

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.12.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No. 22155 of 2013

T.Lalitha Bai

... Petitioner

1.The Commissioner,
Department of Rural Development
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.

2.The District Collector,
Kanyakumari District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the entire records relating to the order in Na.Ka.No.106742/10/DPC2-2, dated 17.09.2012 by the 1st respondent and quash the same directing the respondents to pay the increment as per the promotion cadre from the date of promotion list.

For Petitioner : Mr. T.G.Brusly Gopal

For Respondents: Mr.B.Anand

Government Advocate for R.1 & R.2

O R D E R

This petition has been field for issuance of a writ of Certiorarified Mandamus to issue a direction against the order dated 17.09.2012 by the 1st respondent whereby directing the respondents to pay the increment as per the promotion cadre from the date of promotion list and pass orders.

2.The petitioner was appointed as a Junior Assistant in the Killiur Panchayat Union and promoted as Block Development Officer. The Charge memo was served on the petitioner on the following charges:-

"Charge N o .1 : -

The said Selvi T.Lalitha Bai, Block Development Officer,Melpuram Panchayat Union without getting any permission, rather spending the amount which was allotted under

the Sampoorna Grameen Rozgar Yojana (SGRY-I) for the year 2007 - 08 to the 3% physically disabled persons, allotted the same for some other works and thereby has not completed the Scheme in full, caused damages to the office work.

Charge No.2 : -

The said Selvi T.Lalitha Bai, Block Development Officer, Melpuram Panchayat Union was made responsible for the charges that she was acted utter disregard to her duties and without permission from the council in the Council Resolution Book made endorsement that in the general meeting conducted on 25.07.2007 in the Resolution No.92 by including the jobs without getting permission for Agenda and made forged documents, with utter disregard to the official responsibility.

Charge No.3:-

The said Selvi T.Lalitha Bai, Block Development Officer, Melpuram Panchayat Union without obtaining any permission, has not spent the 3% physically disabled person's allotted amounts for the said Project under the Sampoorna Grameen Rozgar Yojana Scheme (SGRY-I) for the year 2007 - 2008, and acted utter disregard to her duty, and without getting permission from the Council and written in the Register through the forged documents and thereby caused damages to the official duty and she was not only to continue the Government Service and violation of Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973."

3.Enquiry was conducted and the report was given to the District Authority. The District Authority passed the following orders:-

"In respect of misappropriation of funds allotted under SGRY Scheme for the year 2007-08 by Selvi.T.Lalitha Bai, the Retired Block Development Officer (Va.Voo), Melpuram Panchayat Union, disciplinary action has been taken on the said person under Rule 17(B) of the Tamil Nadu Civil Services (Discipline and Appeal) as cited under Reference No.1 above. The said individual has given her explanation vide Letter cited under Reference No.2 above. Punishment has been given by the District Collector under the head of Censure in the Order as cited under Reference

No.3 above. The said individual preferred an Appeal before the Commissioner for Rural Development and Panchayat Raj against the above said Order as cited under Reference No.4 above.

Charges against the Individual, Explanation of the Individual, Findings of the Inquiry Officer, Further Explanation of the Individual on the Inquiry Report, Final Order of the District Collector and the Appeal of the said Individual are as follows : -

Charge No .1 : -

The said Selvi T.Lalitha Bai, Block Development Officer, Melpuram Panchayat Union without getting any permission, rather spending the amount which was allotted under the Sampoorna Grameen Rozgar Yojana (SGRY-I) for the year 2007 - 08 to the 3% physically disabled persons, allotted the same for some other works and thereby has not completed the Scheme in full, caused damages to the office work.

Explanation of the Individual : -

Rs.46,68,860/- has been allotted to the Melpuram Panchayat Union under the Sampoorna Grameen Rozgar Yojana (SGRY-I) for the year 2007 - 08. Out of this 0.3% is Rs. 1,40,064/-. Proposals has been sent to the District Collector and the President, District Rural Development Agency for providing Petty Shop, Milk Cows, Textile Shop, Wood Shop to the 14 physically disabled persons to a sum of Rs.1,40,000/-. Letter No.A3/976/ 07 dated 16.08.2007 has been enclosed. The Project Officer informed in the Meeting that the said amount will not be given to the differently abled persons and only three wheeler cycles will be provided to them. The above said works was not done due to the non obtention of Disability Certificate and the administrative sanction was not obtained from the project officer. The amount for which was also not sanctioned by the Project Officer till date. Since informed to do the development work at the Ward of the President of Panchayat Union, in his Ward in the Devikode Panchayat in an estimate of Rs. 1,40,000/- to develop the Sridevi Koil Kaithottam Salai work, Resolution was passed in the Panchayat Union for Rs. 1,40,000/- by obtaining proper permission from the District Collector and the President, District Rural Development Agency, Nagercoil's proceedings No.A4/497/07 dated 22.08.2007 and on completion

