



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.08.2020

DELIVERED ON : 11.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.1735 of 2014

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A. Jegarajan : Petitioner

Vs.

1.The Secretary to Government,
Handloom, Khadi and Textiles Department,
Government of Tamil Nadu,
Secretariat, Chennai.

2.The Commissioner,
Sericulture Department,
Anaimeedu, Salem.

3.The Deputy Director of Sericulture,
Office of the Deputy Director of Sericulture,
Madurai.

4.The Assistant Director of Sericulture,
Palani Road,
Meenaskshinayakanpatti Post,
Dindigul.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned G.O.Ms.No.199 dated 03.09.2013 issued by the first respondent, confirming the order of the second respondent dated 19.06.2010 in Se.Mu.Ka.No.7959/CD2/2010, confirming the order of the third respondent made in Se.Mu.Na.Ka.No.714/Aa/2008, dated 26.01.2010 confirming the order of the fourth respondent vide vide proceeding in Na.Ka.No.1637/Aa/07, dated 31.12.2007 and quash the same and consequently, direct the respondents to revise and disburse the consequential pensionary benefits and all other benefits payable to the petitioner.

For petitioner	: Mr. T. Antony Arul Raj
For Respondents	: Mr. J. Gunaseelan Muthiah
	Additional Government Pleader



ORDER

This Writ Petition has been filed to quash the impugned order, dated 03.09.2013 passed by the first respondent in G.O.Ms.No.199, confirming the order of the second respondent, dated 19.06.2010 in Se.Mu.Ka.No.7959/CD2/2010, confirming the order of the third respondent made in Se.Mu.Na.Ka.No.714/Aa/2008, dated 26.01.2010 confirming the order of the fourth respondent vide proceeding in Na.Ka.No.1637/Aa/07, dated 31.12.2007 and consequently, direct the respondents to revise and disburse the consequential pensionary benefits and all other benefits payable to the petitioner.

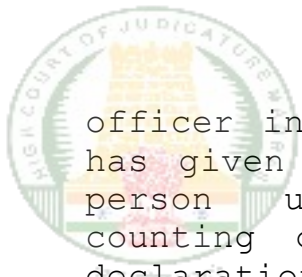
2. The factual matrix of the petitioner that are required for this case as follows:

(a) The petitioner was posted as Election Officer in the Tamil Nadu Legislative Assembly, 2006 held in the year 2006. On that time, there was certain allegations with regard to the discrepancy in the number of votes. In this regard, a criminal case was registered in Crime No.343 of 2006, on the file of the Sub-Inspector of Police, Oddanchathirram. He has committed serious irregularities and misconduct in conducting the Election to Tamil Nadu Legislative Assembly, 2006 and the Chief Electoral Officer and Secretary to Government directed the authorities to initiate disciplinary action under Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.

(b) The fourth respondent / appointing authority has proceeded to frame charges under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules. After conducting an enquiry, orders were passed imposing penalty on 31.12.2007. The petitioner preferred an appeal against the orders of the fourth respondent and the same was disposed by confirming the orders of the fourth respondent. Thereafter, he has sent an appeal to the second respondent against the third respondent order, dated 26.01.2010 and the same was dismissed. Thereafter, he had submitted a review petition, dated 08.09.2010 before the first respondent. The first respondent examined the review petition in consultation with the TNPSC and dismissed the same on 03.09.2013. Hence, the Writ Petition.

3. The stand of the respondents is that based upon the material facts, the charges were held to be proved in the domestic enquiry and punishment was implicated.

4. The learned counsel appearing for the petitioner submitted that for the alleged irregularity said to have been committed by the petitioner, when he was working as an Election



officer in one of the local body Election, one of the co-staff has given a complaint that there are 26 votes cast to the same person under the Electronic Voting Machines over and above counting of the ballot papers, which is resulted in wrong declaration of elected candidate.

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5. He would further submit that the petitioner was working as a Special Grade Junior Inspector of Sericulture Department and he has conducted the election in accordance with rules. After the charge memo issued on 20.08.2006, he has submitted his explanation and the Enquiry Officer has simply rejected the case of delinquent on the ground that the delinquent has not chosen to examine the witnesses as mentioned by him in annexure and accordingly, the charges are held to be proved both by the appellate authority and by the revisional authority, without any discussion and hence, he seeks to set aside the order.

