



W.P.(MD)No.16157 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16157 of 2018

Neelakandan

... Petitioner

Vs.

1.The Secretary to the Government,
Tourism, Culture and Endowments Department,
Fort St George,
Chennai 600009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Nungambakkam High Road,
Chennai 625 034.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of dismissal from service of the petitioner issued by the second respondent in Se.Mu.Na.Ka.No.2213/2013/L3 dated 19.07.2015 and consequent impugned orders passed by the first respondent in G.O.(Pa).No.163 dated 08.11.2017 and G.O.(Pa) No.49 dated 10.05.2018 and quash the same and



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consequently direct the respondents to reinstate the petitioner into service with all attendant and other monetary benefits.

For Petitioner : Mr.M.Ramsundar Vijayraj

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

This writ petition has been filed against the impugned order of dismissal from service issued by the second respondent in Se.Mu.Na.Ka.No.2213/2013/L3 dated 19.07.2015 and consequential impugned orders passed by the first respondent in G.O.(Pa).No.163 dated 08.11.2017 and G.O.(Pa) No.49 dated 10.05.2018.

2. The brief facts are that the petitioner had joined service on 17.07.1989 as Junior Assistant in the Office of the Assistant Commissioner, HR&CE at Tirunelveli on compassionate grounds. Subsequently, he was posted as an Executive Officer Grade IV in Arulmighu Kalyana Sundareswar Temple, Avaniapuram, Madurai South, then posted at several places and finally, he was transferred to Arulmighu Siddi Vinayagar Thirukkivil, Vadakovai at Coimbatore.



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The Joint Commissioner, HR&CE, Madurai, has suspended the petitioner from service vide proceedings dated 21.01.2013 in Se.Mu.Na.Ka.No.11729/2012/E.3 and on the same day charge memo was also issued for 11 counts of charges. It was mainly alleged that when the petitioner was working at Gurunathar Swamy Temple at Ammayanaickanoor, he had given “No Objection Certificate” on 16.11.2010 for the lands belonging to Ammayanaickannoor Muthumariamman temple comprised in S.Nos.604/1 and 604/2 in Oruthattu Village, Nilaikottai Taluk, Dindigul District for alienation to some private persons. After receipt of the said charge memo, the petitioner has submitted detailed explanation dated 18.04.2013 stating that he never gave any no objection certificate for alleged alienation and he specifically stated that the same is a forged document and his signature has also been forged on the said document. On the basis of such forged “No Objection Certificate”, the document was registered in favour of one Thangapandian and mutation was carried in revenue records. Thereafter, an enquiry officer was appointed by the second respondent and the Enquiry Officer had submitted his report on 26.10.2013 vide Na.Ka.No.122/2013/A Tha, stating all the 11 charges are proved. Pursuant to which, the second respondent issued a second show cause notice in Na.Ka.No.2213/2013 L3 dated 29.10.2013 and the



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petitioner has submitted a detailed explanation dated 28.11.2013 denying the findings of the Enquiry Officer. Without considering the same, the second respondent passed the impugned order vide his proceedings in Na.Ka.Se.Mu.Na. Ka.No.2213/2013 dated 19.07.2015, whereby the petitioner was dismissed from his service. Aggrieved over the same, the petitioner preferred statutory appeal before the first respondent on 31.08.2015 and the same was dismissed by the first respondent in G.O.(pa)No.163 dated 08.11.2017. As against the same, the petitioner filed a Review Petition before the first respondent on 22.12.2017 and the same was also dismissed by the first respondent in G.O.(pa)No.49 dated 10.05.2018. Therefore, the petitioner herein has come forward with this present writ petition.

3. The learned counsel for the petitioner submitted that the orders passed by the first and second respondents are not in accordance with law. The petitioner was not given any reasonable opportunity to defend his case. There is no merit in the findings of the Enquiry Officer and the Disciplinary Authorities. Further, he would submit that the disciplinary proceedings against the petitioner were initiated only on the basis of the alleged “No Objection Certificate” to have been



