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S. Srinivasan Vs. the Govt. of Tamil Nadu Reptd. by Commr. and Secy. to Govt. Rural Development and Local Administration Department and anr.

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Court : Chennai

Decided On : Jul-18-1984

Reported in : (1984)2MLJ484

Appellant : S. Srinivasan

Respondent : The Govt. of Tamil Nadu Reptd. by Commr. and Secy. to Govt. Rural Development and Local Administration

Advocate for Pet/Ap. : Mr. R. Muthukumaraswamy

Judgement :

ORDER

S. Nainar Sundaram, J.

1. This writ petition has got to be allowed on a very convincing point and definitely an unimpeachable point on the facts of the case, read along with the Rules relied on by the petitioner. At the relevant point of time, the petitioner was functioning as Selection Grade Block Development Officer. Subsequently, he was visited with four charges, the details of which we are not concerned in the present writ petition and the charges related to the period when the petitioner functioned as the Selection Grade Block Development Officer. The enquiry was processed through the Tribunal under the Tamil Nadu Civil Services (Disciplinary Proceedings

Tribunal) Rules, 1955 hereinafter referred to as the Rules. There is no dispute before me that the petitioner was a gazetted officer at the relevant point of time. The initial order of punishment of withholding of increments was passed by the second respondent. It is true that as against the initial order of punishment of withholding of increments passed by the second respondent, the petitioner preferred an appeal to the first respondent. Since the order came to be passed by the second respondent, the first respondent alone could be the appellate authority. Ultimately, the appellate authority, the first respondent, by the impugned order dated 23-4-1980, chose to impose the punishment of reversion. The point that was urged by Mr. R. Muthukumaraswamy, learned Counsel for the petitioner, is that as per Rule 10(a) of the Rules, in cases enquired into by the Tribunal under the Rules, the first respondent alone shall be the authority competent to impose the penalty on Gazetted Officers like the petitioner and since this mandate has been violated, the very initial order passed by the second respondent must fall to the ground and the order passed by the first respondent exercising powers as an appellate authority will have no sanctity in the eye of law. Factually, there is no dispute that the petitioner was a Gazetted Officer at the relevant point of time. The relevant portion of Rule 10(a) reads as follows:

Notwithstanding anything contained in the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, the following procedure shall be adopted in regard to the passing of final orders in cases enquired into by the Tribunal: (a) In cases enquired into by the Tribunal the Government shall be the authority competent to impose a penalty in cases relating to

(i) Gazetted Officers,

2. The point raised is being answered by the respondents by stating that there is a memorandum dated 19-4-1973 by which the Government have ordered that even though Gazetted status is given to the Block Development Officers and Selection Grade Block Development Officers, the Director of Rural Development will impose penalties on them. There is no denial of the fact that the petitioner, as stated above, was a Gazetted Officer at the relevant point of time, and the fact remains that the case was enquired into by the Tribunal under the Rules. If this is so, Rule

10(a)(i) of the Rules, extracted above, will be directly attracted. The implication of the rule could only be as stated by the learned Counsel for the petitioner. The Rules are those framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. A memorandum cannot over-ride such rules. It is well-settled that administrative instructions or executive instructions cannot override and abrogate the rules framed pursuant to powers under the proviso to Article 309. In *State of Haryana v. Shamsher Jang* : (1972)11LLJ186SC , it has been pointed out that the Government is not competent to alter by means of administrative instructions the prescriptions made by the rules framed under Article 309. In *B.N. Nagarajan v. State of Karnataka* : (1979)11LLJ209SC , it has been pointed out that when the rules framed under Article 309 are in force, no departure is permissible in exercise of the executive powers in contravention of the rules. In *S.L. Sachdev v. Union of India* : [1981]1SCR971 , with reference to the rules under Article 309 of the Constitution of India, it has been pointed out as follows:.. Any directive which goes beyond it and superimposes a new criterion on the Rules will be bad as lacking in jurisdiction. No one can issue a direction which, in substance and effect, amounts to an amendment of the Rules made by the President under Article 309. That is elementary.

3. In this context, Mr. R. Muthukumaraswamy learned Counsel for the petitioner, draws my attention to the following passages occurring in *Wade's Administrative Law, Third Edition*:.. Administrative power derives from statute. The statute gives power for certain purposes only, or subject, to some special procedure, or with some other kind of limits.. The Courts can interfere where administrative action is unauthorised by law; it is then *ultra vires* or, as it is often put, outside jurisdiction.

Learned Counsel also relies on the pronouncement of the Supreme Court in *Purtabpur Company v. Cane Commissioner, Bihar* : [1969]2SCR807 , where, referring to the power of the Cane Commissioner under Clause 6(1) of the *Sugar Cane (Control) Order, 1966*, it has been observed that it is a statutory power and he alone could exercise that power and while exercising that power, he cannot abdicate his responsibility in favour of anyone, not even in favour of the State Government or the Chief Minister.

4. The principles being what they are, there is no escape for the proceedings challenged in the writ petition from getting quashed. What has been done is ultra vires the Rules and without jurisdiction. When the original authority lacked the power, it cannot be rectified on the ground that the ultimate power exercised was by the competent authority, because the ultimate power was not exercised by the said authority as the original authority, but only as an appellate authority. The appellate proceedings themselves were incompetent. The process recognised by the statutory rules has been transgressed.

5. The above aspects are sufficient to countenance the prayer in the writ petition. Yet, I must record that the learned Counsel for the petitioner had other grounds to urge and since I have sustained the ground of attack, discussed above, there was no need to go into the other grounds. This obliges me to interfere in writ proceedings and accordingly, the writ petition is allowed. There will, however, be no order as to costs.

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