IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.30561 & 30079 of 2008 and
W.P.No.17339 of 2014 and
MP.Nos.1 of 2008 & 1 of 2015

WP.No.30561 of 2008

1.R.Sivakumar ...Petitioner

Vs

1. The Secretary to Government,
Revenue Department ,
Fort St.George,
Chennai-9.

2. The Special Commissioner and
Commissioner of Revenue Administrtion,
Chepauk,
Chennai-5.

3. The District Collector,
Kanchipuram District,
Kanchipuram. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to consider the claim of the petitioner for promotion as Deputy Collector without reference to the punishment impose din Na.Ka.No. A3/71919/2002 dated 23.2.2006 imposed by the 1st respondent and promote the petitioner as Deputy Collector and grnat him all consequential service and monetary benefits.

AND

WP.No.17339 of 2014

R.Sivakumar ...Petitioner

Vs

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The Additional Chief Secretary,
   Commissioner of Revenue Administration,
   Chepauk,
   Chennai-5. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Calling for the records of the respondent in connection with the impugned order passed by the 2nd respondent in Proc. No. Pani 2(1)/499/2014 dt. 30.01.2014 quash the same.

AND

WP.No.30079 of 2008

R.Sivakumar ...Petitioner

Vs

1. The District Collector,
   Kanchipuram and District.

2. The Special Commissioner and
   Commissioner of Revenue Administration,
   Chepauk, Chennai-5.

3. The Secretary to Government,
   Revenue Department,
   Fort St. George,
   Chennai-9. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the respondents in connection with the impugned orders passed by the respondents 1 and 2 in Na. Ka.No.A3/71919/2002 dt 23.2.2006 and Pani.3(1)/35546/2006 dt 18.8.2006 respectively and quash the same.

For Petitioner (In all WPs) : Mr.K.Venkataramani, Senior Counsel for Mr.M.Muthappan

For Respondents (In all WPs) : Mr.C.Selvaraj Government Advocate

COMMON ORDER

These three writ petitions are disposed by way of a common order seeing as they relate to the same petitioner and the charge memos issued and impugned orders of punishment form a continuous trajectory of events that have to be considered wholistically to determine the claim of the petitioner in the three writ petitions. This is best done by way of a single, combined order.

2. The prayer in WP.No.30079 of 2008 is for a quash of order dated 23.02.2006 passed by the District Collector, Kancheepuram District/R1, as confirmed on 18.08.2006 by the Special Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-5/R2.

3. The prayer in WP.No.30561 of 2008 is to direct the respondents to consider the claim of the petitioner for promotion as Deputy Collector without reference to the punishment imposed in Na.Ka.No.A3/719/2002 dated 23.02.2006 imposed by the 1st respondent and promote the petitioner as Deputy Collector and grant him all consequential service and monetary benefits.

4. The prayer in WP.No.17339 of 2014 is for a quash of order dated 30.01.2014 passed by the Additional Chief Secretary and Commissioner of Revenue Administration, Chepauk, Chennai-5/R2.

5. The petitioner entered the Revenue Department as a Typist through the selection conducted by the Tamil Nadu Public Service Commission (TNPSC) and joined service on 04.09.1979. He was promoted to the post of Junior Assistant in 1985 and was further promoted as Tahsildar in the year 1999.

6. While serving as Special Tahsildar, Adi Dravida Welfare in Sriperumpudur, Kanchipuram Taluk in 2001, land had been acquired in that area for housing purposes and awards had been passed in regard to the acquisitions. The charges levelled as against the petitioner on 17.11.2002 and additional charge memo on 10.01.2003, were substantially to the effect that the petitioner, in respect of land at S.Nos.201/2A, 201/2B and 202 standing in the name of Tvl.Dolpin and Arokkiasamy, Thiru.Issac Naidu and Tmt.Therasammal respectively (Parcel-1) as well as land at S.Nos.119/1A and 119/1B standing in the name of Mr.T.Saravanan (Parcel-2) had made an endorsement withdrawing the land acquisition proceedings, without obtaining prior approval from the Collector.

