



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.01.2017

DELIVERED ON: 01.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A. (MD) No.587 of 2011

WEB COPY

1.Angalaeswari

2.Minor Selvi Suba,

rep. by her mother and

natural guardian the

first petitioner herein.

.. Appellants/Petitioners

(Appellants 1 & 2 are brought on record as
Legal Representatives of the deceased /
Original petitioner G.Muniasamy, as per
the order of this Court in M.P. (MD).No.2/2010
in W.P. (MD).No.3728/2005, dated 20.07.2010)

Vs.

1.The Assistant Director,
Survey and Land Records,
Madurai.

2.The Commissioner and Director of
Survey and Settlement,
Chepauk, Chennai.

..Respondents / Respondents

Writ Appeal has been filed under Clause 15 of the Letters
Patent, against the order dated 26.10.2010, made in W.P.(MD).
No.3728 of 2005 by a learned Single Judge of this Court.

Prayer in WP(MD). 3728/ 2005 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorarified Mandamus, calling for all the records relating to
the Proceedings of the 1st Respondent issued in his reference
Na.Ka. Nee. A4/2957/03 dated 30/09/2003 and the order of the
Regional Deputy Director of Survey, Madurai issued in his
reference Na.ka. A3/8329/2003 dated 01/04/2004; and the order of
the Additional Director of Survey, Chennai in his ref. Na.Ka.
La1/18611/2004 dated 04/08/2004; and the order of Commissioner and
Director of Survey and settlement, Chennai, issued in his
reference Na.Ka.Gna2/38999/2004, dated 09.02.2005, to quash the
same and to direct the respondents to reinstate the petitioner in
service with backwages together with all the attendant benefits.



For respondents

: Mr.N.S.Karthikeyan,
Additional Government Pleader

JUDGMENT

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

The appellants herein are the legal heirs of the deceased G.Muniasamy, who had filed a writ petition in W.P.(MD).No.3728 of 2005 before this Court. Since the petitioner viz., G.Muniasamy died, during the pendency of the said writ petition, the appellants herein were impleaded as petitioners in that writ petition. A learned Single Judge of this Court, vide order dated 26.10.2010, refused to interfere with the impugned orders dismissing the original writ petitioner viz., G.Muniasamy from service and thereby, dismissed the said writ petition. As against that order, the appellants herein have filed this writ appeal.

2.The brief facts which are necessary for the disposal of the present appeal are as follows;

(a) The deceased G.Muniasamy viz., the original writ petitioner was appointed as Draftsman in the Department of Survey, Madurai District, on compassionate ground, after the death of his father - Gurusamy, by the Assistant Director of Survey, Madurai on 20.10.1994. Prior to the death of the father of the original petitioner, the elder brother of the original petitioner was appointed as Section Writer through the Employment Exchange in the Department of Survey. Since the original petitioner's brother did not support the family monetarily and had his residence elsewhere, the Assistant Director appointed the original petitioner on compassionate ground. While so, in the year 1996, the Director of Survey issued a termination order stating that the appointment of the original petitioner on compassionate ground is not correct. Against the said order, the original petitioner filed O.A.No.5786 of 1996 before the Tamil Nadu Administrative Tribunal. Pending disposal of the said petition, the Tribunal had stayed the impugned order and therefore, he was allowed to continue in the service as Draftsman.

(b) While continuing so, in the year 2003, the first respondent issued a charge memo dated 26.02.2003 to the original petitioner alleging that for personal gains, he played fraud by forging the signature of the Deputy Tahsildar for preparing bogus chitta and Adangal under Natham Land Tax Scheme in respect of a land measuring to an extent of 0.40.00 hectare in S.No.134/2 in patta No.1425 situated at Tallakulam Village, Madurai North Taluk, in the names of S.Venkatapathy S/o.Srinivasan and Krishnaswamy, S/o.Perumalsamy and in that regard, he attempted to get the seal of the Government in the Office of the Madurai North Taluk for affixing it on the fake records. After enquiry, the first respondent dismissed him from service on 30.09.2003. The subsequent appeals filed by the original petitioner were also dismissed by the appellate authorities. Challenging the said

orders, the original petitioner has filed the writ petition.

