**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 16.11.2016**

**PRONOUNCED ON : 25.11.2016**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**

**W.P.(MD) No.4622 of 2011**

S.Arockiasamy ... Petitioner

-vs-

1.The District Collector
Sivagangai District
Sivagangai

2.The District Revenue Officer
Sivagangai District
Sivagangai ... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records of the second respondent, relating to R.C.No.A2/34769/2010, dated 08.12.2010 and R.C.No.A1/40572/09, dated 18.01.2011 and quash the same and consequently direct the first respondent to include the name of the petitioner notionally in the approved list of Tahsildars of the year 1997 and order notional promotion from the year of inclusion and re-fix the pensionary benefits within a specified time frame.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.S.Kumar
Addl. Govt. Pleader

**O R D E R**

The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the orders, dated 18.12.2010 and 08.01.2011, passed in R.C.No.A2/34769/2010 and R.C.No.A1/40572/09 respectively, passed by the second respondent and to direct the first respondent to include the name of the petitioner notionally in the approved list of Tahsildars for the year 1997 and to give notional promotion from the year of inclusion and re-fix his pensionary benefits within a stipulated period.

**2.** The writ petitioner was originally appointed as a Junior Assistant in the Revenue Department on 17.06.1966 and he had retired from service in the cadre of Tahsildar on 30.10.2001. While he was serving as a Firka Revenue Inspector in Nachiapuram Firka, Thiruppathur Taluk, Sivagangai District, charges under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, were framed against him. The gravamen of the charges were that the petitioner, instead of deputing an in-charge Village Administrative Officer, had taken up the responsibilities of the Village Administrative Officer, who went on leave, and recommended for irregular transfer of registry. The petitioner had not submitted any explanation and therefore, the Sub-Collector, Devakottai, vide proceedings in ந.க.அ3/12314/92, dated 09.08.1994, imposed a punishment of stoppage of increment for a period of three years without cumulative effect on him.

**3.** Challenging the punishment, the petitioner made an appeal to the second respondent on 12.09.1994. The second respondent, vide proceedings in ந.க.அ.2/68815/94, dated 28.02.1996, had confirmed the punishment imposed by the Sub-Collector, Devakottai. Aggrieved by the same, the petitioner preferred a second appeal, before the Principal Commissioner-cum-Revenue Administrative Commissioner, on 03.04.1996 and the said second appeal was also came to be rejected vide proceedings in f.vz;.gzpfs; 4(3)/ 77065/96-1, dated 23.08.1997. Against the said order of rejection, the petitioner filed a revision before the Secretary, Revenue Department, on 20.11.1997 and the revision was also came to be rejected.

**4.** Thereafter, the petitioner appeared to have made a representation to include his name in the panel list of Tahsildars for the year 1997 and the same was also rejected by the Secretary, Revenue Department, vide proceedings in க.எண்.33623/பணி 3(1)/99-2, dated 30.09.1999 and the request for promotion to the post of Tahsildar was also rejected by the Chief Secretary to Government in view of the currency of punishment. The review filed by the petitioner for setting aside the punishment imposed by the Sub-Collector, Devakottai, was finally rejected by the Secretary to Government, Revenue Department, vide G.O.(1D) No.645, dated 11.11.1999. Aggrieved by the order of rejection of review to set aside the punishment imposed by the Sub-Collector, Devakottai and the order of rejection of the representation to include his name in the panel list of Tahsildars for the year 1997, the petitioner filed O.A.Nos.8136 and 8069 of 1999 respectively, before the Tamil Nadu Administrative Tribunal and the same were transferred to the file of this Court and renumbered as W.P.Nos.39065 and 40004 of 2006 and this Court, after considering the facts and circumstances of the case, by order, dated 05.07.2010, directed the second respondent herein to consider the contentions raised by the petitioner in his appeal and pass a reasoned order, within a period of three months from the date of receipt of a copy of that order.

**5.** Thereafter, the second respondent issued a notice, dated 16.11.2010, directing the petitioner to appear in person along with supporting documents for enquiry on 29.11.2010 at 05.00 p.m., and accordingly, he appeared in person before the second respondent and recorded his submissions. However, he had not given any specific explanation in respect of the second charge framed against him, on the other hand he had denied it as bald and vague. After hearing the petitioner, the second respondent vide proceedings in ந.க.(அ2).34769/2010, dated 08.12.2010, again confirmed the punishment imposed by the Sub-Collector, Devakottai and vide proceedings, in ந.க.அ1-40572-09, dated 18.01.2011, rejected the request of relaxation of Rule 7(b) of Tamil Nadu Revenue Subordinate Service Rules in view of the punishment imposed on the petitioner. Challenging both the proceedings of the second respondent, the petitioner is before this Court.

