



W.P(MD)No.6970 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6970 of 2023

and

W.M.P.(MD)Nos.6583, 6584 & 10859 of 2023

J.Baskaran

... Petitioner

Vs.

1.The Commissioner,
Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai-15.

2.The District Collector,
Sivagangai District,
Sivagangai.

3.The Enquiry Officer,
Assistant Project Officer,
District Rural Development Agency,
O/o District Collector,
Sivagangai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the Enquiry Officers Report dated 03.07.2020 and the impugned proceedings of the 2nd respondent made in Na.Ka.Q1/911/2019 dated 06.10.2022 and the consequential proceedings of the 1st respondent made in Na.Ka.No. 21008/2022 /DPC2.1 dated 02.03.2023 and quash the same.



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For Petitioner : Mr.K.Govindarajan
for Mr.R.Murali

For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by
Mr.G.Suriyananth
Additional Government Pleader

ORDER

The writ petitioner joined the Rural Development Department as Junior Assistant in the year 1991. He was promoted as Assistant in the year 1997. He became Deputy BDO in the year 2008. He was further promoted to the post of Block Development Officer on 04.04.2018. He was initially posted at S.Pudur Panchayat Union, Sivagangai District. During September 2018, he was transferred to Kanangudi Panchayat Union as BDO. On 28.10.2018, the petitioner had to visit his earlier office. He took the vehicle attached to the chairman's office to go to S.Pudur Panchayat Union Office. Enroute, the vehicle hit a bus and in the resulting accident, the vehicle driver died and the vehicle was also damaged. The petitioner also sustained grievous injuries. The District Collector, Sivaganigai issued charge memo dated 09.05.2019 containing five articles of charge. The petitioner offered his explanation. It was not found to be satisfactory. An enquiry officer was appointed. The enquiry



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officer after giving opportunity to the petitioner found that the charges stood proved. A copy of the enquiry report was served on the petitioner and his further representation was obtained. Thereafter, the District Collector, Sivagangai / Disciplinary Authority passed an order dated 11.11.2020 imposing the punishment of reduction to the post of Deputy BDO. Aggrieved by the same, the petitioner filed an appeal before the Commissioner, Rural Development and Panchayat Raj. The appellate authority vide order dated 21.09.2022 set aside the order of punishment and directed the authority to pass an order afresh on merits and in accordance with law. Following remand, the District Collector, Sivagangai, passed an order dated 07.10.2022 imposing the punishment of reduction to the post of Deputy BDO with a further direction of postponement of future increment for a period of two years. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. The appellate authority vide order dated 02.03.2023 confirmed the order passed by the disciplinary authority and dismissed the appeal. Challenging the same, the present writ petition came to be filed.



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2. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for. This Court vide order dated 29.03.2023 in W.M.P. (MD)No.6584 of 2023 granted an interim order of stay since it found the punishment of reduction in rank to be disproportionate and shocking to judicial conscience. To vacate the same, W.M.P.(MD)No.10859 of 2023 has been filed.

3. The learned Additional Advocate General took me through the contents of the counter affidavit filed by the authorities. The learned Additional Advocate General raised very many grounds. Relying on the recent decision of the *Hon'ble Apex Court 2022 LiveLaw (SC) 998 (Union of India Vs. Subrata Nath)*, he contended that the parameters for exercising judicial review of the order passed in the departmental proceedings are wholly absent in the present case and that the writ petition will have to be dismissed. He submitted that the petitioner was given full opportunity to defend himself in the departmental proceedings and that the principles of natural justice have been fully complied with.



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He also would point out that after the impugned order was passed by the disciplinary authority, the petitioner did not join in the reduced rank and that he chose to be un-authorizedly absent. In this regard, a fresh charge memo has been issued. The learned Additional Advocate General would point out that this fact has been suppressed in the affidavit filed in support of the writ petition. He also argued that the petitioner has the further remedy of filing review before the Government and that such remedy has not been exhausted. He would point out that the charge framed against the petitioner was that he had unauthorizedly taken the vehicle of the chairman of the local body outside the district limits and that there is absolutely no defence for this misconduct. By no stretch of imagination, the conduct of the petitioner can be condoned. If the petitioner had not taken the vehicle outside the jurisdictional limits, the occurrence would not have taken place and the life of an innocent driver would not have been lost. He also pointed that because of the act committed by the petitioner, the vehicle had suffered damage to the tune of Rs.3,00,000/-. He submitted that even if this Court comes to the conclusion that the finding is erroneous, still there is no scope for interference in exercise of writ jurisdiction. According to him, an official



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who is found to have misused official power ought to be severely dealt with and this Court ought not to show any misplaced sympathy for the writ petitioner. He called upon this Court to sustain the impugned order and dismiss the writ petition.

