IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.09.2020

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

REV. APPLN. NO. 58 OF 2020

J.Sathis Saravana Kumar .. Petitioner

- Vs -

1. The State of Tamil Nadu, rep. By
   The Secretary to Government
   Revenue Department
   Chennai – 9.

2. The Principal/Special Commissioner
   & Commissioner for Revenue Administration
   Ezhilagam, Chepauk
   Chennai – 5. .. Respondents

Review Application filed under Order 47 Rule 1 of the Code of Civil Procedure against the order dated 13.07.20 passed in W.P. No.25094/2013.

For Petitioner : Mr. B.Vijay, for
Mr. Namasivayam

For Respondents : Mr. A.N.Thambidurai, Spl. GP

ORDER

The present review application has been filed by the petitioner on the ground of an error apparent on the face of the record.

2. It is submitted by the learned counsel for the petitioner that while the disciplinary authority is the 2nd respondent, who had framed the charges and initiated the enquiry, the explanation had been called for on the enquiry report by the 1st respondent, who is the appellate authority and the impugned order has been passed by the 1st respondent, which is impermissible, as the appellate authority has usurped the powers of the disciplinary authority by passing the impugned order, thereby, precluding the petitioner and closing the doors for the petitioner to pursue the remedy by way of appeal. It is further fairly conceded by the learned counsel for the review applicant that this fact was not brought to the notice of the Court while the writ petition was dismissed by this Court. Therefore, the order passed by this Court should be recalled and the matter remanded back to the disciplinary authority, viz., the 2nd respondent for considering the issue afresh from the stage of submission of the enquiry report.

3. On the above submission, this Court heard the learned Special

Government Pleader appearing for the respondents, who fairly conceded that the impugned order has been passed by the appellate authority and not by the disciplinary authority, who had initiated the enquiry by framing the charges.

4. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side.

5. A perusal of the order passed by this Court on 13.7.20 reveals that while the enquiry initiated by the 2nd respondent/disciplinary authority culminated in the filing of the report holding the charges not proved, the 1st respondent, however, not concurring with the enquiry report, has issued show cause notice and proceeded to impose the punishment. It is evident from the records that it is the 2nd respondent, who is the disciplinary authority, who has framed the charges and initiated the enquiry. Such being the case, the enquiry report ought to have been decided by the 2nd respondent and the action of the 1st respondent in considering the enquiry report and imposing the punishment on the petitioner is not only not in accordance with law, but wholly against the principles of natural justice. Had the 2nd respondent passed any order adverse to the petitioner, the

petitioner would have had an opportunity of challenging the same before the appellate authority. Equally, if the disciplinary authority has passed any affirmative order in favour of the petitioner on the basis of the enquiry report, definitely it would have enured to the benefit of the petitioner. In such a backdrop, passing of the impugned order by the appellate authority/1st respondent, bypassing the disciplinary authority, is wholly impermissible and this fact not having been brought to the knowledge of this Court at the time of hearing the writ petition and passing the order, had resulted in the writ petition being dismissed. In such circumstances, this Court is of the considered view that the above error definitely qualifies itself as an error apparent on the face of the record, warranting recall of the order passed by this Court in the writ petition.

6. For the reasons aforesaid, the order dated 13.7.20 passed in W.P. No.25094 of 2013 is hereby recalled and the review application is allowed and the writ petition stands disposed of by remanding the matter back to the 2nd respondent to consider the case of the petitioner afresh from the stage of submission of the enquiry report and pass orders on the said report in accordance with law within a period of three months from the date of receipt of a

copy of this order.

24.09.2020

Index : Yes/No

Internet : Yes/No

GLN

To

1. The Secretary to Government
   Revenue Department
   Government of Tamil Nadu
   Chennai – 9.

2. The Principal/Special Commissioner
   & Commissioner for Revenue Administration
   Ezhilagam, Chepauk
   Chennai – 5.

M.DHANDAPANI, J.

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