IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.09.2019

Pronounced on : 01.11.2019

Coram

THE HONOURABLE MR. JUSTICE SUBRAMONIUM PRASAD

WP No.6381 of 2010
and M.P.No.1 of 2010

V.Krishnamurthy ..Petitioner

v.

1. The Secretary to Government,
Personnel and Administrative
Reforms (Q) Department,
Secretariat,
Fort St. George, Chennai - 600 009.

2. The Secretary,
Tamil Nadu Public Service Commission,
Chennai - 600 002. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, calling for the records of the 1st respondent herein pertaining to the order in G.O.(2D). No.7/Personnel and Administrative Reforms (Q) Department dated 19.01.2010 and as well as the advice rendered by the 2nd respondent herein in Letter No.1300/DCD-B1/2009-1 dated 31.12.2009 which was relied on by the 1st respondent to pass the above said order and quash the same and further direct the Government to consider the petitioner for promotion as per panel prepared for District Revenue Officers for the year 2008.

For Petitioner : Mr.S.Vijayakumar
For Respondents : Mr.J.Ramesh (for R1)
Additional Government Pleader
Mr.Jaikanth (for R2)
for Mr.M.Devendran,
Standing counsel for TNPSC.

O R D E R

The instant writ petition challenges the order in G.O.(2D). No.7/Personnel and Administrative Reforms (Q) Department dated 19.01.2010, inflicting the punishment of censure on the petitioner for the proven lapse and for the loss cause to the

Government exchequer and a direction to recover the loss of amount of Rs.48,991/- in 12 instalments from the petitioner.

2. The writ petitioner also prays for a direction to consider the name of the petitioner for promotion as per the panel prepared for the District Revenue Officers for the year 2008.

3. The petitioner while working as a Revenue Divisional Officer, Sankari, Salem District, was issued with a charge memo under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules. The charges framed against the petitioner, as translated in the memo of writ petition reads as under.

> "One Mr.Manivannan, the Village Administrative Officer (VAO) of Marudurai village in Kankeyam Taluk, Erode District, was arrested by Vigilance and Anti-Corruption Department, Erode on charges of accepting bribery and consequently the Revenue Divisional Officer, Dharapuram in his proceedings in Na.Ka.No.7327/20/Aa/dt.3/08/1990 suspended the VAO, from the date of arrest on 02/08/1990. Subsequently, the VAO was convicted in the criminal case as per the Judgment dated 12.11.1991 made in CC No.47/1991 on the file of the learned Chief Judicial Magistrate, Erode and imposed a sentence of 2 years rigorous imprisonment with a fine of Rs.2,000/-. Following the conviction in the criminal case, the Departmental proceeding had been initiated against the VAO by the Sub-Collector, Dharapuram in his proceeding in Na.Ka.No.11731/91 dt. 31/12/1991. Under Rule 17(c)(1)(1) of Tamil Nadu Civil Services (Classification, Control and Appeal) Rules to Show Cause why action should not be taken to dismiss him from the service.
>
> The VAO, challenged the Show cause notice dt. 31/12/1991 in OA No.658/1992 on the file of Tamil Nadu Administrative Tribunal, Chennai and the Hon'ble Tribunal was pleased to grant Stay of disciplinary proceeding against him in an order dt.6/2/1992. The said VAO, preferred an appeal against the judgement of his conviction and the Hon'ble Court was pleased to dismiss the Criminal Appeal in the Judgment dated 2/9/1997 made in C.A.No.751/1991 while confirming his conviction and sentence. Thereafter, the said VAO, Manivannan, underwent the sentence in Central Prison, Coimbatore from 21/1/1998 to 21/06/1998. In view of confirmation of his conviction and imprisonment, the subsistence allowance, which had been paid to the VAO from 2/8/1990 to 31/12/1997 was stopped forthwith. Following the opinion given by the learned Government Additional Standing Counsel, Tamil Nadu Administrative

Tribunal, Chennai, the Revenue Divisional Officer, Dharapuram in his proceeding in Na.Ka.No.6019/1994/E dated 28.11.2001, dismissed the VAO from service. The said VAO was dismissed from service on 28/11/2001, on receipt of the opinion from the learned Government Additional Standing Counsel, Tamil Nadu Administrative Tribunal on 21/11/2001, after long delay. In view of the delayed action of dismissal, the VAO sought for subsistence allowane for the period from 1/1/1998 to 28/11/2001 and the same was assessed as Rs.99,236/- and Rs.98,051/- was paid to the said VAO after deduction.