4. I carefully considered the rival contentions and went through the materials on record. Even though the articles of charge are five in number, they flow out of a single act committed by the petitioner. The petitioner had taken the official vehicle to his erstwhile office which was located outside the jurisdictional limits. There cannot be any doubt that this act constitutes misconduct. The vehicle met with an accident enroute and the driver also died. According to the first charge, the petitioner is responsible for the death of the driver Thiru.Harirama chandran. The petitioner can only be termed as remotely responsible. In the law of tort, there is a distinction between proximate cause and remote cause. One can be made liable for proximate cause and not remote cause. The very framing of charge led to serious miscarriage of justice in this case. This is evident from the order passed by the disciplinary authority in the first round. The said order is extracted



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verbatim.

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“All the five charges are proved as per the enquiry officers report. Thiru.J.Baskaran was very much a reason for death of the driver on a Holiday, he has gone out of jurisdiction without any allotted official driver, he utilized the chairman's driver. Jeep utilized was allotted to the BDO Village Panchayat. However, he has gone on a sunday a Holiday to S.Pudur which is far away from Kannangudi Block for personal work and the driver died due to the same hence punishment of reduction to a lower post of BDO to Deputy BDO is ordered as a punishment to Thiru.J.Baskaran for all the 5 proved charges as a deserving punishment. Since the family of the deceased driver R.Hariramachandran has lost the breadwinner for the ill acts of the BDO J.Baskaran.”

The disciplinary authority had gone to the extent of condemning the petitioner that only because of him, the family of Hariramachandran lost their breadwinner. The authorities have failed to note that this is a pure accident for which the petitioner is not at all responsible. It is possible that the occurrence had taken place due to rash and negligent of the bus driver who was coming from the opposite direction. The petitioner could have only been charged the misconduct of taking the official vehicle outside the jurisdictional limit. Instead of framing the charge in that fashion, the petitioner has been made to answer for the remote consequence also. As already noted, the order dated 11.11.2020 was set aside by the appellate authority vide order dated 21.09.2022 and the



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matter was remanded to pass a fresh order. After remand, the disciplinary authority passed the order dated 06.10.2022. The order runs to as many as 13 pages. Pages 1 to middle of the 12th page are a mere narration of the antecedent facts. The discussion portion is this alone:-

“மேற்காணும் ஊரக வளர்ச்சி ஆணையர் அவர்களின் உத்தரவின் அடிப்படையில் தனியர் மீதான குற்றச்சாட்டுக் குறிப்பாணை தனியரின் முகாந்திரம் விசாரணை அலுவலரின் அறிக்கை விசாரணை அலுவலரின் அறிக்கை மீதான தனியரின் மேல்முகாந்திரம் மற்றும் தொடர்புடைய ஆவணங்களை கவனமாக மறுபரிசீலனை செய்து கீழ்க்கண்டவாறு திருத்திய இறுதி ஆணை வெளியிடப்படுகிறது.

(I) Reduction to the rank of Deputy Block Development Officer for a period of 2 years with effect from the date of issue of this order.

(II) The period of reduction is ordered to operate to postpone future increment for a period of 2 years with cumulative effect.

(III) He is allowed to draw the pay that he had last drawn.

(IV) The period of reduction to be reckoned is exclusive of intervals spent on leave.”

5. The disciplinary authority has not at all applied his mind. The petitioner has given his further representation contesting the various findings set out in the enquiry report. There is absolutely no discussion regarding any of the contentions. The conclusion has been mechanically arrived at in a cryptic paragraph. If the final order passed by the disciplinary authority imposing punishment on a delinquent official is



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bereft of reasons, that also will furnish a ground for interference in exercise of judicial review. Aggrieved by the order passed by the disciplinary authority on 06.10.2022, the petitioner filed appeal before the appellate authority. The appellate authority dismissed the appeal on 02.03.2023. The appellate authority's order also runs to almost 11 pages. Pages 1 to 10 are a reiteration of the antecedent developments. The operative portion of the order is as follows:-

“ ஊரக வளர்ச்சி (ம) ஊராட்சி ஆணையரின் இறுதி ஆணை:

திரு.ஜெ.பாஸ்கரன் முன்னாள் வட்டார வளர்ச்சி அலுவலர். கண்ணங்குடி ஊராட்சி ஒன்றியம் தற்போது துணை வட்டார வளர்ச்சி அலுவலர் (சத்துணவு)(பணியேற்காதது) திருபுவனம் ஊராட்சி ஒன்றியம் சிவகங்கை மாவட்டம் என்பவர் மீது குற்றச்சாட்டுகள் ஏற்படுத்தப்பட்டு சிவகங்கை மாவட்ட ஆட்சித் தலைவரால் கீழ்க்கண்டவாறு இறதியாணை பிறப்பிக்கப்பட்டது-

1. Reduction to the rank of Deputy Block Development Officer for a period of two years with effect from the date of issue of this order.
2. The period of reduction is ordered to operate to postpone future increment for a period of two years with cumulative effect.