7. As regards the land in Parcel-1, writ petitions had been filed by the land owners challenging the proceedings for acquisition in the course of which, it had come to light that the petitioner had, in fact, withdrawn the proceedings.

8. In view of the aforesaid position, State counsel would argue that the then counsel could not defend the writ petition effectively. Despite the fact that the writ petition came ultimately to be dismissed, which fact is relied upon by the petitioner strenuously to state that no prejudice had been caused to the State, charges to the effect that the petitioner had not followed applicable rules and procedures prior to making the critical endorsement of withdrawal, constituting gross dereliction of primary responsibility cast upon him to protect the interests of Government and provide house site pattas to the downtrodden Arundhadhiyars. Though the charges in regard to both the parcels of land are identical there does not appear to have been any litigation as regards the second parcel of land.

9. Charge-1 in relation to Parcel-1 refers to a letter from the Special Government Pleader setting out the narration of the litigation, in the course of which the omission and commission of the petitioner came to light.

10. The petitioner responded to Charge-1 on 13.08.2003, wherein he admits that, upon assuming office as Special Tahsildar, a request had been received from Theresammal, for withdrawal of her land from acquisition proceedings. Since there were no particulars available that reflected the details of the lands covered by the acquisition proceedings, he did make the endorsement in question without following due procedures. He does not offer any explanation with regard to the other parcel of land, though, parcel 2 was also withdrawn from acquisition proceedings without following applicable procedures. On this score, there is no dispute.

11. An enquiry officer was appointed, who went into the explanation furnished by the petitioner and submitted a report holding the charges proved. Enquiry report dated 20.01.2005 is detailed and sets out the entire history of the matter. Charge-1 in relation to both parcels of lands was held proved and consequently Charges-2 and 3 also stood proved. For the sake of completion, the charges are extracted below:

'Ref:A3/71919/2002 Dated 17.11.2002

Collector's Office,
Kancheepuram.

CHARGE MEMO

The undersigned proposes to hold an inquiry against Thiru R.Sivakumar, formerly Special Tahsildar (ADW), Sriperumbudur and now Special Tahsildar (LA), NH-4, Sriperumbudur under Rule 17(b) of Tamil Nadu

Civil Services (Discipline and Appeal) Rules. The substance of allegations, namely, the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held, is set out in Annexure-1. A statement of allegations namely, the imputations of misconduct or misbehaviour in support of each charge is enclosed in Annexure-II. A list of documents by which, and a list of witnesses by whom, the charges are proposed to be sustained are also enclosed in Annexures III and IV respectively. Any other witnesses and documents which are found necessary will be examined during the course of the enquiry.

2) Thiru R.Sivakumar, formerly Special Tahsildar (ADW), Sriperumbudur and now Special Tahsildar (LA), NH-4, Sriperumbudur is directed to submit within 21 days of the receipt of this letter, a written statement of his defence and also to state whether he desires oral inquiry or to be heard in person or both. If the written statement of defence is not received within the stipulated time, it will be presumed that he has nothing to offer in his defence and further action will be pursued.

3)He is informed that an oral inquiry will be held and oral evidence shall be heard only in respect of such charges as are not admitted by him. He should, therefore, specifically admit or deny each charge.

4)Thiru R.Sivakumar, is further informed that if he does not submit his written statement of defence on or before the time limit specified in paragraph 2 above or does not appear in person before the inquiring authority or otherwise fails or refused to comply with the provisions of rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) rules or the orders or directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

5)Attention of Thiru.R.Sivakumar, is invited to rule 18 of the Tamil Nadu Government Servants Conduct Rules 1973, under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Thiru R.Sivakumar is aware of such a representation and that it has been made at his instance and action will be taken against him for violation rule 18 of Tamil Nadu Government Servants Conduct Rules, 1973.

6)The receipt of this Charge Memo should be acknowledged forthwith.'

'Ref:A3/71919/2002 Dated 10.1.2003

Collector's Office,
Kancheepuram.