Charge No.1:

When I was serving as Tahsildar, Kangeyam during the period from 23/9/1998 to 12/1/1999 and from 18/1/2000 to 17/06/2001, I failed to take timely action to vacate the Stay order dt. 6/2/1992 in O.A.No.658/1992 on the file of Tamil Nadu Administrative Tribunal, Chennai and also failed to procure and forward the copy of the judgment passed by the Hon'ble High Court in C.A.No.751/1991 dated 2/9/1997. This lapse on my part, enabled the VAO, to claim subsistence allowance for the period from 1/1/1998 to 28.11.2001.

Charge No.2:

As a Tahsildar, Kankeyam during the period from 23/9/1998 to 12/01/1999 and from 18/1/2000 to 17/6/2001, I failed to take timely action to vacate the Stay order dt. 6/2/1992 in OA NO.658/1992 on the file of Tamil Nadu Administrative Tribunal, Chennai and also failed to obtain and forward the copy of the judgement passed by the Hon'ble High Court, Madras in C.A.No.751/1991 dt. 2/09/1997. This resulted in payment of subsistence allowance to the tune of Rs.1,06,925/- to the VAO from 3/9/1997 to 28/11/2001 and out of which R.48,991/- was paid for the period of my tenure as Tahsildar, Kangeyam. Hence, I am held responsible for causing loss to the exchequer, to the tune of Rs.48,991/- out of Rs.1,06,925/."

4. The gravamen of the charge extracted above would show that the allegation against the petitioner is that despite the fact that Mr.Manivannan, Village Administrative Officer (VAO), had been dismissed from service he was continued to be paid subsistence allowance. The second charge is failure to take timely action to vacate the stay obtained by Mr.Manivannan, VAO and continued payment of subsistence allowance. The said charge was later modified and reads as under.

"Appropriate action was not taken by the Tahsildar of Kankeyam who worked there from 2/09/1997 to 20/11/2001 to vacate the Stay granted by the Tamil Nadu Administrative Tribunal and as a result of which, the VAO concerned had been allowed to continue under suspension and the subsistence allowance was ordered to be paid for the period of suspension until his dismissal from service. Thus this has resulted in a loss of Rs.1,06,925/- to the Government exchequer by way of paying subsistence allowance. During the period aforesaid, six Tahsildars were posted in Kankeyam Taluk and I had worked there for the period from 23/09/1998 to 12/01/1999 and from 18/1/2000 to 17/06/2001. An amount of Rs.48,991/- was paid as subsistence allowance to Mr.Manivannan, VAO for the period of my tenure referred above and it was a loss to the Government, which would have been averted, if I would have taken appropriate action in time. Thus, my failure in taking timely action to vacate the stay referred to above had resulted in a loss to Government."

5. On receipt of the charge memo, the petitioner filed the writ petition challenging the second modified charge memo in WP No.20217 of 2007. This Court by an order dated 24.10.2007 dismissed the writ petition as pre-mature. The petitioner therefore gave a written explanation to the charge memo and participated in the enquiry. On the conclusion of the enquiry, advice of the Tamil Nadu Public Service Commission (TNPSC) was also obtained. On enquiry TNPSC found that the petitioner was guilty of charges levelled against him and the Government after examining all the relevant records had proposed to impose the punishment of censure. The Tamil Nadu Public Service Commission after going into the entire records, by its opinion dated 31.12.2009 vide letter dated 1300/DCD-B1/2009-1 had opined as under

From	To
The Secretary, Tamil Nadu Public Service Commission Chennai - 600 002	The Secretary to the Government of Tamil Nadu, Personnel and Administrative Reforms (Q) Department, Secretariat, Chennai - 600 009

Letter No.1300/DCD-B1/2009-1 dated 31.12.2009

Sir,

Sub: Disciplinary Action -Tvl. V.Krishnamurthy and P.Y.Gopalakrishnan, formerly, Tahsildars, Kangeyam,

Erode District - Recovery for the loss caused to the
Government exchequer- views of the Commission
Communication of - Regarding.