**6.** When the matter was taken up for hearing, the learned counsel for the petitioner had insisted on hearing the matter without waiting for the counter affidavit. In view of the long pendency of the matter, this Court was also inclined to take up the matter for final hearing without waiting for the counter affidavit of the respondents, heard the submissions of both sides and disposing of the writ petition by this order.

**7.** The learned counsel appearing for the petitioner would submit that charges were framed against the petitioner on false facts. In fact, the petitioner had never assumed the charge of the Village Administrative Officer, who went on leave. It is only on the directions of the Tahsildar, who was the Superior Officer, the petitioner had taken up the responsibilities of the Village Administrative Officer.

**8.** The learned counsel appearing for the petitioner would further submit that the second respondent had arrived at the conclusion, without assigning any reason. Arriving at conclusion is different from giving reasons for arriving at such conclusion. The second respondent has failed to give reason for arriving at the conclusion of confirming the punishment. Therefore, the impugned orders are liable to be set aside and in support of his contentions, the learned counsel has placed reliance upon the decision in ***The Tamil Nadu Civil Supplies Corporation Limited & another v. S.Sampath***, reported in ***2005-1-L.W.795.***

**9.** The learned counsel appearing for the petitioner would further submit that non-exhaustion of alternative remedy is not a bar for entertaining the writ petitions. In support of his contention, the learned counsel has placed reliance upon the decisions in ***T.E.Vijayaraghavan v. Joint Commr., HR&CE Admn. Dept.***, reported in ***(2010) 3 MLJ 1066; Hindustan Petroleum Corporation Limited v. Geetha Kasturirangan***, reported in ***2010 (1) CWC 942*** and ***A.Natarajan v. Assistant Director (Quality Control)***, reported in ***2012 (1) CWC 424.***



**10.** The learned counsel appearing for the petitioner would further submit that the impugned orders of the second respondent are bad for non-application of mind and discrimination. In support of his contention, the learned counsel has placed reliance upon the decisions in ***N.Nandagopalan v. Secretary to Government***, reported in ***(2006) 3 MLJ 191; East Coast Railway v. Mahadev Appa Rao***, reported in ***(2010) 7 SCC 678; Sindhi Education Society v. Govt. (NCT of Delhi)***, reported in ***(2010) 8 SCC 49; N.S.Jayaraman & Sons v. Government of India***, reported in ***2010 (2) CWC 485; Kranti Associates (P) Ltd. v. Masood Ahmed Khan***, reported in ***(2010) 9 SCC 496, G.Prakasam v. Secretary to Government***, reported in ***(2011) 5 MLJ 417; V.P.Sureshkumar v. Deputy Inspector General of Police***, reported in ***(2011) 7 MLJ 1282; Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank***, reported in ***(2012) 1 MLJ 978 (SC); T.Kuppuswamy v. The Special Officer, Tambaram Co-op. Urban Bank Ltd.***, reported in ***2012 (1) CWC 729; M.Ramanathan v. Secretary to Government***, reported in ***(2016) 6 MLJ 627; P.Vasunathan v. The Secretary, Tamil Nadu Tourism, Culture and Religious Endowments (A-NI2-2) Department***, reported in ***2016 (2) CWC 493; The Secretary to Government v. G.Nagendran***, reported in ***2016 (2) CWC 445.***

**11.** In ***M.Ramanathan***'s case (cited supra), punishment of stoppage of increment was under challenge and the first attack was that there was unexplained delay in issuing the charge memo and the successor allowed the delinquent employee to go scot-free, even though he did not take action for the alleged misconduct.

**12.** The learned counsel appearing for the petitioner has mainly insisted upon the ground of discrimination. It is his contention that when the successor officer was not issued with a charge memo and he was allowed to go scot-free, the punishment imposed on the petitioner is bad and he also should have been let off. The decision relied on by the petitioner in ***M.Ramanathan***'s case (cited supra) is on different aspect. The delinquent therein and successor were working as Forest Rangers. The allegation was that as a Forest Ranger, the delinquent therein did not take any action against Ganja cultivation. His contention was that in spite of information were given to his successor, no charge memo was issued against him and he was allowed to go scot-free and the grounds raised by the delinquent therein attacking the order of punishment were not answered and it was considered as it was without application of mind and it amounts to discrimination.

