



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.9313 of 2015

and

M.P(MD)Nos.1 & 2 of 2015

WEB COPY

R.Varisai Ibrahim

... Petitioner

Vs.

The Revenue Divisional Officer,
Usilampatti,
Madurai District.

... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the order made in Na.Ka.No.3847/2013/A1 dated 30.06.2014 passed by the respondent and quash the same.

For Petitioner

: Mr.D.Sadiq Raja

For Respondent

: Mr.J.Gunaseelan Muthiah

Additional Government Pleader

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari, to call for the records pertaining to the order made in Na.Ka.No.3847/2013/A1 dated 30.06.2014 passed by the respondent and to quash the same.

2.The case of the petitioner is that he joined as a Village Administrative Officer and discharged his duties for the last thirty years to the utmost satisfactory of his superiors. During the year 2013, while he was working as a Village Administrative Officer in Thottappaanaickanur Village, he was given additional charge with respect to the Villages Pothampatti and Thummagundu. While so, the petitioner was suspended from service on 06.06.2013 by the respondent on the ground of contemplation of an enquiry against him.

3.The petitioner was issued with a charge-memo on 24.06.2013 by the respondent by invoking the provisions of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 on the ground that the Headquarters Deputy Thasildar's signature was forged on a patta by the petitioner. Pursuant to the issuance of the said charge-memo, the petitioner submitted a detailed explanation on 10.07.2013 refuting all the charges in the charge-memo. Being not satisfied with the explanation given by the petitioner, the respondent appointed an Enquiry Officer and the enquiry was conducted. After detailed enquiry, the Enquiry Officer



has submitted his report to the effect that the charges are not proved. Under the abovesaid circumstances, the respondent, vide communication dated 31.01.2014, revoked the suspension of the petitioner and posted at Chittoor Village, Thirumangalam Taluk, Madurai District. In the said circumstances, the respondent vide impugned order dated 30.06.2014 imposed the punishment of postponement of increment for a period of three years without cumulative effect. In the impugned order, it is further stated that his suspension period shall be treated as on eligible leave. Challenging the impugned order, dated 30.06.2014, the petitioner has filed the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that the petitioner has not committed any offence as stated in the charge-memo and further stated that the enquiry officer has submitted his report to the effect that the charges are not proved.

5.Though the Writ Petition has been filed in the year 2015, no counter-affidavit has been filed on the side of the respondent.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

7.On perusal of the materials available on record, it is seen that the petitioner was suspended from service on 06.06.2013 by the respondent on the ground of contemplation of an enquiry against him and subsequently, he was issued with a charge-memo on 24.06.2013 by invoking the provisions of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 on the ground that the Headquarters Deputy Thasildar's signature was forged on a patta by the petitioner. The petitioner submitted his explanation on 10.07.2013 refuting all the charges in the charge-memo. Being not satisfied with the explanation, the respondent appointed an Enquiry Officer and an enquiry was conducted. After detailed enquiry, the Enquiry Officer submitted his report to the effect that the charges are not proved. Hence, the respondent vide communication dated 31.01.2014 revoked the petitioner's suspension and posted him at Chittoor Village, Thirumangalam Taluk, Madurai District. In the said circumstances, the respondent vide impugned order dated 30.06.2014 imposed the punishment of postponement of increment for a period of three years without cumulative effect and it is further stated that the suspension period shall be treated as on eligible leave.

8. The disciplinary authority, while disagreeing with the findings of the enquiry officer must record reasons on the basis of evidence on record. If there is no proper evidence or



there is lacuna in the conduct of enquiry, the disciplinary authority must refer the enquiry back to the enquiry officer for further investigation, but the respondent, without doing so chosen to issue the impugned order, which is prohibited under Law. In a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined for some other reason, the disciplinary authority may ask the enquiry officer to record further evidence. But there is no provision for completely setting aside previous enquiry on the ground that the report of the enquiry officer or officers does not appeal to the disciplinary authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. If the authority comes to the conclusion that the enquiry officer has not conducted the enquiry in a proper manner and found that there is no proper reasoning given for holding the charges as not proved, then he has to give the reasoning and also an opportunity to the petitioner concerned to give his explanation and only on the basis of the fresh explanation given by the petitioner concerned, the authority can pass further orders, but in this case, there is no evidence to show that the petitioner was given an opportunity of hearing before passing the impugned order. The principles of natural justice has to be followed and mere suspicion cannot be taken as a reason for passing further orders. If the disciplinary authority feels that the enquiry was not conducted properly, then he has to pass appropriate orders after giving opportunity to the petitioner.

9.As there was no opportunity given to the petitioner, this Court is of the view that the impugned order has to be set aside and the matter has to be remanded back to the respondent. Accordingly, the impugned order is set aside and the matter is remanded back to the respondent to pass fresh orders, after giving reasons why he has not accepted the enquiry report and also an opportunity of hearing to the petitioner concerned.

10.With the above observation, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



To மேலாதிபதி

The Revenue Divisional Officer,
Usilampatti,
Madurai District.

Order made in
W.P. (MD) No. 9313 of 2015

Dated:
19.06.2020

KM (10.07.2020) 4P 2C