இந்நேர்வில் இவர் மீது ஏற்படுத்தப்பட்ட குற்றச்சாட்டுகள் அதற்கு அளிக்கப்பட்ட விளக்கம் விசாரணை அலுவலரின் அறிக்கை விசாரணை அலுவலரின் கண்டறிதல்களின் மீதான தனியரின் மேல்விளக்கம் தனியரின் மேல்முறையீடு மற்றும் இந்நேர்வு தொடர்புடைய ஆவணங்கள் ஆகியவை என்னால் கவனமுடன் பரிசீலனை செய்யப்பட்டது. தனியரின் மேல்முறையீட்டு மனுவில் சிவகங்கை மாவட்ட ஆட்சித் தலைவரால் வழங்கப்பட்ட தண்டனையினை ரத்து செய்வதற்கான ஏற்றுக் கொள்ளத்தக்க புதிய முகாந்திரம் ஏதும் இல்லாத நிலையில் சிவகங்கை மாவட்ட ஆட்சித்



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தலைவரால் வழங்கப்பட்ட இறுதியாணை உறுதி செய்து. தனியார் திரு.ஜெ.பாஸ்கரன் முன்னாள் வட்டார வளர்ச்சி அலுவலர் கண்ணங்குடி ஊராட்சி ஒன்றியம் தற்போது துணை வட்டார வளர்ச்சி அலுவலர் (சத்துணவு)(பணியேற்காதது) திருபுவனம் ஊராட்சி ஒன்றியம் சிவகங்கை மாவட்டம் என்பவரது மேல்முறையீட்டு மனுவினை நிராகரித்து உத்தரவிடப்படுகிறது.”

No reasonable man would state that the order passed by the appellate authority contains reasons. It is cryptic. It does not deal with the contentions advanced by the delinquent official. The appeal filed by the petitioner has been mechanically dismissed. The remarks made in respect of the order of the disciplinary authority are equally applicable to the order passed by the appellate authority. A non-speaking order can be set aside while exercising judicial review. This is too settled a proposition and it does not require any precedential authority. The learned Additional Advocate General would call upon this Court to non-suit the petitioner for the reason that the petitioner had not complied with the order passed by the authorities and that he is remaining unauthorizedly absent and that disciplinary action has been initiated against him in that regard. Since this has not been disclosed in the affidavit filed in support of the writ petition, he called upon this Court to non-suit the petitioner on the ground of suppression of material fact.



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6. I am not able to accept the contention advanced by the learned Additional Advocate General. The Hon'ble Supreme Court in the decision reported in **(2004) 7 SCC 166 (S.J.S.Business Enterprises (P) Ltd., Vs. State of Bihar)** had defined what is material suppression and under what circumstances, the writ petition can be dismissed on the ground of suppression of material fact. The Hon'ble Supreme Court had held as follows:-

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken. Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed. Again when in earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the license to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes



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and the interim order passed by the High Court in such subsequent application was set aside by this Court. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order.”

7. The petitioner is questioning the validity of the impugned orders passed by the disciplinary authority and the appellate authority. The fact that the petitioner had not complied with the said orders and that the authorities have issued the second charge memo are not germane. To decide the validity of the impugned orders, there is no need for the petitioner to make reference to the same. Therefore, non-disclosure of the subsequent development will not constitute suppression.

8. Applying the ratio laid down in ***S.J.S.Business Enterprises***, I decline to endorse the argument of the learned Additional Advocate General. The learned Additional Advocate General would also argue that the writ petition should be dismissed, since he has not availed remedy of review. It is true that questioning the order passed by the appellate authority, the petitioner could have given representation before the



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Government. It is well settled that the rule of alternative remedy will not govern the jurisdiction of this Court. It is only a rule of discretion. I have not in exercise of writ jurisdiction gone into the factual aspects. Therefore, non-exhaustion of the review remedy by the petitioner cannot be a ground for non-suiting him.

9. On the ground mentioned above, the orders impugned in the writ petition are set aside. The matter is remitted to the file of the second respondent to pass order afresh on merits and in accordance with law. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

22.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To

1. The Commissioner,
Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai-15.



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G.R.SWAMINATHAN, J.

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3.The Enquiry Officer,
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