6. Mr. J. Gunaseelan Muthiah, learned Additional Government Pleader appearing for the respondents based on the counter affidavit submitted that due to malpractice alleged on the part of the delinquent, which resulted in 26 votes were cast upon in the Electronic Voting Machine for the same person over and above, ballot paper, counterfeit and he has not taken any steps to prevent. Further, he has adopted his own procedure and also influenced the supervisory official of the election duty and therefore, the conduct of the petitioner is not proper. Hence, the charges against him are held to be proved.

7. The sum and substance of the submission of counsel for the petitioner is that the Hand Book of disciplinary procedure in part IV Para No. 12 states that when a criminal case is filed solely on criminal offence committed by the Government Servant which is in no way connected with the discharge of his official duties, there is no need to pursue the departmental action, except placing the Government Servant under suspension as contemplated under Tamil Nadu Civil Services (Discipline and Appeal) Rules. The ultimate departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed by the Court of law. The departments of Secretariat / Heads of Departments have to follow these guidelines while taking simultaneous criminal and departmental and disciplinary action against Government servants and departmental disciplinary action against Government Servants and pass final orders in the disciplinary proceedings quickly without awaiting the result of the criminal cases.

8. As stated supra, while the petitioner was working as a Junior Assistant in the fourth respondent office, he was posted as Election Officer in the Tamil Nadu Legislative Assembly, 2006 held



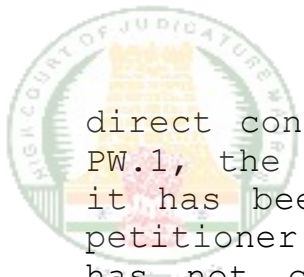
in the year 2006 at Aathur Legislative Assembly, Thirumalairayapuram, Booth No.39, on 08.05.2006. With regard to alleged irregularities committed by the petitioner is serious in nature and there was a misconduct in conducting the Election to the Tamil Nadu Legislative Assembly, 2006, the Chief Election Officer and Secretary to Government has directed to initiate disciplinary action against the petitioner as per Rules and accordingly, charges have been framed and enquiry was conducted. Based upon the report of the Election Commissioner, a Criminal case has also been registered in Crime No.343 of 2006, before the Ottanchaitram Police Station and the matter was taken up as a calender case in C.C.No.164 of 2007, on the file of the learned Judicial Magistrate No.I, Dindigul.

9. During the Trial of Criminal case, it appears that PW.1 Pechiammal was examined, who had given a report to the Election Commissioner and the same was marked as Ex.P1 and other independent witness who worked in the Election and other police witnesses were also examined. For the reasons, the learned Judicial Magistrate No.I, Dindigul has ordered an order of acquittal on 29.12.2009. Based upon the acquittal order in criminal case, the learned counsel appearing for the petitioner made a submission that since the criminal case is ended in acquittal, the present charges have to be quashed.

10. On perusal of records, the First Information Report was registered in Crime No. 343 of 2006, on the file of the Sub Inspector of Police, Ottanchathiram and the final report was taken on file in C.C.164 of 2007. The witnesses as mentioned in the proceeding, were examined. The petitioner was charged for the offence under Sections 135(A), 136 (F) (2) (A) of the the People Representatives Act, 1951.

11. On perusal of the order passed by the learned Judicial Magistrate No.I, Dindigul, it is seen that the said Magistrate has taken the minor contradiction with PW.1 - Chief Election Officer with PW.6 and non marking of the Electronic Voting Machine before the Court, stated that the alleged offence could not have been possible by the accused without co-operation of other persons and hence, the petitioner alone could not have committed the alleged offence and accordingly, chosen to acquit the petitioner. I am not going to say anything about the said Judgment except to state that all is not well in the said Judgment.

