IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.63 of 2018
and
C.M.P.No.471 of 2018

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

2.The Special Commissioner,
Commissioner for Revenue Administration,
Chepauk, Chennai 600 005.

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

4.The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram. ... Appellants/Respondents

versus

E.Dharman ... Respondent/Petitioner

PRAYER: Appeal filed against the order passed by this Court dated 01.04.2014 made in W.P.No.7021 of 2007.

Writ petition having been transferrred from the file of the Tamilnadu Administrative Tribunal, Chennai, in O.A.No.4497 of 2002 is filed to *call for and set aside the proceedings RC 13080/85/அ dt 2.5.86 and the proceedings of the 3rd respondent the DRO Kancheepuram in Na.Ka.79959/86 A1 dt 29.5.87 and the proceedings of 2nd respondent special Commissioner, Commissioner for Rev. Administration, Chennai 5 in A3/25905/88 dt 11.4.89 and the G.O.(ID) No.696 dt 8th December 1999 issued by Secretry to the Government, Revenue Department, Government of Tamilandu Ist respondent herein and consequently direct the respondent to reinstate the petitioner in service*

For Appellants : Mr.V.Anandhamoorthy,
Additional Government Pleader

For Respondent : Mr.C.V.Vijayakumar for Mr.V.Yugendrakumar.

J U D G M E N T
(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this appeal is to the judgment of the learned Single Judge in W.P.No.7021 of 2007 dated 01.04.2014, in and by which, the Writ Petition filed by the respondent challenging the punishment of removal from service imposed on the respondent was set aside with a direction to reinstate the respondent in service.

2. The respondent had filed the above Writ Petition originally before the Tamil Nadu Administrative Tribunal as O.A.No.4497 of 2000, upon abolition of the Tribunal the O.A was transferred to this Court and numbered as W.P.No.7021 of 2007. In the said Writ Petition the respondent had challenged the order of the Government dated 08.12.1999 in G.O.(1D).No.696, Revenue Services (7-1) Department. The said order came to be passed in a revision filed by the respondent challenging the order of punishment of removal from service imposed upon him by the Disciplinary Authority viz., the Revenue Divisional Officer, Chengalpattu which was confirmed on appeal by the District Revenue Officer, Chengalpattu.

3. The respondent who was employed as a Village Administrative Officer was charged with certain delinquencies which included misappropriation of the funds meant for distribution to flood affected people. The Disciplinary Authority after enquiry, concluded that the respondent is guilty of the charges and on such conclusion the Disciplinary Authority Viz., Revenue Divisional Officer, Chengalpattu imposed punishment of removal from service. Aggrieved the respondent filed an appeal before the District Revenue Officer, Chengalpattu. The appellate Authority had by his order dated 29.05.1987 rejected the appeal confirming the order of the Disciplinary Authority dated 02.05.1986. The respondent had filed a further revision before the Special Commissioner for Revenue Administration and the said Revision was also rejected by the Special Commissioner on 11.04.1989. Aggrieved the respondent had made an application to the Government on 11.11.1997 seeking reconsideration of the punishment and the said representation came to be rejected on 08.12.1999. There upon the respondent had approached the Tamil Nadu Administrative Tribunal by filing O.A.No.4497 of 2000. Upon transfer to this Court, the said O.A. was renumbered as W.P.No.7021 of 2007.

4. The main contention of the respondent before the Writ Court was that the enquiry was not conducted in a fair and proper manner. The respondent would claim that the Disciplinary

Authority had based his conclusions upon the statements given by the affected persons and none of the so called affected persons were examined by the Disciplinary Authority during the disciplinary proceedings. The entire findings in the Disciplinary enquiry were based on the statements said to have been made by the persons concerned behind the back of the delinquent officials. Therefore, according to the respondent, the entire proceedings are vitiated.

5. The learned Single Judge who heard the Writ Petition concluded that the major punishment of removal from service solely based on the statements made by the so called affected persons during the preliminary stages of discrete investigation cannot be sustained. The learned Single Judge has referred to the judgment of the Hon'ble Supreme Court in State of Uttaranchal and others Vs. Kharak Singh reported in (2008) 8 SCC 236 and held that the departmental enquiry was not conducted in a fair and proper manner and there has been a violation of principles of natural justice. On the above findings, the learned Single Judge allowed the Writ Petition quashing the impugned orders and directing the appellants to reinstate the respondent without back wages but with continuity of service and other benefits. Aggrieved, the respondents are before us by way of this intra-Court appeals.

6. We have heard Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the appellants and Mr.C.V.Vijyakumar, learned counsel appearing for the respondent.

7. It is now stated that the respondent had even attained the age of superannuation and therefore, the question of reinstatement will not arise. Mr.V.Anandhamoorthy, learned Additional Government Pleader would contend that the respondent had not at any point of time asked for an oral enquiry and as such it cannot be said that the respondent was denied a reasonable opportunity by the Disciplinary Authority. We do not think that such an argument can be accepted. It is the fundamental principles of law that even in disciplinary proceedings certain amount of principles of natural justice should be followed and if the disciplinary Authority chooses to rely upon certain materials, the said materials should be provided to the delinquent official and he should be given opportunity to rebut the said material.

8. If the statements of the so called beneficiaries made at the time of discrete investigation are to be relied upon as foundation for punishing the delinquent official, then the delinquent official should be furnished copies of the said statements and he should have been given opportunity to cross examine them or let in rebutted evidence. In the absence of such

procedure, it cannot be said that the departmental enquiry was fair and proper.

9. If the conclusion is that the departmental enquiry was not fair and proper, the available option is to set aside the order imposing punishment and remit the matter to the Disciplinary Authority for affording an opportunity to the delinquent official. But, we find that no useful purpose will be served by re-doing the entire exercise, that too after a lapse of nearly 32 years, that too after the respondent had attained the age of superannuation. But, at the same time, we cannot also loose sight of the fact that the charges against the respondent amount to misappropriation of the funds meant for flood victims and the respondent cannot be allowed to escape the charges solely on the technical grounds.

10. We are therefore of the opinion that, it will be in the interest of justice to set aside the order of the Government dated 03.12.1999 rejecting the representation of the respondent with a direction to the Government to re-consider the entire issue bearing in mind the fact that the respondent had also attained the age of superannuation. The fact that a reasonable opportunity was denied to the respondent during the disciplinary enquiry should also be taken note of by the Government while re-examining the entire issue.

11. For the foregoing reasons, the appeal is partly allowed, the order of the learned Single Judge directing reinstatement of the respondent with continuity of service and other benefits is set aside, the order of the learned Single Judge quashing the proceedings of the Government in G.O.(ID).696 dated 08.12.1999 is confirmed and the matter is remitted to the Government, with a direction to re-examine the issue, in the light of the observations made above and pass appropriate orders. Taking into account the fact that the enquiry proceedings commenced as early as in the year 1986, we direct the Government to complete the said exercise within a period of three (3) months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-VII)

// True Copy//

Sub Assistant Registrar

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

2.The Special Commissioner,
Commissioner for Revenue Administration,
Chepauk, Chennai 600 005.

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

4.The Revenue Divisional Officer,
Kancheepuram District,
Kancheepuram.

+1 cc to Mr.C.V.Vijayakumar, Advocate SR.No.49637

W.A.No.63 of 2018

RSI(CO)
SMI/14.08.2018