of the said work, the amount has been issued on 24.10.2007. The above said work was completed by passing a Panchayat Union Resolution No.92 dated 25.07.2007 as per the Planning Guidelines and Procedures and the same was attested by the President, Panchayat Union as decided and proper approval has been obtained from the District Collector;) Hence, the allegation that without getting permission, the work was done is absolutely denied by me. As per the instructions of the Panchayat Union President, work was selected and done in the said person's Ward. Even after the details of which was well known to the Melpuram Panchayat Union President, after a period of 1V2 years, due to individual vengeance and since not to co-operate for his wrong doings and in order to take revenge with a mala-fide intention, he has made such allegations and moreover, the amount allotted to the physically disabled persons was not received from the Project Officer. Hence the question of using the amount to the said Scheme, to some other work does not arise and the work mentioned in the Complaint is done only on 15% of the said allotment. Hence, I have not made loss to the Government. Moreover, the work was done only for the public usage. Hence, I request you to relieve from the above said Charge.

Findings of the Enquiry Officer: -

A sum of Rs.48,47,950/- has been allotted under the SGRY-I Scheme for the year 2007 - 2008 to Melpuram Panchayat Union, out of this a sum of Rs.42,49,360/- by way of cash and rice weighing about 105.9454 Metric Tonnes valuing Rs.5,98,590/- and the entire amount (as per the Order of the District Collector in A4/492/2008.2 dated 25.01.2008 along with final release amount) released in 3 instalments credited into the account of Melpuram Panchayat Union. In the above said allotted amount of Rs.48,47,950/- 3% i.e. Rs.1,45,438/- has to be allotted to the Physically disabled persons as per the Government Order. A proposal has been sent to the Project Officer, District Rural Development Unit for the above said 3% allotment through the Letter of the Melpuram Panchayat Union's Commissioner vide No.A3/343/2008 dated 23.01.2008. Administrative Sanction was not received from the District Collector and the President, District Rural Development Unit. In the enquiry, it is known that the job and the

delinquent person's mention about the job i.e. "Devikodu-Devi Koil - Kaithottam Salai Development and the compound wall value Rs. 1,40,000/-" was done at 15% allotment and the same is not done under the 3% allotment made to the physically disabled persons Scheme through the documents and the Measurement Book (No.87/0304) and File Pa.Mu.3576/07 dated 10.12.2007, as mentioned in the Annexure - 3 of the Charge Memo. As per the request of the general public and Adi Dravidar people, as per the Order of the President for the benefit of the general public, the work was done with the permission of the Project Officer, the said Charge is not proved. Hence, the said individual may be relieved from the said Charge.

Charge No.2 : -

The said Selvi T.Lalitha Bai, Block Development Officer, Melpuram Panchayat Union was made responsible for the charges that she was acted utter disregard to her duties and without permission from the council in the Council Resolution Book made endorsement that in the general meeting conducted on 25.07.2007 in the Resolution No.92 by including the jobs without getting permission for Agenda and made forged documents, with utter disregard to the official responsibility.

Explanation of the Individual : -

I have not acted utter disregard to my work in my entire 27 years of service. I have not been involved in any of the charges or any other Complaints in my service period. Through the 22.5% Sampoorna Grameen Rozgar Yojana Scheme (SGRY-I) for the year 2007 - 2008, 9 works and one work to be done in the additional fund and the list of beneficiaries under the Schedule Tribes have been jointly submitted for Council approval, the President of the Panchayat Union himself wrote in the Minutes Book that through the Resolution No.92 dated 25.07.2007 the same was decided and the said work was not written separately and pasted in the Minutes Book. Even prior to taking charge by me, the Agendas were taken print out in the Computer and pasting the same in the Book of the Melpuram Panchayat Union, is followed. The President has also permitted to do the said process. Due to the shortage of staff, it is informed to me that the said process is simple to handle and is

