praying for an opportunity to assail the findings of the Enquiry Officer, but the same was rejected and the respondent imposed a penalty of compulsory retirement by order dated 24.8.1994. The said order was challenged by the petitioner before the Tamil Nadu Administrative Tribunal by filing O.A. No. 136 of 1994 and the same was allowed on 12.1.1995 on technical grounds and the matter was remitted back for fresh disposal.

(b) It is the further case of the petitioner that the Government passed G.O(2D)No.87, Revenue Department, dated 9.4.1996 reinstating the petitioner into service and directed the department to pursue the disciplinary proceedings. In accordance with the said order, petitioner was given posting in July, 1996. Thereafter, the impugned memo dated 8.11.1996 was served on the petitioner on 3.1.1997 calling his remarks on the findings of the Tribunal for Disciplinary Proceedings.

(c) The impugned memo dated 8.11.1996 is challenged in this petition on the ground that the respondent is not the disciplinary authority and the prescribed authority under the Service Rules is the Revenue Divisional Officer, as he is the appointing authority for the Village Administrative Officers. The next authority is District Revenue Officer/Collector and the ultimate authority is the respondent herein, who is the Head of the Department. Therefore petitioner contends that as the impugned memo is issued by the respondent, he is deprived of the right of appeal under Rule 19 and a right of review/revision under Rule 36 of the Tamil Nadu Civil Services (Discipline & Appeal) rules and hence the impugned memo is violative of principles of natural justice. Petitioner also states that post of Village Administrative Officer has been included under category 14 of the Ministerial Service and the Special Rules for the post have been included under Annexure-X under the Special Rules for Tamil Nadu Ministerial Service. It is also contended that Rule 10 of the Tamil Nadu Ministerial Service Rules prescribes that all powers of first appointment, discharge, suspension, termination, probation, reappointment, promotion, transfer and appointment as full member shall be exercised by the appointing authority, and hence the respondent has no jurisdiction to issue the impugned memo dated 8.11.1996.

3. The Respondent herein filed counter affidavit in which in paragaraph 4.6 it is pointed out that the Tamil Nadu Administrative tribunal while passing orders in O.A. No. 136 of 1994 on 12.1.1995, after quashing the order of the respondent dated 24.8.1994, remitted the case back to the Government with the following observations,

Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 relate only to reference of cases for enquiry by the Tribunal and conduct of the enquiry. Thereafter disciplinary authority has to pass orders in accordance with the Tamil Nadu Civil Service (Discipline and Appeal) Rules and requirements of these rules should be fully complied with as also the directions of the Supreme Court. The notice to give the applicant an opportunity of making his representations, following enquiry if conducted by an Officer other than the Disciplinary Authority is to give him an opportunity to present his case with reference to the evidence and the report of the Enquiry Officer for consideration of the Disciplinary Authority. Such consideration is not only in respect of penalty, but also the findings. The Disciplinary Authority is required to apply his mind, examine the evidence and come to a conclusion, whether the report of the Enquiry Authority can be accepted. It is open to him to defend, in which case he should work out his reasons for the charges.

It is further stated in the counter affidavit that since there is a procedural error, the order of the respondent dated 24.8.1994 was set aside and the matter was remitted back to the respondent herein for further orders, in accordance with law and rules. It is further stated that since the enquiry was conducted by the Tribunal for Disciplinary Proceedings as per the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, the respondent is competent to issue the impugned show cause notice and the General Rules 19 and 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules are not attracted in this case. In paragraph 11 of the counter affidavit it is further stated,

... It is submitted that Disciplinary Proceedings in this case are initiated under Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955, and according to Rule 10(b) of the above Rules the respondent is the competent authority to pass final orders on the case remitted under these Rules. Besides, the provisions of Tamil Nadu Civil Service (Discipline and Appeal) Rules, shall not apply in this case as contemplated under Rule 8(d) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, since the applicant has been proceeded for the charge of corruption. Hence the show cause notice dated 8.11.1996 of the respondent is not violative of the rules as contended by the applicant. The show cause notice is in conformity with Rule 10(b) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955. It is also submitted that the Government (represented by Secretary, Revenue Department) are institutionally superior than the Head of department in all aspects. Hence the contention of the applicant is not tenable.

The respondent therefore prayed for dismissal of writ petition on the ground that he alone is the competent authority to issue the impugned memo.

4. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate.

5. As rightly pointed out by the respondent in paragraph 11 of the counter affidavit, the charge against the petitioner being a corruption charge, the Tribunal for Disciplinary Proceedings, constituted under the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, conducted enquiry and gave its finding that the charge against the petitioner is proved.

6. Similar issue raised before the Supreme Court came for consideration in the case of State of U.P. and Another Vs. Chandrapal Singh and Another, , wherein in paragraph 7 of the judgment it is clearly held thus,

Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Article 311 of the Constitution, it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribed that the Accountant General, who is the appointing authority alone could have initiated a departmental proceedings.

7. In this case, Rule 10 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, contemplates that the cases, which are enquired into by the Tribunal, should be disposed of by the Head of the Department concerned and not by any other authority subordinate to him. The said provision empowers the respondent herein to issue the impugned memo and there is no substance in the writ petition and consequently the same is liable to be dismissed and accordingly dismissed. No costs.

8. It is seen from the records that the impugned memo was stayed originally for a period of two weeks, which was subsequently extended until further orders and therefore the respondent was prevented from passing the final orders. In view of the dismissal of the writ petition, there is no impediment for the respondent to pass final orders. If the petitioner had not submitted any representation to the impugned memo dated 8.11.1996, he is given two weeks time to submit his explanation/representation from the date of receipt of copy of this order. On receipt of explanation from the petitioner, the respondent is directed to pass final orders after following the legal formalities and in accordance with law, within a period of four weeks therefrom.