ADDITIONAL CHARGE MEMO

The undersigned proposes to hold an inquiry against Thiru.R.Sivakumar, formerly Special Tahsildar (ADW), Sriperumbudur now Special Tahsildar (LA), NH-4, Sriperumbudur under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The substance of allegations, namely, the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held, is set out in Annexure-1. A statement of allegations namely, the imputations of misconduct or misbehaviour in support of each charge is enclosed in Annexure-II. A list of documents by which, and a list of witnesses by whom, the charges are proposed to be sustained are also enclosed in Annexures III and IV respectively. Any other witnesses and documents which are found necessary will be examined during the course of the enquiry.

2) Thiru R.Sivakumar, formerly Special Tahsildar (ADW), Sriperumbudur and now Special Tahsildar (LA), NH-4, Sriperumbudur is directed to submit within 21 days of the receipt of this letter, a written statement of his defence and also to state whether he desires oral inquiry or to be heard in person or both. If the written statement of defence is not received within the stipulated time, it will be presumed that he has nothing to offer in his defence and further action will be pursued.

3)He is informed that an oral inquiry will be held and oral evidence shall be heard only in respect of such charges as are not admitted by him. He should, therefore, specifically admit or deny each charge.

4)Thiru R.Sivakumar, is further informed that if he does not submit his written statement of defence on or before the time limit specified in paragraph 2 above or does not appear in person before the inquiring authority or otherwise fails or refused to comply with the provisions of rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) rules or the orders or directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex-parte.

5)Attention of Thiru.R.Sivakumar, is invited to rule 18 of the Tamil Nadu Government Servants Conduct Rules 1973, under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Thiru R.Sivakumar is aware of such a representation and that it has been made at his instance and action will be taken against him for violation rule 18 of Tamil Nadu Government Servants Conduct Rules, 1973.

6)The receipt of this Charge Memo should be acknowledged forthwith.'

12. The enquiry report has admittedly been furnished to the petitioner and his explanation called for by the competent authority. Upon consideration of the enquiry report as well as the report of the competent authority as well as the explanation furnished, impugned order dated 23.02.2006 has come to be passed confirming the imposition of punishment of stoppage of increment for a period of one year without cumulative effect.

13. It is the case of the petitioner that firstly, the letter of the Special Government Pleader which is mentioned as an Annexure to charge memo dated 17.11.2002 has not been furnished to him. However, there could hardly have any value addition had such letter been supplied, in view of the admitted nature of default by the petitioner.

14. The second point raised is that in additional explanation dated 26.09.2005 furnished before the competent authority, a request has been made for appointment of an alternate enquiry officer, to conduct the enquiry in a proper manner. To my mind, this is merely a request made as a last resort. There is no explanation or justification for a re-

enquiry or why an alternate enquiry officer must be appointed. Certainly, it would not be feasible or even proper for a change of enquiry officer at the mere asking of noticee, particularly when no fault has been brought out in the procedure followed or in the manner of conduct of enquiry by the officer appointed originally.

15. The next argument advanced on behalf of the petitioner is that the request made for verification of the files prior to conclusion of the enquiry was not complied with. A specific query was put as the purpose sought to be achieved by such verification as it is only if a specific need for verification had been made out by the petitioner that the denial of such opportunity for verification would at all be relevant.

16. My attention is drawn to various documents in the files indicative of negotiations, prior to the endorsement made by the petitioner withdrawing the lands in question from the purview of land acquisition.

17. I fail to see the relevance of prior negotiations, if any. The fact remains that the petitioner ought to have sought and obtained sanction from the District Collector, his superior prior to withdrawing the lands in question from the cover of acquisition proceedings. Thus, and in my considered view, the request for verification of files serves no purpose and no purpose whatsoever has been made out in the pleadings in this regard.

18. Then again, it is submitted on behalf of the petitioner that there is no loss or prejudice caused to the State and the result of the acts of omission and commission by the petitioner are, at most only an embarrassment caused to the Government Pleader at the time when the matter was being argued. It is stressed upon that the writ petition filed at the instance of the land owners has itself been rejected. Thus, the petitioner would state that the punishment imposed is wholly disproportionate to the acts of omission and commission, seeing as they have had no repercussions upon the State, either monitory or otherwise.

