

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.12.2014

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition No. 1199 of 2009

And M.P.No. 2 of 2009

RESERVED ON 25.09.2014

K.Jayapal

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Rural Development and Panchayat Raj,
Secretariat,
Chennai-09.

2.The Director of Rural Development,
and Panchayats,
Panagal Building,
Saidapet,
Chennai-15.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in connection with the order passed by him in G.O.(S) No.192, Rural Development & Panchayat (E1) Department, dated 30.12.2008, quash the same and direct the respondents to treat the petitioner as honourably retired from service with effect from 1.10.2006 with all monetary and service benefits.

For Petitioner : Mr.R.Singaravelan

For Respondents : Mr.Gomathi Nayagam,
AAG-III

Assisted by Mr.D.Suryanaranan, GA

ORDER

By proceedings in G.O.Ms.No.192 Rural Development and Panchayats (E) Department, dated 30.12.2008, the Government of Tamil Nadu, has removed the petitioner from service, who was placed under suspension and was not permitted to retire from service, while he was

working as Assistant Director (Panchayats), Perambalur, for the proved irregularities. Aggrieved by the same, the petitioner has come forward with the present writ petition, to quash the same and grant consequential benefits thereof.

2. According to the petitioner, while he was working as Assistant Director, Perambalur District, was served with a charge memo dated 2.5.2001, levelling as many as 7 charges and consequently, placed him under suspension. He challenged the said order of suspension before the Tamil Nadu Administrative Tribunal, wherein, he got interim stay of the proceedings and by virtue of the same, he was reinstated in service and just two days before his date of superannuation, i.e. on 30.9.2006, he was again placed under suspension. After the enquiry, out of 7 charges, the Enquiry Officer submitted his report, holding that the charges 1, 2 and 3 were proved while the charges 4 to 7 were not proved. However, the Government of Tamil Nadu, differed from the findings of the enquiry officer and held that the charge No.6 was proved and charge No.7 was partly proved and called for explanation. The petitioner submitted a detailed explanation on 23.9.2007 denying the charges categorically. Thereafter, since no final order was passed, the petitioner moved a writ petition before this Court in W.P.No.21003 of 2008, wherein, while disposing of the same, this Court directed the first respondent to pass final orders on or before 31.12.2008. Thereafter, the petitioner was issued another charge memo dated 25.9.2006 just five days before his date of superannuation, making him liable to pay sum of Rs.1,02,254/- for the accident caused by one S.Arul, Cholera Mazdoor of Thiruverambur Panchayat Union when he had unauthorisedly taken the vehicle and driven and died in the accident. The said disciplinary proceedings were pending.

3. In the meanwhile, the first respondent has passed the impugned order, dated 30.12.2008 removing the petitioner in respect of the charge memo issued by the second respondent, dated 2.5.2001. Aggrieved by the same, the petitioner has come forward with the present writ petition.

4. A detailed counter affidavit has been filed on behalf of the respondents, wherein, it has been stated that the petitioner, while he was serving as Assistant Director, Perambalur District from 5.2.1999 to 7.3.2001, sent a letter in Rc.No.884/2000/A3, dated 6.4.2000 to all the Village Panchayat Presidents of composite Perambalur District, stating that M/s.Global Industries, Thanjavur is a Small Scale Industry Unit, was selling tarpaulins and the Village Panchayat Presidents were informed to procure tarpaulins for the use during Grama sabha and give on rent for functions in the village. In fact, no such industry was existing nor manufacturing nor selling

