IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

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THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.28157 of 2014 and
W.M.P.Nos.1 and 2 of 2014

S.Manivannan ... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep by its
Secretary to the Government,
Revenue Department,
Fort St.George, Chennai 600 009.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The District Revenue Officer,
Kancheepuram District,
Kancheepuram. ... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in relation to G.O.(2D).No.587 Revenue [Personnel 4(2)] Department dated 17.07.2014 and quash the same and issue a consequential direction to the respondents to drop all further proceedings.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.T.M.Pappiah
Special Government Pleader

O R D E R

Heard Mr.R.Saseetharan, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader, appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in relation to G.O.(2D).No.587 Revenue [Personnel 4(2)] Department dated 17.07.2014 and quash the same and issue a consequential direction to the respondents to drop all further proceedings."

3.The case of the petitioner is as follows:

The petitioner was initially appointed as Land Surveyor on 21.07.1983. In the year 1989, his service was regularized. As such, on 29.09.2006, he was promoted as Sub Inspector of Survey. While working as Sub-Inspector of Survey, Chengalpattu, Kancheepuram District, he was issued a charge memo dated 27.11.2011, alleging certain acts of misconduct on his part.

4. According to the charge, he was involved in the process of changing name in the patta and other relevant records as well as computerized records in favour of one Mr.Kamalakannan, in respect of certain lands. He was also charged that he failed to bring to the notice of the Tahsildar about the fact that the Land Settlement Officer and Assistant Land Settlement Officer have no authority to grant patta in respect of Rytwary lands.

5. The petitioner submitted his explanation denying all the above charges. After hearing the petitioner, a similar set of charges has also been issued to various other officials. However, notwithstanding the detailed explanation submitted by the petitioner on 26.12.2011, an enquiry was conducted on the alleged charges. In the enquiry, no witnesses were examined and statement has been obtained from the petitioner alone in the enquiry. Thereafter, the Enquiry Officer submitted his report holding charges against the petitioner proved only on the basis of the statement obtained from the petitioner and also on the basis of certain Government Orders issued on the subject matter of the charges.

6. The petitioner has submitted his detailed explanation to the Enquiry Officer's report, pointing out certain infirmities in conducting the enquiry. However, the first respondent has passed the impugned order vide G.O.(2D) No.587, Revenue [Personnel 4(2)] Department dated 17.07.2014, imposing the punishment of stoppage of increment for one year with cumulative effect. Since the said order was passed by the first respondent, there is no appeal against the order and since the punishment imposed will affect his pensionary benefits, the petitioner is before this Court.

7. Upon notice, the learned Special Government Pleader entered appearance and filed a detailed counter and reiterated the averments made therein.

8. The learned counsel appearing for the petitioner would submit that the charges by itself are vague and cannot be the basis of any disciplinary action against the petitioner. He would submit that as a low level officer, there is no scope for his involvement in the process of changing name in the patta or relevant revenue records. It was only the duty of the Tahsildar and he was ultimately responsible for the change of patta or the change in any relevant revenue records.

9. The imputation of the charges also does not specifically deal with as to what kind of involvement can be attributable to the petitioner. In which event, the same cannot be a valid basis for the issuance of the charge. Moreover, he would submit that there was no proper enquiry as contemplated in the relevant rules. Even though it was a minor penalty proceedings, no proper opportunity has been offered to the petitioner when the charge has been stoutly denied by him. He would further submit that the second charge being failed to bring to the notice of the Tahsildar, with regard to the change of name in the patta and grant of patta in respect of Rytwary lands, cannot be a valid charge as against the petitioner, since the Tahsildar is ultimately responsible as the superior officer for carrying out directions and the petitioner being sub-ordinate to Tahsildar, he cannot give any directions to him, as to how he would discharge his duties as Tahsildar.

10. In the said circumstances, the learned counsel would submit that the charges cannot be countenanced both in law and on facts and the procedure followed in conducting the enquiry is also not fair and proper. Since no witnesses have been examined in respect of the charges and mere statement obtained from the petitioner, which alone formed the basis for the report holding the charges have proved.

11. On the basis of such findings, the first respondent has passed the impugned order, imposing penalty as stated above. According to the learned counsel for the petitioner, the order of the disciplinary authority does not contain any reasons, but merely recorded the enquiry proceedings and ultimately imposed the impugned penalty. Such order is a non-speaking order and the same is contrary to the relevant rules.

12. The learned Special Government Pleader, appearing for the respondents would submit that the charges are established in a properly conducted enquiry and the punishment imposed is the

minor one and therefore, the same is not liable to be interfered with. However, the learned counsel appearing for the petitioner would submit that the punishment apparently appears to be minor one but it is indeed a major penalty for the reason that the stoppage of increment with cumulative effect will certainly have considerable impact on the pensionary benefits payable to the petitioner for his entire life time. Moreover, during the pendency of the disciplinary action, his next avenue of promotion as Deputy Inspector of Surveyor, was denied to him and his juniors have been promoted by overlooking his seniority. In the said circumstances, the punishment is a major one because of the wider adverse implication affecting the service career of the petitioner.

13. This Court has given its anxious consideration to the rival submissions of the learned counsels and perused the materials and pleadings placed on record. This Court finds that there is a considerable force in contention put forth by the learned counsel appearing for the petitioner that the charges by themselves have no factual reasons or legal basis in order to bring them within a frame work of any misconduct. The charges appeared to be vague and did not disclose as to what kind of involvement was there on the part of the petitioner. Therefore, the said charges cannot be held as valid, since the petitioner being sub-ordinate to the Tahsildar, he cannot instruct the Tahsildar to discharge his duties as per the instructions issued by the superiors.

14. The third charge is merely a consequential one to the charges 1 and 2. Moreover, as rightly contended by the learned counsel for the petitioner that no proper opportunity has been given to the petitioner in the enquiry and the Enquiry Officer merely obtained the statement from the petitioner and held that the charges proved. Moreover, it is to be seen that the disciplinary authority has not given any reasons except recording the enquiry proceedings and issued the impugned penalty order dated 17.07.2014. The disciplinary authority should spell out the proper reasons as to why he has taken a particular course of action, particularly when he was imposing the penalty on the petitioner, which would have an adverse impact throughout the life of the petitioner. In the absence of such reasons, the order of the disciplinary authority cannot stand the test of judicial scrutiny.

15. For all the reasons stated above, the impugned order is set aside and the petitioner's pay shall be restored as it stood before the imposition of the impugned penalty. The petitioner is also entitled to all the consequential and attendant benefits on such restoration. Accordingly, the writ petition is allowed and

the authorities are directed to implement this order within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
The Government of Tamil Nadu
Revenue Department,
Fort St.George, Chennai 600 009.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The District Revenue Officer,
Kancheepuram District,
Kancheepuram.

+1 cc to M/s.R.Saseetharan Advocate sr 57432

W.P.No.28157 of 2014

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