**13.** The learned Additional Government Pleader appearing for the respondents would submit that the writ petition is not maintainable on the following reasons:

i. The petitioner has not chosen to implead the original authority, who had imposed the punishment as a party respondent to the writ petition and therefore, it is not maintainable for non-joinder of necessary parties;

ii. The petitioner has not availed the alternative remedy of appeal and revision;

iii. The petitioner had not chosen to deny the charges, when explanation was called for under 17 (a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules and without denying the charges levelled against him, he cannot now turn up and allege that the punishment is illegal.

iv. Even before the second respondent, the petitioner has not chosen to submit any specific reply in respect of the second charge. Instead, he had submitted that it is bald and without specific details. Therefore, in the absence of specific denial, it shall be constructed that the petitioner had admitted the guilt.

v. The petitioner had not availed the remedy of appeal, second appeal, revision and review to the hierarchy officers and having failed to avail the same, he has approached this Court with *mala fide* intention to pressurize the respondents to achieve his illegal object.

vi. Above all, the impugned orders of the second respondent are well reasoned and the decisions cited by the learned counsel for the petitioner would not support the case of the petitioner as they are not applicable to the present case.

**14.** The learned Additional Government Pleader appearing for the respondents would further submit that the punishment imposed on the petitioner is a minor punishment under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and it is not a major punishment. Therefore, the pleas of the petitioner are not sustainable and the writ petition is liable to be dismissed.

**15.** Heard both sides and perused the materials produced.

**16.** Admittedly, the petitioner was issued with a charge memo on 07.05.1993. He had not submitted his explanation for the charge memo. Therefore, the Sub-Collector, Devakottai, being the Disciplinary Authority, had imposed the punishment of stoppage of increment for three years without cumulative effect. At the threshold, the petitioner should have submitted his explanation denying the charges framed against him, but, he had failed to do so. Thereafter, while preferring appeal before the second respondent, he had taken a defence that based on the instructions of his Superior Officer, he had performed his duty as Village Administrative Officer. But, in respect of the second charge, on enquiry, it was found that it was an assigned land and transfer of registry was considered as irregular. In spite of the detailed imputation, the petitioner had chosen to brush it aside as bald and vague. Even in the enquiry conducted by the second respondent, the petitioner had not chosen to give a specific explanation to the said charge. The second respondent, in the impugned orders, has clearly mentioned the imputation of the delinquency, which led to the punishment and had given reasons for confirming the punishment imposed on the petitioner.

**17.** A perusal of the impugned orders of the second respondent would show that the second respondent has elaborately discussed the appeal grounds raised by the petitioner and the conclusion arrived at by the second respondent is based on the reasons given by him in the impugned orders. The learned counsel for the petitioner, during the course of arguments, would submit that the petitioner had retired from service on attaining the age of superannuation. At this stage, non-inclusion of the petitioner's name in the panel list for promotion to the post of Tahsildars for the year 1997 has to be considered. The non-inclusion of the petitioner's name in the panel list was due to currency of the punishment and for want of relaxation under Rule 7(b) of Tamil Nadu Revenue Subordinate Service Rules. Relaxation of Rule 7(b) is an independent cause of action. That cannot be mingled with the disciplinary proceedings. Therefore, in a writ petition challenging the punishment order, relaxation of rules cannot be a consequential relief. Therefore, the contentions of the learned Additional Government Pleader that the writ petition is bad for non-exhaustion of alternative remedy and non-joinder of necessary party have much force to reject the claim of the petitioner.

**18.** Further, in service jurisprudence, a person is entitled to doctrine of equality for enforcing positive rights. In other words, equality can be claimed based on vested legal rights granted to the similarly placed persons. In the present case, according to the petitioner, it is only on the directions of his Superior Officer, he had taken up the responsibilities of the Village Administrative Officer, when the incumbent V.A.O., was on leave. Since no disciplinary action was initiated against the said Superior Officer, the petitioner claimed that he is also entitled to go scot-free and the disciplinary proceedings initiated against him shall be dropped on the ground of discrimination. Such an argument cannot be sustained and the action of the respondents cannot be held as discriminatory. There cannot be equality in illegality. One wrong shall not be set right by another wrong. This amounts to negative equality. Postulation of such theory cannot be recognized. Therefore, on this ground also, the writ petition fails.



**19.** Further, this Court is also of the view that the writ petition is not maintainable for multiple reliefs of different cause of actions on disciplinary proceedings and on non-relaxation of Rules. Even assuming that the petitioner succeeds in this writ petition and punishment order is set aside, he could not be considered for promotion for want of relaxation of Rule 7(b) of Tamil Nadu Revenue Subordinate Service Rules. In such circumstances, the prayer sought for in this writ petition cannot be granted.

**20.** In the result, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

krk

To:
1.The District Collector, Sivagangai District,
Sivagangai.

2.The District Revenue Officer,
Sivagangai District, Sivagangai.

+1CC to Spl.Government Pleader Sr.No.73234
+1CC to Mr.S.Visvalingam, Advocate Sr.No.72861

GJM/SS2/15.12.16-7p-5C

**PRE-DELIVERY ORDER**
**IN**
**W.P.(MD) No.4622 of 2011**
**25.11.2016**