tarpaulins. Because of his letter, the village Presidents followed the instructions and purchased 214 tarpaulins without following the guidelines mentioned in G.O.No.195, dated 4.5.1998 wherein, it has been clearly stated that the purchase should be made only through open tenders. Thus, by issuance of the above said letter, the petitioner had misled Rs.24,58,009/- to the government and at that time of purchase, the actual market rate of tarpaulin was lower than the amount offered by the said company and the net loss incurred was a sum of Rs.7,67,110/- out of purchasing a sum of Rs.24,58,009/-. For the said grave lapses, disciplinary proceedings were initiated against the petitioner under rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (hereinafter, referred to as 'the Rules'), vide charge memo, dated 2.5.2001. the petitioner submitted his explanation to the charges. Out of total 7 charges, the foremost and basic charge was that the petitioner instructed the Panchayat Presidents to purchase tarpaulins by violating the guidelines and skipping tender procedures as well as from a non-existing company. The Enquiry Officer, after holding the enquiry, submitted his report, holding that the charges 1,2 and 3 were proved, while the charges 4 to 7 were not proved. After examining the case and connected records, the first respondent has deviated from the findings of the Enquiry Officer in respect of charges 6 and 7, holding that the charge No.6 was proved and the charge No.7 was partly proved. A copy of the report of the Enquiry Officer and the reasons for deviating from the findings of the Enquiry Officer by the first respondent were communicated to the petitioner and called for his further representation. The petitioner has submitted his further representation on 27.10.2004 and 23.9.2007. the Government, have carefully and independently examined the charges framed against the petitioner, explanation submitted by him, findings of the Enquiry Officer, the reasons for deviating from the findings of the Enquiry Officer and finally decided that the charges 1 to 6 were proved while the charge No.7 was partly proved and for the proven charges, the Government arrived at a provisional decision to impose a punishment of removal from service against the petitioner and sought for the views of the Tamil Nadu Public Service Commission under Regulation 18 (1)(b)(iv) of the Tamil Nadu Public Service Commission Regulations, 1954. Thereafter, the Government issued final orders on 30.12.2008 imposing punishment of removal from service for the proven charges and the Service Commission also concurred with the decision of the Government. Therefore, it is stated that the entire amount spent on purchase of tarpaulins to the tune of Rs.24,12,946/- is wasteful expenditure and loss caused to the government only because of the irregularities committed by the petitioner and hence, prayed for dismissal of the writ petition.

5. Challenging the impugned order of removal from service inflicted by the first respondent, Mr.R.Singharavelan, learned counsel appearing for the petitioner would contend that the impugned

order is the result of total non-application of mind to the facts leading to the charges and the explanation offered by the petitioner.

He would contend that there was no loss caused to the government since the so-called tarpaulins were purchased by the Village Presidents and the petitioner was nothing to do with the said purchase made by them and that in any event, the impugned order of removal from service is disproportionate to the nature of the charges and it is tainted with mala fide motive and illegalities and hence, liable to be set aside.

6. As regards the findings of the Enquiry Officer regarding the charges, learned counsel would contend that even assuming that the charges were proved, cannot be said to have constituted a misconduct or a grave misconduct attracting any charge under Rule 17 (b) as laid down by the Hon'ble Apex Court in AIR 1979 SC 1022. He would also contend that in fact, the petitioner by following the guidelines in G.O.Ms.No.195, dated 4.5.1998 which insists that the purchase of articles should be made through the Small Scale Industries, the petitioner had mere written a letter to the Village Presidents to purchase of tarpaulins in accordance with their financial status through the industry, namely, M/s.Global Industries which was admittedly a small scale industry and there was neither any compulsion nor any condition imposed insisting them to purchase tarpaulins. Being Village Panchayats, they are at liberty to exercise their discretionary power in the matter of purchase in accordance with the tender rules. Therefore, the learned counsel would contend that without considering the same, fixing the entire liability on the petitioner that too, admittedly, when he was not gained wrongfully, there is no justification on the part of the respondents in initiating the disciplinary proceedings against the petitioner by framing the charges under Rule 17(b). He would contend that it was not in dispute that the so-called industry M/s.Global Industries was a small scale industry as could be seen from the certificate dated 29.12.2002 and as per the standing orders, the petitioner has sent the Circular since while exercising the powers under Section III(J) of the Tamil Nadu Panchayats Act, 1994, it has been decided to purchase tarpaulins to watch television during night hours by the villagers and being a responsible officer, the petitioner never guided to his subordinate officials, but specifically stated in the circular that the concerned panchayats should follow the norms and procedures in the matter of purchasing the tarpaulins since the powers conferred under the Panchayats Act to the panchayats to purchase articles by its own and in fact, the village panchayats, after passing the resolutions, had purchased the tarpaulins from the said industry and therefore, the petitioner had not committed any irregularity. As regards the loss to the tune of Rs.24,58,009/- alleged to have been caused to the exchequer, the learned counsel would contend that the petitioner was not responsible for this since as per G.O.Ms.No.238, dated 25.7.1997, Block Development Officers