Ref: 1.Government letter No.20129/Q/2007-7, dated
05.03.2009
2. Government letter No.20129/Q/2007-8, dated
05.03.2009
3. Government letter No.20129/Q/2007-18, dated
23.10.2009

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I am directed to invite attention to the references cited and to say that the views of the Commission on the disciplinary cases referred to above, are as follows:-

In this case, show cause notices were issued against Tvl. V.Krishnamurthy (Delinquent Officer -I) and P.Y. Gopalakrishnan (Delinquent Officer -II), formerly Tahsildars, Kangeyam, Erode District, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, for certain lapses. The delinquent officers submitted their explanations denying the charges. The Government aftor examining the case with relevant records has proposed to impose a punishment of "Censure" on both the delinquent officers for the proven charges and to recover the loss caused to the Government Exchequer (i.e) Rs.48,991/-in 20 instalments (i.e. first instalment at Rs.2,460/- and from second instalment at Rs.2,449/- for 19 months) from Thiru.V.Krishnamurthy (Delinquent Officer-1) and to recover the loss caused to the Government Exchequer (i.e) Rs.6,952/- in 10 instalments (i.e.first instalment at Rs.697/- and from second instalment at Rs.695/- for 9 months) from Thiru. P.Y.Gopalakrishnan (Delinquent Officer-11) and sought the views of the Commission.

The Commission has carefully gone through the records of the case.

In this case, the explanations submitted by Tvl. V.Krishnamurthy (Delinquent Officer -I) and P.Y. Gopalakrishnan (Delinquent Officer -II), formerly Tahsildars, Kangeyam, Erode District are not satisfactory and acceptable. Though the Revenue Divisional Officer is the appointing authority for the post of VAO, the pay bills for VAOs are drawn and disbursed by the Tahsildars only. Therefore, it is the bounden duty of the delinquent officers to verify whether Judgement was delivered in the W.P. filed by the VAO. If they had promptly watched the outcome of W.P., the payment of subsistence allowance to the convicted VAO could have been averted. As such, the lapses pointed out against the delinquent officers are held proved based on records. Hence, the loss caused to the Government by way of paying subsistence allowance to one Thiru.M.Manivannan, VAO stands proved.

Therefore, the Commission agrees with the Government to recover the loss caused by the delinquent officers. However, the recoveries proposed by the Govornment is not implomentable on both the delinquent officers, since Thiru.P.Y. Gopalakrishnan, (Delinquent Officor-ll) Is due to retire from service on 31.01.2010 and Thiru.V.Krishnamurthy (Delinquent Officer. 1) is due to retire from service on 30.04.2011. Hence, the Commission advises the Government, to recover the sum of Rs.6,952/- being the loss caused to the Government by Delinquent officer II, from his DCRG and to recover the sum of Rs.48,991/- being the loss caused to the Government by the Delinquent Officer .I, in 12 Instalments (First Instalment at Rs.4,111/- and from 2nd Instalment at Rs.4,080/- for 11 months).

2) A copy of orders as and when passed in this case, may be sent to the Commission for its information.

3) The records relating to the case are sent separately with the Commission's Letter No. 1300/DCD-B1/2009-2, dated 31/12/2009.

for SECRETARY,

6. Based on the said advice, the Government passed G.O.(2D) No.7 dated 19.01.2010, by imposing the punishment of censure. It is this order, which is under challenge.

7. The material on record discloses that one Mr.Manivannan, VAO was facing grave charges. The said Mr.Manivannan was arrested by Vigilance and Anti Corruption Department for the charge of bribery on 02.08.1990 and was placed under suspension by an order dated 03.08.1990. He was convicted in CC No.47 of 1991 on the file of the learned Chief Judicial Magistrate, Erode, by judgment dated 12.11.1991. A show cause notice for dismissal was issued against Mr.Manivannan, VAO. Against the conviction, Mr.Manivannan filed Crl.A.No.751 of 1991. Show

cause notice for dismissal was challenged by Mr.Manivannan in OA No.658 of 1992. He obtained an order of stay on 06.02.1992. Cr.A.No.751 of 1991 was dismissed on 02.09.1997. Stay order was vacated on 19.07.2003.

8. The charge against the petitioner is that Mr.Manivannan who had been convicted as early as on 12.11.1991 was permitted to get subsistence allowance and no steps had been taken by the Revenue Divisional Officers, to get the stay vacated, even though the criminal appeal was dismissed on 02.09.1997.

