



Writ Appeal No.78 of 2020
and W.A.No.1646 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.78 of 2020
and Writ Appeal No.1646 of 2021**

W.A.No.78 of 2020

V.Krishnamurthy

... Appellant

Vs.

1. The Secretary to Government,
Personnel and Administrative
Reforms (Q) Department,
Secretariat, Chennai – 9.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 2.

.. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 01.11.2019 made in W.P.No.6381 of 2010.

W.A.No.1646 of 2021

The Secretary to Government,
Personnel and Administrative Reforms (Q) Department,
Secretariat, Fort st.George,
Chennai – 600 009.

... Appellants

Vs.



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1. V.Krishnamurthy

2. The Secretary,

Tamil Nadu Public Service Commission,
Chennai – 600 002.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 01.11.2019 made in W.P.No.6381 of 2010.

For Appellant in : Mr.S.Vijayakumar,
W.A.No.78 of 2020 Senior Counsel
and first respondent in for Mr.G.Bharadwaj
W.A.No.1646 of 2021

For First Respondent : Mr.R.Kumaravel,
in W.A.No.78 of 2020 Additional Government Pleader
and Appellant in
W.A.No.1646 of 2021

For Second : Mr.R.Bharanidharan
Respondent [in both
W.As.]

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SURESH KUMAR,J.)

Since these two appeals arisen out of the common order passed by the Writ Court dated 01.11.2019 made in W.P.No.6381 of 2010, these two appeals were heard together and are disposed of by this common order.



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2. The appellant in W.A.No.78 of 2020 viz., V.Krishnamoorthy was working as Thasildar at Kangayem Taluk between 23.09.1998 and 12.01.1999 and again between 18.01.2000 and 17.06.2001.

3. A Village Administrative Officer in the Taluk viz., Manivannan was arrested pursuant to a trap case and thereafter, he has been convicted by the competent Criminal Court, therefore he has been removed from service.

4. Before such removal was made, since he was arrested by the Vigilance and Anti Corruption Department on 02.08.1990, he has been placed under suspension by order dated 03.08.1990 and the criminal case in C.C.No.47 of 1991 on the file of the Chief Judicial Magistrate, Erode ended in conviction by judgment dated 12.11.1991.

5. Therefore, a show cause notice for dismissal was issued against the Manivannan, VAO. Challenging the same, he filed an original application before the Tamil Nadu Administrative Tribunal in



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O.A.No.658 of 1992, where he obtained a stay on 06.02.1992. Against the order of conviction, he had also filed Criminal Appeal in C.A.No.751 of 1991. The said criminal appeal was dismissed by the Appellate Court on 02.09.1997 and therefore, the stay order also was vacated on 19.07.2003. Therefore, the period between 06.02.1992 and 19.07.2003 there had been a stay order. The charge against the said Krishnamoorthy was that during the period between 1998 - 2001 when he was working as Tahsildar at kangeyam Taluk, he had not taken any effective steps to vacate the order of stay granted by the Court/Tribunal, therefore from 1998-2001, calculating the subsistence allowance, it was directed to be paid by the proceedings of the Revenue Divisional Officer dated 13.12.2001 and accordingly, a sum of Rs.98,051/- was paid, therefore there has been a loss caused to the ex-chequer, for which alleged inaction on the part of delinquent Krishnamoorthy was the reason, therefore such a charge had been framed against the said Krishnamoorthy.

6. Though initially charge was framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 [in short, 'the Rules'] it has been subsequently converted into Rule 17(a) of the Rules on 30.04.2007.



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7. Though this charge had been denied by the said Krishnamoorthy and he had written a letter to that effect on 13.11.1998, that has not been taken into account and the reply given by the delinquent has not been taken into account by the disciplinary authority and ultimately the 17(a) charge ended in a punishment of censure with recovery of a sum of Rs.48,991/-.

8. Because of this disciplinary proceedings as well as the punishment of censure, the delinquent Krishnamoorthy was not considered for promotion to the post of District Revenue Officer for the panel year 2008.

9. Therefore, challenging the said punishment awarded against the delinquent Krishnamoorthy by the Secretary to Government, Personnel and Administrative Reforms (Q) Department in G.O.(2D).No.7, Personnel and Administrative Reforms (Q) Department, dated 19.01.2010 as well as the proceedings of the second respondent viz., Secretary, Tamil Nadu Public Service Commission, dated 31.12.2009, the said Krishnamoorthy filed the aforesaid Writ petition in W.P.No.6381



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of 2010. While deciding the said writ petition, the Writ Court even though has held that the petitioner i.e., Krishnamoorthy cannot be held guilty for payment of subsistence allowance to the Manivannan, Village Administrative Officer, however has sustained the punishment of censure by upholding the same, but at the same time, the consequential direction for recovery of a sum of Rs.48,991/- was found to be unjustified and accordingly it was set aside.

10. As against the portion of the order passed by the learned Judge, upholding the punishment of censure, the said Krishnamoorthy preferred writ appeal in W.A.No.78 of 2020 and in respect of setting aside the portion of recovery of sum of Rs.48,991/-, the State preferred appeal in W.A.No.1646 of 2021. That is how these two appeals have come up for consideration.

11. Heard Mr.S.Vijayakumar, learned Senior Counsel appearing for the employee Krishnamoorthy and Mr.R.Kumaravel, learned Additional Government Pleader appearing for the appellant/State, who are the respondents in the respective writ appeals.