should inspect the panchayats and submit reports the same if any misappropriation of panchayat funds had taken place and admittedly, no reports in this regard were received and moreover, in audit inspection, there were no queries pointed out and the said tarpaulins were very much necessary for the above said purpose and further, they were rented by which, income derived by the panchayats. Therefore, there was absolutely no loss to the government exchequer.

7. As regards the charge No.6 framed against the petitioner for wantonly delayed the small mines royalty payment disbursement for the period 1996-97, the learned counsel would contend that though the Enquiry Officer has given categorical finding that it was not proved, holding that there were no specific remarks as regards delay made in monthly inspection report of the Director of Rural Development, however, the Government had erroneously without considering the true facts borne on record, differed from the said findings and held that it was proved. Likewise, though the Enquiry Officer held that the charge No.7 was not proved, holding that since there was heavy outstanding tax dues to be collected, it could not be held that the petitioner failed to inspect the duties of his sub-ordinates, the Government again differed the same and held erroneously that it was partly proved. With these contentions, the learned counsel sought for setting aside the impugned order of removing the petitioner from service and he lastly contended that the punishment of removal is disproportionate and cannot be sustained. He pointed out that two delinquents, namely, N.Ramalingam and S.Anwar Basha who were involved in similar charges, were let off and punishment of recovery of Rs.200/- alone and censure were only imposed respectively, whereas, for the petitioner, the indiscrimination punishment was inflicted, which is liable to be set aside.

8. On the other hand, Mr.R.Gomathynayagam, learned Addl.Advocate General would contend that the petitioner has committed very grave irregularities while acting as Assistant Director, Perambalur by issuing the Circular, dated 6.4.2000 to the village panchayats for purchase of 214 tarpaulins from his own selected industry, M/s.Global Industries with exorbitant rates, contrary to the tender norms and guidelines issued under G.O.Ms.No.195, dated 4.5.1998 and thereby caused a loss to the tune of Rs.7,67,110/- to the government exchequer. He pointed out that in fact, purchase of tarpaulins itself was not necessary and as per the provisions of the Tamil Nadu Panchayats Act, 1994, the village panchayats were conferred to purchase the articles by following the norms and procedure and the petitioner being an Officer, issuing the Circular for purchase of tarpaulins that too from a particular company without calling for tenders, clearly established his personal interest. He also pointed out that the petitioner had not obtained any prior approval from the District Collector for issuing the Circular and

therefore, the irregularities committed by him, were grave in nature and clearly proved during the enquiry, the Government has rightly imposed the punishment of removal from service, which requires no interference particularly in the facts and circumstances, where it has been proved that the petitioner had acted in illegal manner and committed grave irregularities.

9. As regards the contention of the learned counsel for the petitioner that two other delinquents, namely, N.Ramalingam and S.Anwar Batcha, who were involved in similar irregularities, were let off with minor punishment, the learned Addl.Advocate General would state that the charges framed against the said delinquents were entirely different since they had not set any circular like the petitioner, but only instructed to promote small scale industries and orally asked the subordinates to purchase tarpaulins, for which, disciplinary proceedings were initiated by placing under suspension and later it was found that the charges were not proved. Therefore, the petitioner cannot take advantage and by quoting their acts and claim benefit under the given and proven charges against him. With these contentions, the learned Addl.Advocate General sought for dismissal of the writ petition.