followed. Moreover, the Minutes Book is under the custody of the President of the Union only. To hand over the Minutes Book to the Commissioner was made on several occasions and in person, and through Letter NO.A2/988/07 dated 02.08.2007, 09.10.2007 and 13.02.2008 and Letter No.A2/3180/2008 dated 14.12.2008, the same was not handed over by the said person. In this regard, if the concerned Assistants Mr.R.Kuttralam and Mr.T.Neelabalakrishnan enquired, the truth will come out. Thereafter, the Resolution Register was handed over to A2 Section Assistant Mr.L.Stanley John, Junior Assistant on 26.12.2008. There is no possibility for inclusion or exclusion of the Agenda on own volition by the Commissioner when the Minutes Book was under the custody of the Panchayat Union's President. Moreover, the President of the Panchayat Union himself written in the Minutes Book as "Resolved". Hence, I am denying the said charge in entirety. I am humbly requesting to relieve me from the above said charge.

Findings of the Enquiry Officer : -

When the Melpuram Panchayat Union Council's Meeting Minutes Book was scrutinized, in Page No.105 of the last Subject Note of the Meeting dated 25.07.2007, was included in the Agenda in respect of the said Meeting and sent to the members, is pasted in the Minutes Book. That the corrections were made as against the Resolution No.92 and it is known that in Page No. 107 of the Meeting dated 25.07.2007 the same is started in Serial Number as Resolution No.92. There is no proper witness to take a decision that the delinquent person has done it on her own and made forged documents. Moreover, no prosecution witness was attended in respect of the charges concerned. It is also clearly known that the delinquent person has not made any corrections in the Minutes Book through the evidence of the three defence side witnesses. Hence, the said delinquent person may be dropped from the said charges.

Charge No.3:-

The said Selvi T.Lalitha Bai, Block Development Officer, Melpuram Panchayat Union without obtaining any permission, has not spent the 3% physically disabled person's allotted amounts for the said Project under the Sampoorana

Grameen Rozgar Yojana Scheme (SGRY-I) for the year 2007 - 2008, and acted utter disregard to her duty, and without getting permission from the Council and written in the Register through the forged documents and thereby caused damages to the official duty and she was not only to continue the Government Service and violation of Rule 20 of the Tamil Nadu Government Servants' Conduct Rules, 1973.

Explanation of the Individual : -

In my 27 years of service, I have obeyed the orders of my superior Officers and executed the same. I have acted within the Government Rules, Regulations and Orders. I have obeyed to the Government and the Officers. In my 27 years of service, I worked without any blemish and allegations. By considering my blemishless service, I humbly requested to relieve me from the above said charges.

Findings of the Enquiry Officer ; -

This Charge was made based on the enquiry conducted on Charge Nos.1 & 2 is clearly shows that the delinquent was not failed to do from her duties. There are no documents or witnesses to decide that the delinquent was acted dishonestly. It could not be decided that the delinquent violated the Rule 20 of the Tamil Nadu Civil Service Conduct Rules, 1973. Hence, this charge is not entirely proved. Hence, all the charges could be dropped.

Final Order of the District Collector : -

Based on the charges framed against the Melpuram Panchayat Union Block Development Officer (Va.Voo), Selvi T.Lalitha Bai, her personal explanation for that, findings of the Inquiry Officer and related documents, and after considering the same meticulously, the following final order has been pronounced.

"Charge No.2 and 3 are partially proved. The Inquiry Officer has reported that there is no evidence to prove that the corrections were done by the accused Officer. However she cannot be absolved from her responsibility as a Supervisory Officer. However keeping in view the fact that the Officer is at verge of retirement, she is punished with 'censure'.

It is the said order that is under challenge in the present writ petition.

4.The learned counsel for the petitioner contended that he was not given the transfer enquiry during the hearing. On the other hand, the learned counsel for the respondent states that the petitioner had participated in the proceedings. He was given an opportunity to cross examine the witnesses as well as the document. The writ petitioner states that there is no infirmity in the decision making process while the enquiry was conducted. It is settled law that the Court cannot sit on the enquiry proceedings as the Court appeal unless the finding of enquiry report is so perverse that shocks the conscience of the Court. The counsel for the petitioner has not been able to demonstrate that the order is perverse. Further the service rules provide from appeal. In the presence of an equally efficacious remedy which is available to the petitioner the writ is not maintainable. The writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

gsp/pkn
To

1.The Commissioner,
Department of Rural Development
and Panchayat Raj,
Panagal Building, Saidapet,
Chennai - 600 015.

2.The District Collector,
Kanyakumari District.

+1 CC TO GOVERNMENT PLEADER SR.NO. 58081
W.P.No. 22155 of 2013

A.SK(26/02/2019)