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12. In the impugned order itself, the learned Judge has found that the appellant Thasildar was working as Thasildar in Kangeyam Taluk from 23.09.1998 till 12.01.1999 and in the second spell from 18.01.2000 to 17.06.2001. The charge against him was that he had failed to apprise his seniors and he had not informed his superior is still holds good. However, the learned Judge also found that the writ petitioner alone cannot be held responsible for the payment made to the Manivannan, VAO and the Thasildar alone cannot be singled out for the loss, therefore he has ultimately come to the conclusion that the petitioner cannot be held guilty for payment of subsistence allowance to Manivannan, VAO.

13. In this context, it is to be noted that, after 1997, no subsistence allowance had been paid in fact. However, the said Manivannan, VAO on 11.12.2001 had made a request to pay the subsistence allowance calculating from 1997 till 2001 and that was considered by the then Revenue Divisional Officer one Meenakshi Sundaram and he has issued proceedings in Na.Ka.No.6019/94(E), dated 13.12.2001, where he has stated the following:

"மேற்படி பணியறவு செய்யப்பட்ட
திரு.மணிவண்ணன் என்பவர் தனக்கு நிலுவையிலுள்ள



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பிழைப்பூதியம் வழங்குமாறு பார்வை 3-ல் காணும் கடிதத்தில் மனுவான கொடுத்துள்ளார். எனவே, காங்கயம் வட்டம், மருதுறை கிராமம், முன்னாள் கிராம நிர்வாக அலுவலர் திரு.மணிவண்ணனுக்கு நிலுவையிலுள்ள பிழைப்பூதியத்தினை உரிய விதிகளின் படி கணக்கிட்டு வழங்க நடவடிக்கை எடுக்குமாறு காங்கயம் வட்டாட்சியர் கேட்டுக்கொள்ளப்படுகிறார். இத்துடன் திரு.மணிவண்ணன் மனுவின் நகல் இணைக்கப்பட்டுள்ளது. இணைப்பு: ஒன்று ஒம்/-ஆர்.மீனாட்சிசுந்தரம் வருவாய் கோட்டாட்சியர், தாராபுரம்."

14. Therefore, it was directed by the then Revenue Divisional Officer to make the payment of subsistence allowance for the period between 1997-2001 in 2001. However, before such order had been passed by the Revenue Divisional Officer dated 13.12.2001, the two stint of the tenure of the Tahsildar at Kangeyam Taluk had come to an end, therefore absolutely, he had not been responsible for making any alleged excess payment of subsistence allowance to the said dismissed VAO Manivannan.



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15. Coming to the charge that he has not taken effective steps or not informed to the superiors, which alone cause loss to the Government as the subsistence allowance was continuously paid to the dismissed VAO is concerned, it is to be noted that, the stay was granted on 06.02.1992, but this Krishnamoorthy had joined as Tahsildar at Kangeyam Taluk only on 23.09.1998, therefore, all these years the stay order was there, no effective steps had been taken by his predecessors. However, during the tenure of the petitioner Krishnamoorthy as Tahsildar in Kangeyam Taluk, admittedly no payment had been made, therefore, he had not been instrumental for the loss made to the Government for making the wrong payment of the subsistence allowance.

16. Insofar as the charge that he has not taken effective steps to vacate the stay is concerned, we feel that, it is a vague charge, because if any case is pending before the Court of law, where stay is granted against the interest of the State or Department concerned, normally steps would be taken to vacate the stay, however, in thousands and thousands of



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litigations such kind of stay petition are not disposed either the delay being caused at the Court or because of the time constraint. Therefore for such kind of reasons, if charges are framed like the present one against the official concerned that too to the extent of affecting their promotional avenues, that kind of measure, in our considered opinion would be beyond the scope of the code of conduct prescribed for the Government servants. If any specific code of conduct prescribed for the Government servants are violated, then only it would amount to frame a charge for enquiry and for that they may impose the penalty or punishment.

17. Here in the case in hand, on the basis of factual matrix, we do not find that there has been any scope for framing a charge against the official concerned viz., Krishnamoorthy and therefore, the basis of the charge framed against him even though under Rule 17(a) of the Rules does not holds good.

18. Even though the learned Judge, who passed the impugned order ultimately found that the writ petitioner cannot be found to be guilty for payment of subsistence allowance, he has gone to uphold the



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punishment of censure, but at the same time, the recovery aspect has been set aside. Once the recovery goes, the punishment of censure also automatically has to go and it cannot be separated as has been adopted by the learned Judge in the order impugned, therefore, for that reason also, we feel that the order impugned is liable to be interfered with.

19. Therefore for all these reasons, the order impugned passed by the Writ Court is to be set aside, accordingly, it is set aside. As a sequel, the orders impugned before the Writ Court are also liable to be set aside, accordingly, they are set aside. Consequently, there shall be a direction to the State, who are the appellant in W.A.No.1646 of 2021 and respondents in W.A.No.78 of 2020 to consider the plea of the appellant viz., Krishnamoorthy with regard to his promotion to the post of District Revenue Officer for the year 2008, if he is otherwise eligible to be considered and in such consideration his promotion can only be treated as notionally, for which he is not entitled for any backwages benefit but only the service would be counted for other service and pensionary benefits. The needful as indicated above shall be undertaken by the State/employer within a period of three (3) months from the date of



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receipt of a copy of this order.

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With all these directions, the W.A.No.78 of 2020 is ordered accordingly and the W.A.No.1646 of 2021 is dismissed. No Costs.

(R.S.K.,J.)

(K.B., J.)

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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
mp

To

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