10. Heard both sides and perused the entire materials available on record.

11. A charge memo No.19335/01/DPC 3-1, dated 2.5.2001 was issued to the petitioner for the irregularities alleged to have been committed by him, while he was working as Assistant Director (Panchayats), Perambalur District, wherein, as many as 7 charges were framed under Rule 17(b), which in brief,

- i) That he sent a Circular to Presidents of Panchayats instructing them to purchase tarpaulins from the concern which is not in existence, without following the Government norms and procedures and he wrongly guided subordinates;
- ii) That he violated the rules and procedures of panchayats, without calling for tender rate and quote, he insisted the Presidents of Panchayats to purchase the tarpaulins;
- iii) That he caused loss to the revenue exchequer of pachanyats to the tune of Rs.24,58,009/-;
- iv) That he wantonly caused inordinate delay in budgetary settlements of 1999-2000 vis-à-vis state budget for second quarter;
- v) That he wantonly delayed to get beneficiary certificate after completing the 10th Finance Committee subsidy for the year 1999-2000;

- vi) That he wantonly delayed the small mines royalty payment disbursement for the period 1996-97; and
- vii) That he failed to supervise the inspection works of Block Development Officer, as well as his sub-ordinates and thereby violated Rule 20(1) of the Tamil Nadu Government Servant Disciplinary and Appeal Rules and he failed to follow integrity and involvement in work;

12. The petitioner has submitted his explanation, which found not satisfactory, an enquiry was conducted, wherein, after conducting the enquiry, the Enquiry Officer, has submitted his report, holding that the charges 1 to 3 were proved, while charges 4 to 7 were not proved.

13. It is not in dispute that the petitioner, while working as Assistant Director (Panchayats), Perambalur during 1999 to 2001, issued a Circular in Rc.No.884/2000/A3, dated 6.4.2000 to the all the Village Panchayat Presidents of Perambalur District, to procure tarpaulins for the use during Gramasabha and also suggested to purchase the same from one M/s.Global Industries, a Small Scale Industry and it is admitted fact that pursuant to the same, all the concerned village panchayats, numbering 173 had purchased 214 tarpaulins at the total cost of Rs.24,58,009/-. According to the respondents, it is the grave irregularity committed by the petitioner, for the following reasons, viz., i) the petitioner is not empowered to issue such Circular without getting prior permission from the higher authority, i.e. District Collector, ii) it is in violation of norms and procedures and guidelines issued in G.O.Ms.No.195, dated 4.5.1998, since the petitioner mentioned the name of the company from which, purchase has to be made, whereas, the procedure insists to call for tenders by the Committee headed by the District Collector and finalize the lowest quoted tender, if at all any purchase is necessary; and iii) that purchase of tarpaulins is nothing but waste since there was absolutely no necessity and if at all it was required, the government would have purchased at the time of purchase of televisions during the year 1995-96 itself; iv) that the purchase of tarpaulins was made at high rate than the existing market rate, thereby a loss to the tune of Rs.7,67,110/- had taken place.

14. At the outset, it is to be noted that issuance of the so-called Circular, dated 6.4.2000 to all the Presidents of Panchayats to purchase tarpaulins by suggesting an industry of his choice, was not categorically denied by the petitioner. While accepting the issuance of the Circular, the explanation given by the delinquent officer for the above said lapses, is that already there were circulars for purchase of tarpaulins issued by the department and there were no standing orders prohibiting purchase of tarpaulins for

