

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.18825 of 2008
and
M.P.No.1 of 2008 &
M.P.No.1 of 2009

R.Kathiresan

...
Petitioner

Vs.

1.The Secretary to the Government and
Agricultural Production Commissioner,
Agriculture Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Agriculture,
Chepauk, Chennai-600 005.

...Respondents

Prayer:-

Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the impugned order of the 1st respondent in G.O (3D) NO.135 Agriculture (Ve.Ni.7) Department, dated 18.06.2008 and quash the same.

For Petitioner : Mr.P.Rajendran

For Respondents : Mr.Thangayadhana Balakrishnan
Additional Government Pleader

ORDER

This petition has been filed seeking to call for the records relating to the impugned order of the 1st respondent in G.O (3D) NO.135 Agriculture (Ve.Ni.7) Department, dated 18.06.2008 and quash the same.

2.The case of the petitioner before this Court is as follows: The petitioner while working as Field Demonstration Officer in the Office of the Assistant Director of Agriculture, Agriculture Extension Centre, Manamadurai, Sivagangai District, in 1999, a Charge Memo was issued by the Director of

Agriculture, Chennai in Proceedings No.Pa.O.Na.2/24/6470/99 dated 15.11.1999 wherein six charges were framed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner submitted his explanations denying the charges on 22.12.1999 and the Enquiry Officer was appointed to conduct an enquiry to the said charges, and he has held the enquiry and submitted the report to the Special Commissioner and Secretary to Government, Agriculture Department Chennai, by holding him guilty of all the charges. A copy of the Enquiry Report was communicated to the petitioner by the Special Commissioner and Secretary to the Government, Agriculture Department, in Letter No.5481/Ve.Ni-7/2001-3, Agriculture Department, dated 27.06.2001 and called him to submit his further explanations if any. After considering his explanations, on 18.07.2002, the Secretary to the Government (The 1st respondent herein) has passed an order in G.O (3D) No.135 Agriculture (Ve.Ni.7) Department, dated 18.06.2008 imposing the punishment of Stoppage of Increment for 12 months without cumulative effect and also directing recovery of a sum of Rs.97500/- from the salary of the petitioner in 98 installments by order dated 18.06.2008 which has been challenged before this Court by filing this Writ Petition.

3.The petitioner has raised various grounds and stated that the impugned order has been passed on the basis of the Commission's letter. The 1st respondent ought to have communicated a copy of the said letter to the petitioner before issuing the impugned order and he ought to have given an opportunity to explain his stand and the said act violates the principle of natural justice. The Commission's report, which was relied upon and the impugned order, cannot be sustained in law.

4. The petitioner would further contend that the findings of the enquiry officer were not based on the acceptable evidence. On the careful perusal, it will prove that the petitioner is not at all guilty of the charges levelled against him and the same is perverse and cannot be sustained in law, and the additional explanations submitted by him with regard to the findings of the enquiry officer, the Disciplinary Authority, namely, the 1st respondent has not considered and no reason for rejecting the said explanations were given in the order and the opportunity was not given to him.

5.The learned counsel for the petitioner would also contend that the penalty is specified under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. "Recovery from pay" is also a penalty specified under the said Rule and

two penalties have been imposed for the same charges. The respondents have not considered that the petitioner was not at all available in the office on the alleged incident took place and he was on leave which was sanctioned by the competent authority. However for the misconducts committed by the Agricultural Development Officer during the absence of the petitioner, the petitioner cannot be held responsible and the finding that the petitioner has taken leave only to avoid the said incident is arbitrary and unfair, to punish the petitioner for the misconducts committed by others, has to be set aside. In the absence of any finding to the effect that the petitioner caused loss to the Government, the punishments of stoppage of increment cannot be imposed against him. By the impugned order, two punishments, namely, Stoppage of increment for 12 months without cumulative effect and recovery from pay have been imposed. Hence, the petitioner has prayed to quash the impugned order and allow the Writ Petition.

6. The counter affidavit has been filed by the respondents in detail. The learned Additional Government pleader appearing for the respondents would contend that the petitioner's allegation that, he has been punished for no mistake of him cannot be accepted. He would further submit that during the year 1999, ADT.36 certified Paddy Seeds have been transferred from Sivagangai District to Thanjavur District and these Paddy Seeds were purchased by the farmers and sowed in their fields, and found later to be mixed variety of medium duration variety and ADT.36 Paddy Seeds. Hence 61 farmers, in 162.81 acres were suffered loss due to the mixing of the Paddy Seeds, and they sought for compensation and the Government have decided to give a relief of Rs.2000/- per acre and a sum of Rs.3,25,000/- was sanctioned by the Government to compensate the loss sustained by the farmers. That apart, the Government had instructed the authorities to conduct enquiry and take disciplinary action against the officials, who were responsible for the said act, due to which the Government suffered loss and also instructed to recover the loss amount from the erred official and send the report to that effect. Hence, the disciplinary action was initiated under rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules against the petitioner, and other three officials who were responsible for the said irregularities. The enquiry officer conducted an enquiry and the enquiry report was received and the same was given to the petitioner and further explanation was received from the petitioner and the Government has considered the charges without any bias.

