BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 15.02.2017
Reserved on : 01.12.2016
CORAM :

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.(MD).No.9349 of 2011
and
M.P(MD)No.1 of 2011

S.Chandran .. Petitioner

vs.

1.The State of Tamilnadu Rep.
by the Secretary to Govt.,
Revenue Department,
Secretariat,
Chennai - 9.

2.The Special Commissioner & Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai – 5.

3.The District Collector,
Tuticorin.

4.Tamilnadu Public Service Commission Rep.
By the Secretary,
No.1, Greams Road,
Chennai – 6. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondents 3, 2, 1 in connection with the orders passed by them in their Proc.Na.Ka.A7/30863/2006 dated 10.01.2008, Roc.No.Ser 4 (4) 21456/08, dated 14.07.2008 and G.O.(2D)No.317, Revenue (Ser.6(1)) Department, dated 01.08.2011 respectively and quash the same and direct the respondents to pay all the service and monetary benefits withheld by the respondents because of the punishment orders referred to above by issuing writ of Certiorarified Mandamus.

For Petitioner : Mr.D.Selvanayagam

For Respondents : Mr.Mr.K.Guru (for R1 to R3)
Government Advocate
Mr.K.K.Senthil (for R4)

O R D E R

The instant Writ Petition is filed to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondents 3, 2, 1 in connection with the order passed by them in their Proc.Na.Ka.A7/30863/2006 dated 10.01.2008, Roc.No.Ser 4(4) 21456/08 dated 14.07.2008 and G.O.(2D) No.317, Revenue (Ser.6(1)) Department, dated 01.08.2011 respectively and quash the same and direct the respondents to pay all the service and monetary benefits withheld by the respondents because of the punishment orders referred to above by issuing writ of Certiorarified Mandamus.

2.The case of the petitioner is that he was appointed as steno cum typist through Tamil Nadu Public Service Commission. The petitioner was promoted as Assistant in the year 2002 and was transferred to the post of Revenue Inspector in the year 2004. Subsequently, the petitioner was promoted as Deputy Tahsildhar on 28.07.2011 and he is working in the said post till date. While so, a charge memo dated 12.05.2016 was issued to the petitioner by leveling 3 charges against him which are as follows:

"1.Charge No.1:-

That inspite of the direction given by the Tahsildar, Tuticorin vide his letter dated 21.10.2003 that there should not be any Registration of documents in respect of dry lands in Village Survey No.1705/1, Meelavittan Part-1, Tuticorin Taluk to the Sub- Registrar, Tuticorin, I had effected for the transfer of patta in respect of the above lands in the name of Peter Jayaraj in Patta No.2043 without even verifying the Village Accounts and vide his file in the file No. A.D.R.4142/2005-2006.

2.Charge No.2:-

That the delinquent had helped the Private party to take the possession of the Government lands.

3.Charge No.3:-

That the delinquent had violated Rule 20 of the Tamil Nadu Government., Servants Conduct Rule 1973 by avoiding the work in Government Service with proper attention and honesty."

3.The petitioner had submitted his explanation to the charge against him on 15.10.2006. The Explanation is as follows:-

Rebutting the charges on the ground that the lands in village S.No.1705/1, as per Village Account and in the Computerized Patta proceedings, already classified as Patta Land and Patta also was given to the previous owner. The above entries are not entered by the petitioner either in the Village Account or in the

Computerized Account. The petitioner further stated that on the basis of the earlier entries in the Village Account and Computerized Patta, the petitioner has issued the Patta to one Peter Jeyaraj.

4.The petitioner further contented that it is not known to him as to why there is no attempt to find out the persons who issued Computerized Patta and entries made as Patta Lands in the Village Account. Followed by the charge memo, an enquiry was conducted and the enquiry officer in his report dated 27.04.2007 has held that all the 3 charges leveled against the petitioner were not proved. But despite that the District Collector, the 3rd respondent refused to accept the enquiry report and passed the order of punishment of stoppage of increment for the period of 1 year with cumulative effect by his order dated 10.01.2008. The petitioner has preferred an appeal to the 2nd respondent and the same was rejected by his order dated 14.07.2008. As against the same, the petitioner has preferred a revision petition to the 1st respondent and the 1st respondent after getting the opinion from the Tamil Nadu Public Service Commission, the 4th respondent herein, confirmed the order of punishment by his order dated 01.08.2011. As against the above said orders of the respondents 1 to 3 dated 10.01.2008, 14.07.2008 and 01.08.2011 respectively, the petitioner has filed the present writ petition by challenging the said orders as illegal and arbitrary.