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issued by the petitioner. Only on the basis of a xerox copy of alleged “No Objection Certificate”, the whole proceedings were initiated. Even though the petitioner made a specific request for the supply of original copy of the “No Objection Certificate” during the course of enquiry on 07.10.2013, the same was not at all furnished. The said fact was projected in the enquiry report given by the Enquiry Officer. As far as the first charge is concerned, the findings of the Enquiry Officer would clearly reveal that the Sub Registrar has given a in his letter No.26/2013 dated 14.06.2013, which was marked as Ex.14 in the report, wherein the Sub Registrar clearly stated that no document was registered based on the “No Objection Certificate” alleged to have been issued by the petitioner. Further, insofar as the second charge is concerned, as per the letter given by the Tahsildar dated 29.06.2013 marked as Ex.P.4, it is stated that patta was changed in favour of Thangapandian not based on the alleged “no objection certificate” issued by the petitioner. As per the report of the Circle Inspector of HR & CE Department, Nilakottai in his proceedings in O Mu 245/2015 dated 04.01.2013, it was stated that the said property was registered on the basis of a Will which was marked as Ex.5 and Ex.6 and Ex.7. The lands in survey Nos.604/1 and 604/2 to an extent of 8 Acres 37 cents which is standing in the name of Jeyasakthivel. A



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certificate has been issued by the Village Administrative Officer in favour of Jeyasakthivel on 10.08.1998 marked as Ex P12, based on which, the document has been registered. Further, he has also given auction notice and other documents which are marked as Exs.9 to 12. These exhibits are against the department and in favour of the petitioner.

4. The second respondent had predetermined to punish the petitioner and issued the charge memo based on the communication sent by the District Collector to the first respondent in Na Ka No.37549/2012 A4 dated 20.12.2012. It is pertinent to note that the order passed by the first respondent is without any jurisdiction and the same is violative of Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As per the rule, it is only Government which is the competent authority to initiate the disciplinary action against the petitioner as well as others who belongs to different Departments. In the instant case, there are three officials and all are belonging to different departments namely HR & CE, Revenue and Registration Department are involved.



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5. The first respondent being an appellate authority passed the impugned order accepting the recommendations of TNPSC vide his letter No. 2306/DCT/U1 /2016 dated 16.09.2016 and report of forensic department in Doc.No.182/17 dated 19.07.2017 pertaining to petitioner signature in the alleged “No Objection Certificate”. The said orders referred to as per G.O.Ms.No.163 dated 08.11.2017 wherein the orders were shown as references 5 and 6. The said documents were not furnished to the petitioner at the time of hearing of the appeal. In this circumstances, it is pertinent to note that TNPSC report alone was furnished at the time of rejecting the appeal of the petitioner and Forensic report was not furnished to the petitioner. Therefore, the non-furnishing of necessary documents to the petitioner is violating of principles of natural justice. Therefore, the orders passed by the first and the second respondents are liable to be set aside and the petitioner prayed to allow the writ petition.

6. The learned Government Advocate appearing for the respondents submitted that the petitioner was appointed as Junior Assistant on compassionate ground in the year 1989. Subsequently, on transfer of service, he was appointed as Executive Officer Grade-IV and then promoted as Executive Officer Grade III.



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He would further submit that the District Collector, Dindigul has sent a report to the Secretary to Government, Tourism Culture and Religious Endowments Department in Rc.No.37549/12/B4, dated 20.12.2012, wherein he has stated that the land in Survey No.604/1 measuring 4.74 acres and 3 acres in Survey No.604/2 in Oruthattu Village belongs to Arulmighu Gurunathaswamy Temple and the said land was settled in the name of the temple under Estate Abolition Act, TD No. 417. Under Tamil Nadu Inam Abolition Act, the Inam was settled in the name of the temple and Patta No.5 granted in the name of Gurunathaswamy temple represented by its present Manager. Further, the Patta No.403 granted in the name of the Gurunathaswamy temple under UDR Scheme, but in the 'A' Register, it was wrongly printed as “Gurunathaswamy Konar”. The petitioner herein has given “No Objection Certificate” stating that the said lands are not belonging to the HR & CE Department and no objection to register the sale deeds. Based on the said No Objection Certificate given by Thiru.Neelakandan, the property was registered in the name of one Thangapandian and patta was also changed in his name. Therefore, the Collector has requested to initiate disciplinary proceedings against the petitioner. It is further submitted that there are 11 charges framed against the writ petitioner by the Joint Commissioner, Madurai vide Pro.RC.No.