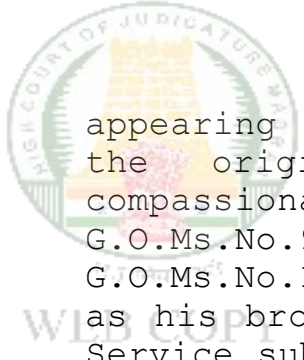
(c) During the pendency of the said writ petition, due to the abolition of the Tamil Nadu Administrative Tribunal, O.A.No.5786 of 1996, which was filed by the original petitioner challenging the termination order, was transferred to the file of a learned Single Judge of this Court and renumbered as W.P.No.21695 of 2006. The learned Single Judge, by order dated 29.11.2006, has closed W.P.No.21695 of 2006 holding that it is unnecessary to go into the dispute on hand, since the original petitioner was imposed with a penalty of dismissal from service in pursuance of the disciplinary proceedings initiated against him.

(d) When the present writ petition came up before a learned Single Judge of this Court, the learned Single Judge, by an order dated 26.10.2010, has rejected the relief claimed by the original petitioner holding that the order, dated 29.11.2006, passed in the earlier writ petition pertaining to the status of the original petitioner has become final as the appellants have not challenged the same by way of appeal, etc., and hence, the appellants have no locus standi whatsoever to seek the present prayer. Challenging this order, the present writ appeal has been filed.

3.The learned counsel appearing for the appellants submitted that no oral evidence was taken from any person concerned, before levelling the charges against the original petitioner and no witness was examined in the presence of the original petitioner and no opportunity was given to prove the falsity of the charges. More over, the enquiry officer himself had come to the conclusion that it was not possible to find out as to who had prepared the bogus adangal and chitta and who had forged the signature found in it. Therefore, this is a case of no evidence. Under such circumstances, the learned Single Judge by dealing with the merit of the case ought to have set aside the dismissal order. On the other hand, the learned Single Judge dismissed the writ petition holding that since the closure of the earlier writ petition has not been challenged by way of appeal, the status of the original petitioner i.e., terminated employee has become final and the effect of the interim order of stay operating in favour of the original petitioner in the earlier writ petition is once for all taken away and thus the original petitioner has no locus standi to seek the prayer in the present writ petition. Thus, the learned counsel for the appellants submitted that the present writ petition has not been decided on merits. He has further submitted that the appellants will have a right to challenge the order passed in the earlier writ petition only if the present writ appeal is allowed and the impugned orders are quashed. Thus, he prayed to allow the appeal.

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4. Countering the submissions made by the learned counsel for the appellants, the learned Additional Government Pleader



appearing for the respondents submitted that the appointment of the original petitioner viz., G.Muniasamy (deceased) on compassionate ground was found to be irregular by reason of G.O.Ms.No.998, Labour and Employment, dated 02.05.1981 and G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, as his brother by name G.Ganesan was appointed in the Government Service subsequent to the death of their father and therefore, the original petitioner was terminated from service. Challenging the said order, the original petitioner filed O.A.No.5786 of 1996 and pending disposal of the said O.A., the Tamil Nadu Administrative Tribunal has granted interim stay of the impugned order of dismissal from service. Based on the said order, the original petitioner has been continuing in service. While continuing so, the original petitioner had been involved in the acts of misconduct. The first respondent, after conducting detailed enquiry and granting sufficient opportunity, has dismissed him from service and the same was also affirmed by the appellate authorities. He has further submitted that the termination order has reached its finality as the appellants have not chosen to challenge the said order passed by the learned Single Judge of this Court for the past 11 years. Under such circumstances, the order passed by the learned Single Judge in this writ petition cannot be found fault with.