5.The respondents 1 to 3 filed their counter affidavit and contented that the petitioner before his recommendation to issue transfer of patta in the name of Peter Jeyaraj, has to verify the Taluk and Village “A” Register and Village Adangal and to make necessary field enquiry and inspection of land. But the petitioner has not followed any of the procedure mentioned above and therefore, the petitioner allowed the individual to take possession of the valuable Government land. Hence the petitioner has committed serious lapse in his official position as Firka Revenue Inspector.

6.The respondents further contended that the charges were framed against the petitioner for his recommendation of transfer of government land to some individual without proper enquiry and not for making false entry in the government records and therefore the issue regarding defaulter in making wrong entries is a separate matters and not connected with the charges framed against the petitioner. The further contention of the respondents is that the petitioner was working as Revenue Inspector at the relevant point of time, he should have known all the government lands within his jurisdiction with public interest and have a vigil to protect government land and that also his official duty and responsibilities but the petitioner failed to do so. Therefore the respondent contented that the charges framed against the petitioner and the punishment of stoppages of increment for 1 year with cumulative effect is sustainable under law and the same is not warranted interference by this Court. The order of rejection of the appeal and revision by the respondents 2 and 1 respectively are perfectly correct and there is no violation.

7.I heard Mr.D.Selvanayagam, learned counsel appearing for the petitioner, Mr.K.Guru, learned Government Advocate, appearing for the respondents 1 to 3 and Mr.K.K.Senthil, learned counsel appearing for the 4th respondent and gone through the entire records.

8.According to the petitioner, he was issued with 3 charges namely on the allegation that he has recommended for only on the basis of computerized patta without verifying the Taluk and Village "A" Register and Adangal thereby violated rule 20 of the Tamil Nadu Government Servant Conduct Rule, 1973 by avoiding the work in Government service without proper attention and honestly. For the said charges laid against the petitioner, enquiry was conducted and the enquiry officer held that all the charges laid against the petitioner were not proved. However, the 3rd respondent, District Collector ordered punishment of stoppage of increment for one year with cumulative effect.

9.The main contention urged on the side of the petitioner is that the Tashildhar of Tuticorin by his letter dated 21.10.2003 addressed to the Sub-Registrar of Meloor in Tuticorin District stated that there are several Survey Numbers which are classified and assessed dry lands of government including S.No.1705/1 and the said lands were wrongly classified as patta land and issued with patta. Therefore, the Tahsildhar requested the Sub-registrar concerned not to register any document relating to the Survey Numbers mentioned in the said letter. As rightly pointed out by the learned counsel for the petitioner, a perusal of the said letter would disclose that the same was not marked to any Revenue Authorities including the petitioner as Revenue Inspector, except the District Collector and District Registrar. Therefore, the contention of the petitioner is that he was not aware of the letter dated 21.10.2003 of the Tahsildhar, Tuticorin is having force to justify his case. Further it is specifically contented by the Learned Counsel for the petitioner that on the basis of the said letter, no steps were taken to include the Survey number 1705/1 in the village records as it is a government poromboke land. The said contention of the petitioner was not rebutted by the respondents either in their counter or in their oral submissions.

10.That apart, the petitioner has referred the proceedings of the District Collector dated 09.08.2004, wherein a circular was issued with regard to the procedure to be followed in the matter of patta transfer. In the said proceedings, it is stated that the government has introduced a website by name "TAMIL NILLAM" and in the said circular of the District Collector, Tuticorin it is specifically stated that the Revenue Inspector of respective

Taluks could recommend for transfer of patta on the basis of the information available in the computer. Therefore, in this case, the reason assigned by the petitioner is justifiable as he has recommended for the issuance of patta stood in the name of the previous owner to the present purchaser is by following the circular of the District Collector, Tuticorin dated 09.08.2004.