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11729/2012/C3 dated 21.01.2013 and the petitioner was placed under suspension. The petitioner had submitted explanation on 18.04.2013. Thereafter, an Enquiry Officer was appointed by the Commissioner in Pro.Rc.No.2213/2013/L3 dated 16.05.2013. After completion of the enquiry, a copy of the enquiry report was furnished to the petitioner and he was requested to submit his explanation on the report of Enquiry Officer vide Commissioner's Rc.No.2213/2013-L3 dated 29.10.2013. The petitioner has submitted further explanation on 28.11.2013. Thereafter, the Sub Registrar, Nilakottai appeared before the Commissioner and had given statement that the original files relating to the registration of the document was not available in the office. After verifying all the documents, the Commissioner has passed final order in the disciplinary proceedings by imposing punishment of dismissal from the service vide Pro.Rc.No.2213/2013/L3 dated 19.07.2015. The petitioner has preferred an appeal before the first respondent and the same was confirmed and correctly dismissed the appeal preferred by the petitioner. Therefore, the respondents prayed to dismiss the writ petition.

7. Heard Mr.M.Ramsundar Vijayraj, the Learned Counsel appearing for the petitioner and Mr.M.Senthil Ayyanar, Government Advocate, the Learned



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Counsel appearing for the respondent and perused the materials available on record.

8. The first contention that was raised by the petitioner is that the charge memo contains 1 to 4 documents. But the enquiry officer had collected 5 to 15 documents during the course of enquiry and has relied on the same, but the said documents was not served to the petitioner. The respondents have not denied this in their counter. Therefore, this Court is of the considered opinion that there is violation of principles of natural justice.

9. The next contention is that the petitioner has sought to produce the original of the alleged “No Objection Certificate” and the same was not furnished. Moreover, the respondents had compared the signature based on the photo copy of the alleged certificate. Even the forensic report also states that the signature was compared based on the photo copy of the alleged certificate. It is settled principle that any signature ought to be compared with the original and photo copy of the alleged “No Objection Certificate” is inadmissible evidence. It is pertinent to state herein that the Tamil Nadu Public Service Commission has also



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opined that photo copy is compared and it is not proper. But the respondents had relied on the alleged photo copy of the certificate and had come to the conclusion, therefore this Court is of the considered opinion that the basis of the enquiry itself is erroneous.

10. The next contention of the petitioner is that there are allegations that the patta was issued based on the alleged “No Objection Certificate” and sale deed was registered in the name of one Thangapandian. But the government had not initiated any action against the officials in Revenue Department and Registration Department. The TNPSC has also taken this aspect and had opined and recommended the government to conduct enquiry against all persons and thereafter take decision on the appeal. The relevant portion of the TNPSC opinion is extracted hereunder:

இவ்வழக்கில் வழங்கப்பட்டுள்ள இறுதி ஆணையில்
விசாரணை அறிக்கை ஏற்றுக்கொள்ளப்பட்டு அன்னார் மீதான //
குற்றச்சாட்டுகளும் நிரூபணமாகின்றதெனத் தெரிவித்து பணியறவு
(dismissal from Service) என்ற தண்டனை வழங்கப்பட்டுள்ளது.



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திரு.அ.நீலகண்டன் அரசுக்கு செய்து கொண்டுள்ள 31.08.2015 நாளிட்ட மேல்முறையீட்டில் தான் கொடுத்ததாக சொல்லப்படும் தடையின்மை சான்றின் ஒளிநகலில் உள்ள ஒப்பம் தன்னுடையது இல்லை என்றும் பொய்யாவணம் (forgery) செய்து சான்று அளிக்கப்பட்டுள்ளது என்றும், இச்சான்றில் உள்ள கையொப்பத்தின் உண்மைத் தன்மையினை உரிய துறையுடன் தொடர்பு கொண்டு அறிந்திருக்க வேண்டுமென்றும், இந்த வழக்கில் சம்பந்தப்பட்ட வேறு பணியாளர்கள் எவர் மீதும் நடவடிக்கை எடுக்கவில்லை, அதற்கான காரணமும் அறியவில்லை என்றும், என்னையே ஆதாரத்துடன் நிரூபிக்கக் கோருவது சரியல்ல என்றும், ஒளிநகல் வைத்து நடவடிக்கை எடுக்கக்கூடாது என நீதிமன்ற ஆணைகள் இருந்தபோதும் இதனைக் கருத்தில் கொள்ளாமல் குற்றச்சாட்டுகள் நிரூபிக்கப்பட்டுள்ளதாக தெரிவித்துள்ளார்.