panchayats and for smooth and effective functioning of panchayats, as a responsible officer, the petitioner had issued the said circular to purchase tarpaulins after following norms and procedures. It is to be noted that before issuing the said circular, the petitioner had not obtained any prior permission or atleast brought to the notice of the District Collector and further, he specifically suggested an industry, namely, M/s.Global Industries from which, they have to make purchase, without mentioning the procedure of tender process, etc., and by virtue of the same, the Panchayats were obliged to purchase the tarpaulins without following tender process and at the rates fixed by the said company and thereby, 214 tarpaulins were purchased at the cost of Rs.24,58,009/- which in fact, more than the prevailing market rate and thereby, a sum of Rs.7,67,110/- was caused as loss to the exchequer. By this, it is clearly proved that the petitioner has acted in the manner only in order to serve his personal interest and contrary to the rules and the procedure. During the enquiry, it has been duly established the above said lapses committed by the petitioner and that the purchase of tarpaulins itself was a wasteful expenditure. Therefore, on going through the findings of the Enquiry Officer as well as the Government differing from the findings of the Enquiry Officer in respect of Charge No.6 and 7, this Court does not find any irregularity or illegality in order to interfere with the same. It is not the case of the petitioner that the entire disciplinary proceedings were initiated against the petitioner with mala fide intention nor he pointed out any deficiencies or irregularities in conducting the enquiry.

15. It is settled law that the High Court cannot as an appellate body over the decision taken by the Disciplinary authority. In "Union of India versus Sardar Bahadur" reported in (1972) 4 SCC 618, the Hon'ble Supreme Court has held as under:

"A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt. If the inference that Nand Kumar was a person likely to have official dealings, with the respondent was one which reasonable person would draw from the proved facts of the case, the High Court cannot sit as a court of appeal over a decision based on it. Where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 to review the materials and to arrive at an independent finding on the materials. If the enquiry has been properly held the question of adequacy or reliability of the evidence cannot be canvassed before the High Court.

16. In "Apparel Export Promotion Council v. A.K. Chopra, reported in (1999) 1 SCC 759, at page 770, the Hon'ble Supreme Court has held as under in para 16:

"16. In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty."

17. Having regard to the above and as already held by this Court, the findings of the disciplinary authority holding that the charges as against the petitioner were proved, were based on evidence and material documents and in the absence of any perversity or illegality pointed out in such findings of fact, this Court is restrained to interfere with those factual findings while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. Further as regards the punishment, though the learned counsel for the petitioner would contend that dismissal from service imposed against the petitioner that too at the time of retirement, is too disproportionate to the proved charges and it is liable to be interfered with, this Court is of the view that the said punishment does not shock the conscience of this Court, in order to substitute its own opinion and impose lesser punishment or penalty, more particularly, wherein, the petitioner had committed serious irregularities, which led to considerable loss to the tune of several lakhs to the public exchequer. As regards the contention of the learned counsel for the petitioner that two delinquents, namely, N.Ramalingam and S.Anwar Basha who were involved in similar charges,

were let off and punishment of recovery of Rs.200/- alone and censure was only imposed respectively, whereas, the petitioner was imposed major penalty, is concerned, on perusal of the charges framed against the said delinquents, this Court found that the charges framed against the said delinquents were entirely different and admittedly, they had not sent any circular like the petitioner, but only instructed to promote small scale industries and orally asked the subordinates to purchase tarpaulins, for which, disciplinary proceedings were initiated by placing under suspension and later it was found that the charges were not proved. Therefore, the petitioner cannot take such stand having committed serious irregularities which were clearly proved.

For the foregoing reasons, the Writ Petition fails and it is dismissed. No costs. Consequently, connected MP is closed. However, it is needless to state that it is open to the petitioner to work out his remedy for retiral benefits, for which he is entitled to, in the manner known to law.

-s/d-
Assistant Registrar (CO)
Dt:23/1/2015

True Copy

Sub-Assistant Registrar

Suk

To

1. The Secretary to Government,
State of Tamil Nadu
Rural Development and Panchayat Raj,
Secretariat,
Chennai-09.

2. The Director of Rural Development,
and Panchayats,
Panagal Building,
Saidapet, Chennai-15.

+ 1 cc to Mr.R.Singgaravelan, Advocate SR 41

tej (co)
prk29/1

W.P.NO.1199 OF 2009