7. The case of the respondent is that the petitioner had

availed leave during the important works like sowing of ADT.36 Paddy Seeds, harvesting, packing in new gunny bags, transporting the harvested seeds to the seed Processing Unit and Seed Processing work. Further, he had availed earned leave from 01.03.1999 to 09.03.1999 without permission from the Assistant Director of Agriculture concerned and also received the salary for that already. On the above proposed punishment, the views of Tamil Nadu Public Service Commission under its regulation 18(i) (b)(ii) was called for and the Commission has concurred with the punishment provisionally decided by the Government. Hence, the final orders confirming the provisionally decided punishment was issued as per G.O. (3D) No.135, Agriculture (AA7) Department, dated 18.06.2008.

8.The respondents counsel would further content that it is not mandatory to communicate the views of Tamil Nadu Public Service Commission to the petitioner before issuing the final orders. The Deputy Director of Agriculture, the enquiry officer has verified the related documents and conducted the enquiry and the charges against the petitioner are proved. The said copy of the enquiry was also handed over to the petitioner by the Government and he has also submitted the additional explanation and the same was carefully considered, then only the said punishment was decided to be imposed. The petitioner has not put forth any new valid grounds in his additional explanation. As per the enquiry report, the petitioner has not inspected the related Paddy Seed Farm during the harvest period and during post harvesting procedure and he did not show any interest or attention during the period of producing qualified seeds and he has not visited the Sanavayal Village, purposely he went on frequent leave during the harvesting of Paddy Seeds processing and packing of seeds. The contention of the petitioner that due to his mother's ill health he had transferred to Chennai office, was not convincing. At the time of processing, the said paddy seeds on 14.01.1999, he was away to Chennai for the treatment of his mother and hence, the person from the other division had procured the said seeds. Only at the time of February, the said processing and harvesting has taken place and the enquiry officer come to the conclusion that there is no truth in the petitioner's statement. Even the earned leave has been taken which was not permitted and even the other officer, who has helped him also found fault with. There was no contra evidence produced by him to prove that he was not under any fault. From the perusal of the records of registration, the petitioner has not visited the said village where the same was sown and used. The petitioner has submitted that he had asked various other officers and employees to had this works and due to which, some mistakes have been committed and the petitioner claims that he has not been blamed, cannot be accepted and only after going

through the records the said punishment has been imposed against the petitioner. Further, the loss caused by the petitioner i.e. Rs.97,500/- has been imposed and ¼th share has to be recovered. Hence, there is no double jeopardy in his pay.

9.The learned Additional Government pleader would further contend that the petitioner along with three other officials are responsible for a loss of Rs.3,25,000/- to the Government. Hence, the Government directed to compensate the loss by recovering the amount from the responsible officials concerned. The petitioner and 2 other delinquents' share fixed at 30% each and 4th delinquent's share at 10%, who caused a loss of Rs.3,25,000/- to the Government and created a bad impression to Agriculture Department among the public also. The Enquiry Officer informed that even though the petitioner knew well in advance the procedural lapses in Seed Certification Process on tagging of ADI.36 Paddy Seeds, the petitioner wantonly went on Earned Leave on that days, which shows shirking of responsibility and encouraging misappropriation in the process by the petitioner. Hence rightly, the disciplinary action has been taken against the petitioner and three others and the punishment was awarded. The details of the punishment for the charges held proved against them are as follows:

S.I. No.	Name of the accused officers	Govt. order No. and date	Nature of Punishment
(1)	(2)	(3)	(4)
1.	Thiru.V.Thiyagarajan, Assistant Director of Agriculture, (Now:Retired) Devakottai,	G.O(3D) No.133 Agri (AA7) Dept. dated:18.06.08	A punishment of pension cut of Rs.200/- in his monthly pension for 12 months and recovery of Government loss of Rs.32,500/- from his DCRG. (i.e., his share in the total amount of Government loss of a sum of Rs.3,25,000/-)