5. That apart, the learned Additional Government Pleader has further submitted that it is incorrect to state that the misconducts of the original petitioner has not been proved and that absolutely there is no evidence. In fact, one Mr.Bose, Office Assistant, had categorically stated in his evidence that on 21.02.2003 the bogus Chitta and Adangal were given to him by the original petitioner for getting Office seal. Mrs.G.Usharani, former Deputy Tahsildar, has also stated in her evidence that the signature found in the patta does not belong to her. In fact, the original petitioner gave a statement to the effect that one Mariappan had asked him about getting Office seal and on humanitarian ground, he took him to the North Taluk Office, Madurai for getting seal and he has not seen him earlier. But, on the contrary, the original petitioner, subsequently, in the written statement had stated that the said Mariappan is known to him for about 6 months. As per the request of the original petitioner, oral enquiry was conducted and the witnesses were examined. The enquiry report was also served to him calling for explanation. He has also submitted his explanation, in which he had admitted that all the opportunity was given to him. Hence, now the appellants cannot say that without giving any opportunity to the original petitioner, the impugned orders have been passed. Thus, he sought for dismissal of the appeal.

<https://hcservices.courts.gov.in/hcservices/> the submissions made on either side, we have carefully gone through the entire materials available on record, including the files produced before this Court by the learned



Additional Government Pleader.

7. The main submission made by the learned counsel for the appellants is that the order of dismissal has been passed against the original petitioner based on no evidence and that the original petitioner has not been given sufficient opportunity and under such circumstances, the impugned order of dismissal is liable to be set aside. In order to appreciate this submission, we have to look into the charges framed against the petitioner. There are four charges framed against the original petitioner. On perusal of the charges, we find that apart from the charge of forging the signature of the Deputy Tahsildar in the documents, there are other charges to the effect that the original petitioner made an attempt to get the seal of the Government in the bogus Chitta and Adangal in the Taluk Office, Madurai North for personal gain. Before the Enquiry Officer one Mr. Bose, Office Assistant and one Mrs. G. Usharani, former Deputy Tahsildar, have adduced evidence against the original petitioner. Apart from that, as rightly contended by the learned Additional Government Pleader, though the original petitioner had stated at one place that one person whose name ascertained as Mariappan later approached him for getting the office seal and on humanitarian grounds, he took him to Madurai North Taluk Office for getting seal in the Chitta and Adangal brought by him, in the other place he has contradictorily stated that Mr. Marippan came to him on 19.02.2003 at 3.00 p.m. and that he knows the above person for the past six months. Thus, it is clear that there are materials to prove some of the charges of the original petitioner.

8. Further, there is no mala fide alleged against the enquiry officer. It is seen from the record that the enquiry report was served with the original petitioner, for which he has also submitted his explanation on 24.06.2003. In the very same letter, dated 24.06.2003, the original petitioner has stated as follows;

"ஐயா,

எனக்கு வழங்கப்படவேண்டிய வாய்ப்புகள் வழங்கப்பட்டது என்பதையும் அதை நான் முழுமையாக பயன்படுத்திக் கொண்டேன் என்பதையும் விசாரணை மற்றும் நான் அளித்த வாக்குமூலம் விளக்கங்கள் அடிப்படையிலும் ஆவணங்கள் அடிப்படையிலும் இறுதி ஆணை வழங்க கேட்டுக் கொள்கிறேன்."

The above admission made by the original petitioner makes it clear that he has been granted sufficient opportunity. Therefore, the submission of the learned counsel for the appellants that the impugned order of dismissal has been passed without providing sufficient opportunity to the original petitioner is rejected.

9. So far as the disciplinary proceedings are concerned, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt, because a disciplinary proceeding is not a criminal trial. In this regard, a reference could be placed in the decision of the Hon'ble Supreme Court in



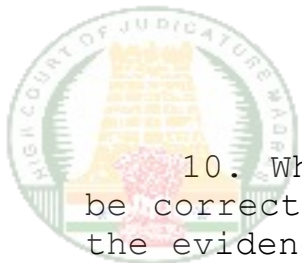
Government of T.N. vs. A.Rajapandian reported in 1995 (1) SCC 216, wherein the Hon'ble Supreme Court in Paragraphs 9 and 10, has held as follows:

"9. This Court in Union of India v. Sardar Bahadur reported in 1972(4) SCC 618, 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 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 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 of reliability of the evidence cannot be canvassed before the High Court."

