

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 30-06-2008

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.28420 of 2006
(O.A.No.2351 of 1996)

R.Viswanathan

.. Petitioner.

Versus

1.The State of Tamil Nadu Rep.
by the Secretary to Government,
commercial Taxes and Religious
Endowments Department,
Fort St. George, Madras-600 009.

2.The Inspector General of Registration,
Mandaveli, Madras-600 028.

.. Respondents.

Prayer: This petition has been filed seeking for a writ of Certiorarified Mandamus, to call for the records on the file of the respondents one and two in connection with the orders passed by them in their proceedings G.O.(D).No.439, dated 29.9.95, No.52623/A1/92, dated 23.7.93 and quash the same and direct the respondents to reinstate the applicant in service with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan

For Respondents: Mr.T.Seenivasan

Additional Government Pleader

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2. The petitioner has stated that he was selected for appointment to the post of Junior Assistant through the Tamil Nadu Public Service Commission, on merits, and he had joined service, on

15.4.58. He was promoted to the post of Assistant, on 1.10.70. Thereafter, he was promoted to the post of Sub Registrar, Grade II, on 1.8.83. Later, he was promoted to the post of Sub Registrar, Grade I in the year 1991 and he had continued in service as such till he was compulsorily retired from service, by an order of the second respondent, dated 23.7.93.

3. While the petitioner was serving as a Sub Registrar, Grade II, at Cuddalore, a charge memo had been issued alleging certain lapses on his part. The matter was referred to the Tribunal for disciplinary proceedings at Coimbatore. Based on the findings of the Tribunal, the second respondent had passed the impugned order compulsorily retiring the petitioner from service. The petitioner has stated that both the Tribunal for disciplinary proceedings, Coimbatore, and the second respondent had not taken into account the procedural infirmities and the contradictions involved in the matter, before the impugned order had been passed. The evidence available against the petitioner was inadequate for the Tribunal, as well as the second respondent to find that the charges against the petitioner were proved. The punishment of compulsory retirement from service imposed on the petitioner is disproportionate to the charges levelled against him. Further, the appeal filed by the petitioner has been rejected by the first respondent by an order in G.O.(D) No.439, Commercial Taxes and Religious Endowments Department, dated 29.9.95.

4. The petitioner has further stated that the first respondent had confirmed the order passed by the second respondent without any independent application of mind. Even though the order of the first respondent, dated 29.9.95, made in G.O.(D) No.439, Commercial Taxes and Religious Endowments Department, is based on the opinion obtained from the Tamil Nadu Public Service Commission, it cannot be said to be a detailed order covering important issues raised in the appeal. In such circumstances, the petitioner has filed an Original Application in O.A.No.2351 of 1996, which has been transferred to this Court and re-numbered as W.P.No.28420 of 2006.

5. No reply affidavit has been filed on behalf of the respondents till date.

6. The main contention of the learned counsel for the petitioner is that the punishment of compulsory retirement imposed on the petitioner by an order made in the appeal filed by him, is disproportionate to the charges levelled against the petitioner and that it is arbitrary, invalid and unsustainable in the eye of law and therefore, liable to be dismissed.

7. The learned counsel appearing for the petitioner has further submitted that the impugned order, dated 29.9.95, had been passed by the first respondent without applying his mind to the charges levelled against the petitioner and the explanation submitted by him. Though, the said order has been made based on the opinion rendered by the Tamil Nadu Public Service Commission, it has been passed mechanically, without dealing with the issues, independently, on merits and in accordance with law.

8. In such circumstances, it has been prayed by the learned counsel for the petitioner that it would suffice if the order of the first respondent, dated 29.9.95, made in G.O.(D) No.439, Commercial Taxes and Religious Endowments Department, is set aside and the first respondent is directed to pass a reasoned order, considering the issues raised in the appeal and the explanation submitted by the petitioner for the charges levelled against him.

9. In view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available before this Court, it is seen that the order passed by the first respondent, on 29.9.95, in the appeal filed by the petitioner is bereft of reasons. It is clear that the issues arising for adjudication in the appeal have not been independently assessed before the petitioner was imposed with compulsory retirement. Even though, the Tamil Nadu Public Service Commission has been consulted before the impugned order has been passed by the first respondent, the opinion rendered by the Commission could not be taken to be binding on the first respondent. Hence, the first respondent ought to have analysed the facts and circumstances of the case in which the issues had arisen for consideration and independent reasons ought to have been given while passing the impugned order, dated 29.9.95. While emphasising the importance of the need to give reasons, the Supreme Court, in Maharashtra State Board of Secondary and Higher Secondary Education V. K.S.Gandhi and others (1991 (2) SCC 716), had held as follows:

"21. Thus it is settled law that the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at. It also excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion/decision reached. The order when it affects the right of a citizen or a person, irrespective of the fact, whether it is quasi-judicial or administrative fair play requires recording of germane and relevant precise reasons. The recording of reasons is also an assurance that the authority concerned consciously applied its mind to the facts on record. It also aids the Appellate or

Revisional Authority or the supervisory jurisdiction of the High Court under Article 226 or the appellate jurisdiction of this Court under Article 136 to see whether the authority concerned acted fairly and justly to mete out justice to the aggrieved person."

10. In such circumstances, the order passed by the first respondent, on 29.9.95, is set aside, directing the first respondent to consider the appeal filed by the petitioner, on merits and in accordance with law and pass appropriate orders thereon, within a period of twelve weeks from the date of receipt of a copy of this order.

The writ petition is partly allowed with the above directions. No costs.

csH

Sd/-
Assistant Registrar

/ True Copy /

Sub. Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu Rep.
commercial Taxes and Religious
Endowments Department,
Fort St. George, Madras-600 009.

2. The Inspector General of Registration,
Mandaveli, Madras-600 028.

1 cc to Mr.R.Singaravelan, Advocate, SR.32821
1 cc to Government Pleader, SR.33875

ku (co)

dv/18.7.

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