S.I. No.	Name of the accused officers	Govt. order No. and date	Nature of Punishment
2.	Thiru S.P.Sampath, Agricultural Development Officer, Kannankudi	G.O(3D) No.134 Agri (AA7) Dept. dated: 18.06.08	A punishment of Stoppage of next increment without Cumulative effect for 12 months and recovery of Government loss of Rs.97,500/- from his monthly salary in 81 instalments, at the rate of Rs.1500/- as first instalmet, balance Rs.96,000/- is to be recovered in 80 instalments at the rate of Rs.1200/- per month was awarded. (i.e. His share in the total amount of Government loss of a sum of Rs.3,25,000/-)

S.I. No.	Name of the accused officers	Govt. order No. and date	Nature of Punishment
3	Thiru R.Kathiresan, Field Demonstration Officer. Kannankudi,	G.O(3D) No.135 Agri (AA7) Dept. dated 18.06.08	A punishment of Stoppage of next increment without Cumulative effect for 12 months and recovery of Government loss of Rs.97,500/- from his monthly salary in 98 instalments, at the rate of Rs.500/- as first instalment, balance Rs.97,000/- to be recovered in 97 instalments at the rate of Rs.1000/- per month was awarded. (i.e. His share in the total amount of Government loss of a sum of Rs.3,25,000/-)

In respect of other delinquent person Thiru S.Ramamoorthy, Field Demonstration Officer, Kannankudi, the case was under examination with Tamil Nadu Public Service Commission.

10.When the matter came up for admission, interim stay was granted by this Court in M.P.No.1 of 2008. The respondents filed vacate stay petition in M.P.No.1 of 2009, but the same was not taken up.

11.The petitioner relies on the judgment of the Hon'ble Division Bench of this Court cited in (2005) 2 MLJ 154, Union of India and another Vs. The Registrar, Central Administrative Tribunal, Chennai and another, in W.P.No.5147 of 2005 and

W.P.M.P.No.5670 of 2005, wherein which, it has been held that the disciplinary authority, in imposing the punishment cannot act on material which was neither supplied nor shown to the delinquent officer". Irrespective of Rule 17 of the Conduct Rules, if the disciplinary authority relied on the advice of the Service Commission, principles of natural justice would require supply of the copy of the advice to the delinquent officer before passing an order of punishment.

12.Heard, learned counsel for the petitioner and learned Additional Government Pleader for the respondents and perused the available materials on record.

13.It could be seen from the records that the petitioner has contended that he was on leave when the processing works were going on and in order to take care of his mother who was taking treatment in Chennai, he was travelling up and down and hence other officials were directed to conduct the said processing and there was a mistake committed by them, for which, he cannot held responsible. Eventhough the statement of the petitioner is not convincing when he has submitted his explanation that the disciplinary authority has not passed an order in detail while imposing punishment. But the only point which the petitioner raised is while considering the case of the petitioner, the report of the Commission's have not been communicated to the petitioner, which the petitioner is mainly contending that the principles of natural justice has been violated.

14.Rule 17 of Central Civil Services (Conduct) Rules, speaks about communication of orders. As per that provision, orders made by the disciplinary authority shall be communicated to the Government Servant, who shall also be served with each article of charge and statement of findings of the disciplinary authority together with brief reasons for its disagreement, and if any advice is given by the Tamil Nadu Public Service Commission, the disciplinary authority should communicate the said advice of the Commission along with the order made by him to the petitioner before passing the official order. It would be proper before imposing any punishment to supply copy of the said report of the Commission. When the disciplinary authority, while imposing punishment, major or minor, acts on material which is neither supplied nor shown to the delinquent, then they committed such basic and fundamental procedural errors and it is the duty of the Court to set aside the said orders.

15.Hence, in view of the above facts and circumstances, this Court is of the view that an opportunity ought to have been given to the petitioner to present his explanation if any, before passing the final order of punishment. The respondents

ought to have given him a copy of the Commissions advice. Hence, this Court remands the matter back to the disciplinary authority in order to give an opportunity to the respondents herein to consider the case of the petitioner, after supplying the copy of the Commission's advice/report to the petitioner within a period of two weeks from the date of receipt of a copy of this order. The petitioner has to submit his explanations, if any, within a period of four weeks from the date of receipt of a copy of the Commission's advice/report from the respondents. The respondents are directed to pass orders on merits after considering the explanation submitted by the petitioner and as per law within a period of eight weeks thereafter.

Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vji/nsd

To

1.The Secretary to the Government and
Agricultural Production Commissioner,
Agriculture Department,
Fort St.George, Chennai-600 009.

2.The Commissioner of Agriculture,
Chepauk, Chennai-600 005.

+1cc to the Government Pleader, S.R.No. 89928

MR(CO)
CS/03/04/2019

W.P.No.18825 of 2008

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