10. In Union of India v. Parma Nanda reported in 1989 (2) SCC 177, this Court observed as under:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the person for misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

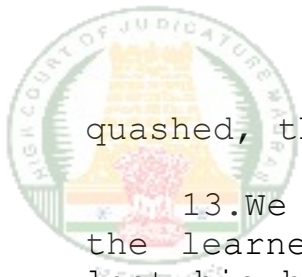


10. When a question arose as to whether the High Court would be correct in law to appreciate the evidence, the manner in which the evidence was recorded and record a finding in that behalf, the Hon'ble Supreme Court in the decision in *Rae Bareilly Kshetriya Gramin Bank v. Bhola Nath Singh and others* reported in 1997 (3) SCC 657, at Paragraph 6, has held as follows;

"The judicial review is not akin to adjudication of the case on merits as an appellate authority. The High Court, in the proceedings under Article 226 does not act as an appellate authority but exercises within the limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice."

11. From the above decisions, it is clear that while exercising jurisdiction under Article 226 of the Constitution of India, interference with the decision of the departmental authorities can be permitted, if such authority had held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration of extraneous facts to the evidence and merits of the case, or if the conclusion made by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds which are very similar to the above. Further, it is also clear that if the enquiry has been conducted properly, then the question of adequacy or reliability of the evidence cannot be gone into by this Court, because the jurisdiction of the High Court under Article 226 of the Constitution of India, is a supervisory one and not an appellate one. Here, in this case, we do not find any infirmity or illegality in the impugned orders passed by the respondents.

12. It is yet another submission of the learned counsel for the appellants that the finding rendered by the learned Single Judge that unless and until the case relating to the termination order is decided on merits, the original petitioner cannot challenge the present disciplinary proceedings, since he had lost such status by virtue of the dismissal order passed in W.P.No.21695 of 2006, whereby the effect of interim order of stay operating in favour of the original petitioner was taken away once for all, is not correct. According to the appellants, in the earlier writ petition viz., W.P.No.21695 of 2005, the question as to whether the compassionate appointment was legally valid or not, has not been decided on merits, on the other hand, the learned Single Judge dismissed the writ petition only on the ground of subsequent order dismissing him from service and therefore, if the impugned orders challenged in the present writ petition are



quashed, they will get a chance to reopen W.P.No.21695 of 2005.

13. We are not inclined to accept the above submissions made by the learned counsel for the appellants, because a person, who lost his bus long back, now cannot say that he already reserved a seat in that bus. Admittedly, even before the closure order, dated 29.11.2006, passed by the learned Single Judge of this Court in W.P.No.21695 of 2005, the original petitioner has filed the present writ petition viz., W.P.(MD)No.3728 of 2005. It is the duty of the petitioner to bring to the knowledge of the Court about the pendency of the said writ petition. But, he has failed to do so. If the original petitioner had brought to the knowledge of the Court about the pendency of the present writ petition, then both the writ petitions would have been tagged and heard together, and decided on merits or at least the original petitioner might have been given liberty to revive the said writ petition in case of getting favourable order in the present writ petition. Even after closure of the said writ petition, the original petitioner could have very well challenged the same by way of appeal. But, he has not challenged the same. Now, 11 years have passed. The learned Single Judge has held that the order, dated 29.11.2006, passed in the earlier writ petition pertaining to the status of the original petitioner has become final as the original petitioner or the appellants have not challenged the same by way of appeal and hence, the appellants have no locus standi whatsoever to seek the relief in the present writ petition. We do not find any infirmity or illegality in the order passed by the learned Single Judge

14. In view of the above, this writ appeal is liable to be dismissed and accordingly dismissed. No costs.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To

1.The Assistant Director, Survey and Land Records,
Madurai.

2.The Commissioner and Director of Survey and Settlement,
Chepauk, Chennai.

+1CC to M/S.Kannan, Advocate, SR.No. 11974

+1CC to the Special Government Pleader, SR.No. 11937

Judgment made in
Writ Appeal (MD) No.587 of 2011
01.03.2017