11.Apart from that the enquiry officer appointed by the 3rd respondent, has clearly held that the petitioner cannot be blamed for the recommendation of issuance of patta transfer in the name of Peter Jeyaraj on the ground that the petitioner was not in a position to know about the letter of the Tahsildhar, Tuticorin dated 21.10.2003 sent to the Sub-registrar Mellur, since the said letter was not communicated to the petitioner or to any other Revenue Officials and the contention of the said letter was not recorded stay book being maintained at the office of the Tahsildar. Therefore, the 3rd respondent while imposing the punishment to the petitioner by stoppage of increment for a period of 1 year with cumulative effect has not at all considered the above said reason assigned by the enquiry officer, but he mechanically stated that the petitioner failed to verify the "A" Register and Village Adangal.

12.Further, the impugned order of the 3rd respondent has not distinguished the findings of the enquiry officer. It is imperative on the part of the 3rd respondent, especially while he differing with the findings of the enquiry officer, he has to give independent, justifiable reason as to how and why he differed with the findings of the enquiry officer. The perusal of the impugned order of the 3rd respondent would show that, he on his own without meeting out the findings of the enquiry officer, given his findings is unsustainable in the service jurisprudence. Therefore the impugned order of the District Collector, Tuticorin go to show his non-application of mind to the total facts and circumstance of the events related with the charges. In this context this Court in ***Tmt.D.Vijayalakshmi v. The Chairman, Tamilnadu Slum Clearance Board*** in W.P.No.20229 of 2007 and W.P.No.18607 of 2008 dated 27.08.2009 has held that in the present case on hand the enquiry officer has given a clear finding based upon the materials available exonerating the petitioner from all the charges. No doubt, the power is conferred upon the respondent to accept or differ the findings on the report of the enquiry officer. The disciplinary officer can differ with the findings of the enquiry officer and in that case, he has to point out the differences and on that basis consider and proceed to issue a show cause notice calling for the explanation from the delinquent officer. So in the opinion of the Court the non-application of the mind would make the impugned order is unsustainable.

13.Apart from that this court puts its anxious consideration whether the impugned order of the appellate and revisional authority are justifiable. The perusal of those orders passed by the respondents 1 and 2 would show that it is only a reproduction of the impugned order of the 3rd respondent without any independent application of mind. It is on the part of the appellate and revisional authorities to analyze the facts of the case in depth, since the charges are relating to the service of an employee. Further, the appellate and revisional authorities are not curtailed by any statues to analyze the facts and all the relevant circumstances and record related to the charges. In the absence of non-application of independent mind on the part of the respondents 1 and 2 are liable to be interfered with this court. Accordingly the impugned orders of the respondents 1 to 3 are warranting interference by this Court. Hence, for the foregoing discussion, this court has no hesitation to quash the impugned orders of the 1 to 3 respondents. Accordingly all the 3 impugned orders of the respondents 1 to 3 dated 10.01.2008, 14.07.2008 and 01.08.2011 are hereby set-aside and consequently the petitioner is entitled to get all the monetary benefits withheld by the respondents in view of the order of punishment.

14.In the result:

a) this writ petition is allowed, by setting aside the order passed by the respondents 3, 2 and 1 in Proc.Na.Ka.A7/30863/2006 dated 10.01.2008, Roc.No.Ser 4(4) 21456/08 dated 14.07.2008 and G.O.(2D)No.317, Revenue (Ser.6(1)) Department, dated 01.08.2011 respectively;

b) the respondents are hereby directed to pay all the service and monetary benefits withheld by the respondents because of the impugned punishment orders;

(c) the respondents are hereby directed to complete the said exercise within a period of eight weeks from the date of receipt of copy of this order. No costs.

Sd/-
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

1.The Secretary,
Government of Tamilnadu,
Revenue Department,
Secretariat, Chennai - 9.

2.The Special Commissioner & Commissioner
of Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 5.

3.The District Collector,
Tuticorin.

4.The Secretary,
Tamilnadu Public Service Commission,
No.1, Greams Road,
Chennai - 6.

+1 cc to Mr.K.K.Senthil , Advocate in SR.No. 8548
+1 cc to Mr.D.Selvanayagam , Advocate in SR.No. 8251

vs/skn
AE/SKN/SAR2/05.04.2017/7P/7C

W.P.(MD).No.9349 of 2011
and
M.P(MD)No.1 of 2011
15.02.2017