மேல்முறையீட்டாளர் திரு.அ.நீலகண்டன் பத்திரப் பதிவிற்கு ஆதாரமாக வழங்கியுள்ள தடையின்மை சான்று உண்மையானதுதானா என சரியாக துறையினரால் ஆய்வு செய்யப்படவில்லை. அசல் சான்று கிடைக்கப் பெறாத நிலையில் ஒளி நகலினை அடிப்படையாகக் கொண்டு மேல்முறையீட்டாளருக்கு பெருந்தண்டனையான 'பணியறவு' (major punishment) வழங்கப்பட்டுள்ளது. மேலும் விசாரணை அலுவலர் அறிக்கையில் தெரிவித்துள்ள பரிந்துரையின்படி இம்முறைகேட்டில் பத்திரப்பதிவுத் துறை மற்றும் வருவாய்த் துறையில் தொடர்புடைய நபர்கள் மீது என்ன நடவடிக்கை எடுக்கப்பட்டது என்பது குறித்து விவரங்கள் ஏதும் கோப்புகளில் இல்லை. இவ்வழக்கில், பத்திரப்பதிவுத் துறை, இந்து சமய அறநிலைய ஆட்சித்துறை, வருவாய்த்துறை



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என மூன்று முக்கிய துறைகள் சேர்ந்திருப்பதால், மேற்படி
ஒவ்வொரு துறையிலும் முழுமையான தெளிவான விசாரணை
செய்து போதிய ஆதாரங்களைப் பெற்று இம்மேல்முறையீட்டின்
மீது முடிவெடுக்குமாறு தேர்வாணையம் அரசைக் கேட்டுக்
கொள்கிறது

Even though it is only opinion of TNPSC and it is not mandatory, but it would indicate that the enquiry is biased. The biased enquiry is further confirmed when the respondents had not initiated any action against the said Thangapandian who had transferred of land. Infact the respondents had not even initiated any action to retrieve the land from the said Thangapandian. Therefore, this Court is of the considered opinion that the enquiry is biased and liable to be set aside.

11. The next contention of the petitioner is that the petitioner had raised various grounds in the memorandum of appeal, but none of the grounds were considered by the 1st respondent. On perusal of the appellate order dated 08.11.2017, it is seen that the appellate authority had narrated various proceedings and then had passed one paragraph order and there is no discussion of any grounds. Therefore, this Court is of the considered opinion that the impugned order dated 08.11.2017 is a non-speaking order.



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12. Further the records indicate that the entire allegation is based on the alleged “No Objection Certificate”, except this no other evidence are available. The Registration Department had stated that as per Land Register, in the year 1956, the disputed survey number was changed in the name of Arulmigu Gurunathasamy Konar. The Registration Department had also stated the document was registered based on the Will and not based on the alleged “No Objection Certificate”. Also categorically stated as per their records the lands in question are not noted as temple property. When the land in question is not noted as temple property in the registration department, then the question would never arise for “no objection certificate”. Hence the “no objection certificate” theory seems highly improbable. From these facts it would be evident that the scope of the enquiry ought to be widened and the real mischief ought to be rectified.

13. The learned Government Advocate for the respondents vehemently opposed to interfere with the order passed by the appellate authority by stating that the charges are very grave against the petitioner. But as stated supra the respondent’s enquiry against the petitioner alone is tainted with bias, violative of



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principles of natural justice and non-speaking order. When the respondent failed to take action against the said Thangapandian, a clout is created on the enquiry that the respondents is trying to save somebody.

14. For the reasons stated supra, this Court is remitting the case back to conduct denova enquiry, by including the persons who are involved. Since more than one department is involved, then the jurisdiction to conduct enquiry is with the Principal Secretary to the Government, who is the proper authority to conduct enquiry.

15. The impugned order dated 19.07.2015 passed by the 2nd respondent and consequential impugned orders passed by the first respondent dated 08.11.2017 and 10.05.2018 are quashed. The respondents are directed to reinstate the petitioner into service. Accordingly, this petitioner stands allowed as stated supra. There shall be no order as to costs.



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16. The jurisdictional police is directed to register FIR in this case and conduct investigation.

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NCC : Yes/No

Index : Yes/No

Internet : Yes/No

sbm

To

1.The Secretary to the Government,
Tourism, Culture and Endowments Department,
Fort St George,
Chennai 600009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Nungambakkam High Road,
Chennai 625 034.



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S.SRIMATHY, J.

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