19. I disagree for the reason that the thrust and purpose of disciplinary proceedings is to address and correct acts of omission and commission by a Government employee. This is all the more when the repurcussions caused by such acts are serious.

20. In this case, withdrawal of the lands covered by Notification under Section 4(1) of the Land Acquisition Act, 1894, (in short 'Act') from acquisition can only be effected

by operation of Section 48 of the Act by the District Collector and thereafter by the Competent Authority in the State.

21. Thus the mere absence of monetary loss cannot lead to the quashing of the disciplinary proceedings. This would, in my view constitute a gross over simplification of the scope and purpose of disciplinary proceedings. Moreover, the acts committed by the petitioner have resulted in the subject parcels of land being unavailable for development of housing sites for the Arundhadhiyars, for which the acquisition proceedings were initiated in the first place.

22. With the rejection of the arguments of the petitioner, impugned orders dated 23.02.2006 and 18.08.2006 in WP.No.30079 of 2008 stand confirmed, as does the punishment thereunder.

23. Coming to WP.No.17339 of 2014, what is impugned are charges dated 27.10.2006. Initially the aforesaid charges had culminated in proceedings dated 14.12.2007 that had been challenged in WP.No.18771 of 2008.

24. The case of the petitioner, that order dated 14.12.2007 is non-speaking and did not advert to the various grounds raised by the petitioner was accepted and the order was set aside, though the charges remained and were processed yet again to culminate in order dated 30.01.2014 imposing a punishment of censure upon the petitioner.

25. Even now, the argument advanced is that the order of the competent authority dated 30.01.2014 continues to be non-speaking, and does not follow either the specific procedure as set out under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. ('Rules'), or the specific directions of this Court in order dated 26.09.2011.

26. This is what the Court has to say in regard to first order dated 26.09.2011 imposing punishment that was ultimately set aside. Paragraph-19 states:

> '19.Coming to the question of non-application of mind, the impugned order is totally without reasons and it is a non-speaking order. It is to be seen that the competent authority has not even discussed any of the charges in his conclusions and simply extracted the process of disciplinary proceedings and concluded the same by imposing the punishment, and therefore, a clear analysis of the entire order would give impression to the Court

> that the authority has not applied his mind and the order passed by the disciplinary authority is a non-speaking order and without any reasons. Whether the authority is judicial or quasi-judicial, he must assign reasons for imposing such punishment. Unless the reasons are disclosed, the person cannot know whether the authority has applied mind and passed the order, and therefore, giving reasons is the heart-beat of the decision making authority and the order must always be supported by cogent reasons to impose such punishment. Though the punishment is minor in nature, that will have effect in the Government servant's career and the order should be supported by reasons with the speaking order.
>
> 20.For all the above reasons, the impugned orders are set aside and the matter is remanded back to the first respondent / disciplinary authority to pass a speaking order by giving reasons, in the manner known to law, after giving an opportunity of hearing to the petitioner. The Writ Petition is allowed to the extent indicated above. No costs.'

27. The mandate at paragraph-20 is for the disciplinary authority to pass a speaking order by addressing reasons in a manner known to law, after hearing the petitioner. Though the petitioner has been heard, the order is wholly non -speaking and no reasons are set out for confirming the punishment imposed.

28. The first respondent being a quasi-judicial authority is expected to have followed proper procedure, set out under Rule 23, i.e., marshal the facts, advert to the basis of the charges instead of simply extracting them, consider the explanations furnished by the petitioner and thereafter come to a decision as to whether the charges were liable to be proceeded with. In the absence of any adherence to the prescribed procedure impugned order dated 30.01.2004 is set aside.