12. During the Departmental enquiry, PW.1 has categorically deposed that while she was in the election duty at Sembatti Panchayat on 08.05.2006, based on the phone call received from Ward No. 39, she attended the booth and there are 26 bogus votes have been recorded in the Electronic Voting Machine, which is the



direct control of the petitioner alone. Based on the witness of PW.1, the departmental proceedings have been initiated, wherein, it has been categorically stated that in the Booth No.39, the petitioner herein was working as a Chief Election Officer and he has not conducted the Election properly and allowed 26 bogus votes, thereby, over and above the voters attended the election booth and in view of the same, the wrong candidate was declared as successful candidate. It is to be stated that the stand of proof required before the trial Court is beyond the reasonable doubt whereas the standard of proof of evidence that has to be proved and established in the departmental proceedings is only preponderance of the probability.

13. Admittedly, the first contention of the learned counsel for the petitioner that merely because he was acquitted in criminal case for which the prosecution has to prove charges beyond reasonable doubt and hence, the same will not automatically entitle for discharge in the departmental proceedings. It is to be stated that in the departmental proceedings, not only the offence under Section 135(A), 136 (F) (2) (A) of the the People Representatives Act, 1951, but, the petitioner was stands changed for also declaration of the duty and violation of sub Rule 14(1) and 14(3) of the Tamil Nadu Government Servant Conduct Rules, 1973. With regard to recording of 26 votes in the Electronic Voting Machine over and above the actual voters standing out in the booth thereby, the petitioner was allowed to tamper the Ballot Box under Section 136(1)(f) of the Peoples Representative Act, 1951. Furthermore, it is to be stated that as per Rule 11 of the Election Conduct Rules, it is the duty of the Election Officer to speak about their work entrusted on the petitioner. However, it appears that the petitioner is said to have allowed 26 voters to record their votes in the Electronic Voting Machine, which found to be over and above the voters, who have attended booth on that date and the same was in favour of one contesting person in the election.

14. Based upon the Election Officer and other Election Duty Officials, who are examined in the Departmental proceedings, the Enquiry Officer has rightly come to the conclusion that the all the charges framed against the delinquent officer has been proved on the point of preponderance of the probability and accordingly, held that the charges are proved and the report of the Enquiry Officer has been accepted by the disciplinary authority confirmed by the appellate authority and had also been confirmed by the review authority.

15. I find that the enquiry conducted by the Enquiry Officer on the basis that there is no procedural irregularity in conducting the enquiry and in the absence of any illegality



committed by the disciplinary authority, appellate authority and the review authority and the proceeding of the respondent herein, does not suffer from any irregularity or illegality, warranting interference by this Court in respect of charges. Accordingly, the finding of the Enquiry Officer is confirmed by the authorities is hereby confirmed.

16. On the point of quantum of punishment, I find that the Election is the Touch stone of the democratic process, the franchising of the voters found to be the fountain - stone of the election process. The petitioner herein is a Government servant being appointed as Election Officer appears to have been colluded with one political party, in order to favour him to allow 26 voters to be recorded in Electronic Voting Machine, over and above the voters attended as per the voters list. As per the evidence of departmental witness No.1 and thereby, 26 voters have not even come to the booth, and due to misdeeds of petitioner and consequently, one person got benefit and he was declared as an elected person and that being the case, I am of the considered view that punishment imposed by the disciplinary authority cannot be termed as excess.

17. In this view of the matter, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar(Co)

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Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Handloom, Khadi and Textiles Department,
Government of Tamil Nadu,
Secretariat, Chennai.



2.The Commissioner,
Sericulture Department,
Anaimeedu, Salem.

3.The Deputy Director of Sericulture,
Office of the Deputy Director of Sericulture,
Madurai.

4.The Assistant Director of Sericulture,
Palani Road,
Meenaskshinayakkanpatti Post,
Dindigul.

+1 CC to M/s.T. ANTONY ARUL RAJ, Advocate (SR-16682[F] dated
11/09/2020)

+1 CC to M/s.GP (SR-16837[F] dated 15/09/2020)

ORDER MADE IN
WP (MD) .No.1735 of 2014
11.09.2020

AC(CO)
TR(05.10.2020) 7P 7C