(2014) 06 MAD CK 0236

In the Madras High Court

Case No : W.P. No. 4339 of 2014 and M.P. No. 1 of 2014

S. Gurumoorthy APPELLANT

Vs

The Secretary to Government RESPONDENT

Date of Decision : 13-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0236

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The petitioner was formerly working as an Assistant at the Office of the Sub-Registrar, Ambattur, Chennai North Registration District. The Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai, along with a team of Officers made a surprise raid at the office of the Sub Registrar, Ambatur. During the same, there were several irregularities noticed. So far as the petitioner is concerned, he was found in possession of Rs. 7,220/- and the same was recovered from him since, he did not offer any explanation for the same. From the other staff of the said office, various amounts were recovered. Apart from that, a sum of Rs. 74,580/- was recovered from the office premises of the petitioner. The Deputy Superintendent of Police, after completing the said raid, submitted a report. Based on the same, a charge memorandum was issued to the petitioner in A1/1254/07 dated 05.12.2007 by the Tribunal for disciplinary proceedings, Chennai. In that proceeding, the petitioner was shown as A.3. One Mr. G. Dakshinamoorthy, the then Sub-Registrar and one Ms. Indira the then Sub Registrar (Chit & Society) were shown as A.1 and A.2 respectively.

2. So far as the petitioner is concerned, as many as four charges were framed. The petitioner denied all the four charges. The Commissioner for disciplinary proceedings on completing the enquiry, had found that the charges 1,2 and 4 were not proved and charge No. 3 alone was proved. Charge No. 3 reads as follows:-

Charge No. 3:- You (Aos 1 to 3) could not satisfactorily account for an unaccounted cash of Rs. 74,850/- which has been recovered from your (Aos 1 to 3) office premises.

3. During the enquiry proceeding, before the Commissioner for Disciplinary Proceedings, one Mr. KRishnakumar was examined as P.W.5. He has stated that the said amount of Rs. 74,580/- belonged to him. He had further stated that he had brought the said amount to the office to pay towards his housing loan. Since, at that time, the Vigilance and Anti Corruption Officers suddenly entered into the office, out of fear, he had concealed the said amount behind the seat of A.2 Officer. The Commissioner for Disciplinary Proceedings, held that the said claim of P.W.5 was not believable. Therefore, he held that all the three accused/Officers are responsible for the said amount and accordingly held that the charge No. 3 was proved.

4. The petitioner however denied the above charge. According to him, he was not aware of the said amount and he had no knowledge that the money was kept in the office premises. He did not claim the amount also. Based on the said report and on accepting the same, the Government issued G.O. (D). 331 Commercial Tax and Registration (H) Department dated 20.10.2011, imposing a punishment of stoppage of increment for two years with cumulative effect on the petitioner.

5. Challenging the said Government Order, the petitioner has filed a revision before the Government on 01.11.2011. On considering the same, the Government issued G.O. (D). 691 Commercial Tax and Registration (H) Department dated 20.12.2013, rejecting the said revision. Challenging the same, the petitioner is before this Court with this writ petition.

6. I have heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents and I have also perused the records carefully.

7. As I have already pointed out, the punishment imposed on the petitioner is only in respect of charge No. 3. Charge No. 3 states that a sum of Rs. 74850/- was recovered somewhere from the office of the petitioner. Admittedly, the money was not recovered either from the petitioner or from his Box, Bureau or Table. The place of recovery of the amount was behind the seat of A.2 officer. There is no evidence available anywhere that the petitioner had knowledge about the said amount being kept behind the seat of A.2 officer. It may be true that the claim of P.W.5 was not accepted by the Commissioner for Disciplinary Proceedings and consequently, by the disciplinary authority also. Simply because, the claim made by P.W.5 that he only kept the money in the said place was not accepted by the Commissioner for Disciplinary Proceedings and consequently by the disciplinary authority, it cannot be concluded that the money was kept in the office premises either by the petitioner or by the other accused officers with his knowledge. There has to be positive evidence to prove either that the petitioner kept the money there or that at least he had any knowledge. Ofcourse it is true

that in the departmental proceedings, charges need not be proved beyond any doubt, as in the case of criminal case and it is suffice that if the charge is proved by applying the principle of preponderance of probabilities. But, in this case, absolutely, there is no evidence even to attribute knowledge, that the above said amount was kept elsewhere in the office of the petitioner. When that be so, at no stretch of imagination, it can be concluded that the petitioner was responsible for the said amount. Thus, in my considered opinion, the finding given by the Commissioner for Disciplinary proceedings is perverse and the same is based totally on no evidence.

8. I am conscious of the fact that in a writ proceeding, this Court cannot re-appreciate the evidence adduced in the disciplinary proceedings but, at the same time, it is permissible for the Court to interfere with the order of punishment when the Court finds that the said finding is totally baseless which is based on no evidence. In this case, since, I have hold that there was no evidence at all available to hold that the petitioner is guilty of charge No. 3, the finding given by the Commissioner for Disciplinary Proceedings that the petitioner is guilty of Charge No. 3 and the consequential Government Order imposing punishment on the petitioner are liable to be set aside.

9. In the result, the writ petition is allowed and the impugned charge memorandum and G.O. (D) No. 691 Commercial Tax and Registration (H) Department dated 20.12.2013 are liable to be set aside and the petitioner is exonerated from Charge No. 3. The petitioner shall be permitted to retire from the date on which he had attained the age of superannuation, if, there was no other legal impediment and he shall be paid all the retirement benefits by the respondents. No costs. Consequently, connected miscellaneous petition is closed.