9. It is the case of the petitioner that he was the Tahsildar of the District from 23.09.1998 to 12.01.1999 and 18.01.2000 to 17.06.2001. According to the petitioner, he therefore can only report to the Revenue Divisional Officer and could not have passed any order himself. The petitioner would state that he had taken efforts to bring it to the knowledge of the then Revenue Divisional Officer through communication dated 14.12.1998. He would state that on 08.08.2000, he sent a communication to the Revenue Divisional Officer reminding him of the earlier communication dated 14.12.1998 with a copy of the letter dated 03.08.2000 sent by the Government Standing Counsel, advising the Revenue Divisional Officer to remove the VAO forthwith from service, following the dismissal of the criminal appeal, but the Revenue Divisional Officer did not take any steps to terminate the services of Mr.Manivannan, who was at that time the VAO.

10. The petitioner has filed additional documents. He has filed the letter dated 13.11.1998 sent by him to the Revenue Divisional Officer, Dharapuram. The said letter reads as under:-

"Thiru V.Krishnmurthy

Tahsildar

Kangayam.

The Revenue Divisional Officer, Dharapuram.

Ref.No.10228/98/A3 dated 13.11.98.

Sir,

Sub: Village Administration - Kangayam Taluk - Marudurai Village - Formerly Village Administrative Officer Thiru Manivannan - suspended - payment of subsistence allowance -= regarding.
Ref: V.O. note of the RDO, Dharapuram, vide no.6019/94-E dated 7.11.98

With reference to the above, the subsistence allowance of Thiru Manivannan, formerly VAO, Marudurai Village, Kangayam Taluk, for the month of January 1998 was encashed on 3.2.98 and remitted back in State Bank of India, Kangayam Tauk, vide Ch.No. 1895 dated 28.4.98, as the VAO has not come forward to receive the money. I submit that subsistence allowance was not paid to him thereafter, I hereby informed it over phone on 10.11.98. Further I submit that as per your instructions, I will depute my Assistant for obtaining the judgement in O.A.No.653/12.

Sd/ V.Krishnanurthy,

Tahsildar,

Kangayam."

A perusal of the said letter shows that no subsistence allowance has been paid to Mr.Manivannan, after November 1998. In his reply to the show-cause notice, the petitioner has stated that during his tenure as Tahsildar, he has contacted the Senior Standing Counsel in person on 14.12.1998, for taking necessary steps for vacation of stay. It is also stated that he was in regular touch with the counsel.

11. Be that as it may, Rs. 106925/- has been paid to Mr.Manivannan towards subsistence allowance even after dismissal of appeal on 02.09.1997. The letter dated 13.11.1998, does not indicate that the petitioner had taken any steps to get the stay vacated after the dismissal of the criminal appeal filed by Mr.Manivannan. The petitioner is only passing the buck to the Revenue Divisional Officers, who worked during the relevant period. His submission that it is the Revenue Divisional Office who failed to take action cannot be accepted and the petitioner cannot be absolved of the lapse on his part.

12. The petitioner served as Tahsildar in Kankeyam from 23.09.1998 to 12.01.1999 and 18.01.2000 to 17.06.2001. The charge against the petitioner is that he had failed to apprise his seniors. The charge that he had not inform his superiors still holds good. However, the petitioner alone cannot be held responsible for the payment made to Mr.Manivannan and Tahsildar alone cannot be singled out for the loss. In view of this, the petitioner cannot be therefore held guilty for payment of subsistence allowance to Mr. Manivannan, VAO.

13. This Court is therefore of the opinion that while the punishment of censure needs to be upheld, but the consequential direction of recovery of sum of Rs.48,991/- is not justified, for the reason that at the time when the orders were made by the Revenue Divisional Officer, he was not the Tahsildar, Kangeyam.

14. The writ petition is partly allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

ars/pkn.

To
1. The Secretary to Government,
Personnel and Administrative
Reforms (Q) Department,
Secretariat,
Fort St. George, Chennai - 600 009.

2.The Secretary
Tamil Nadu Public Service Commission
Chennai 600 002.

+1 CC to Mr.S.Vijayakumar, Advocate sr 90634
+1 CC to Dr.M. Devendran, Advocate sr 90645.

WP No.6381 of 2010
and
M.P.No.1 of 2010

PA(CO)
SP(04/12/2019)