29. Now we come to the impact of the many punishments imposed upon the petitioner in the context of his claim for empanelment from the year 2005-06 onwards. The history of the petitioner's career has been set out in G.O.(2D) No.246, Revenue (Ser-1) Department, dated 09.08.2016. Learned Senior Counsel appearing for learned counsel on record for the petitioner would fairly submit that the petitioner was not liable to be included in the panel for the years 2005-2006, 2006-2007 and 2007-2008 for the reasons set out in the aforesaid G.O., extracted below:

'Abstract

Public Services - Tamil Nadu Civil Service - Thiru R.Sivakumar, formerly Tahsildar/Deputy Collector (Retired), Kancheepuram District Revenue Unit - Appeal for inclusion of name in the list of Deputy Collectors for the year 2007-2008 - Orders - Issued.

Revenue (Ser-1) Department

G.O.(2D)No.246 Dated: 09.08.2016
திருவள்ளுவர் ஆண்டு 2047
துன்முகி வருடம், ஆடி 25
Read:

....
History of the case:-

(iv) Position in the temporary list of Deputy Collectors for the year 2005- 2006:-

(a) His name was taken up for first time consideration for the year 2005-2006. At the time, his position was as follows:-

(b) Punishment of stoppage of increment for one year without cumulative effect awarded in Collector Rc.A3/71919/2002, Dated 23.2.2006, for irregularities in withdrawing Land Acquisition proceedings without getting permission from the District Collector during the year 2002. Punishment given effect from 01.04.2006 to 31.03.2007.

(c) Charges framed under rule 17(a) of Tamil Nadu Civil Service (Discipline and Appeal) Rules for the irregularities noticed while he was working as Special Tahsildar (Land Acquisition), Maraimalainagar in Collector Rc.No.F2/67671/2001, Dated 27.10.2006, were pending.

Hence, his name was not included for the year 2005-2006 due to punishment stated above.

(vi) Position in the temporary list of Deputy Collectors for the year 2006-2007:-

(a) His name was again taken up for consideration for inclusion in the list of Deputy Collector for the year 2006-2007.

(b) Punishment of stoppage of increment for one year without cumulative effect awarded in Collector Rc.A3/71919/2002, Dated 23.02.2006, for irregularities in withdrawing Land Acquisition proceedings without getting permission from Collector during the year 2002. Punishment given effect from 01.04.2006 to 31.03.2007.

(c) Charges framed under rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules for the irregularities noticed while he was working as Special Tahsildar (Land Acquisition), Maraimalainagar in Collector Rc.F2/67671/2001, Dated 27.10.2006, were pending.

Hence, due to currency of above mentioned punishment, his name was overlooked for the year 2006-2007:-

(vii) Position in the temporary list of Deputy Collectors for the year 2007-2008:-

(a) His name was again taken up for consideration for inclusion in the list of Deputy Collectors for the year 2007-2008.

(b) Punishment of stoppage of increment for one year without cumulative effect awarded in Collector, Kancheepuram Proceedings Rc.A3/71919/2002, Dated 23.02.2006, for irregularities in withdrawing Land Acquisition proceedings without getting permission from Collector during the year 2002. Punishment given effect from 01.04.2006 to 31.03.2007.

(c) Charges framed under rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules for the irregularities noticed while he was working as Special Tahsildar (Land Acquisition), Maraimalainagar in Collector Rc.F2/67671/2001, Dated 27.10.2006, were pending.

(d) Fresh charges have been framed under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules by District Collector, Kancheepuram District in Ref.No.A3/6723/2007, Dated 27.09.2007 for certain irregularities noticed in sanctioning Social Security Scheme benefits to ineligible persons, while he was working as Tahsildar, Uthiramerur.'

30. As regards the Constitution of the panel for the year 2008-2009, the request of the petitioner has been denied pointing out that the order of punishment of censure dated 14.12.2007 has been set aside by this Court only on 26.09.2011. The charge of censure being a minor charge in terms of Rule 17 (a) of the Rules, pendency of charges as on the effective date for empanelment for the year 2008-2009, which is 31.12.2007, will not be a bar. Thus, the petitioner will be considered for empanelment for the year 2008-2009 with all consequential benefits.

31. These writ petitions are disposed as above. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

vs

To

1. The Secretary to Government,
   Revenue Department,
   Fort St. George, Chennai-9.

2. The Special Commissioner and
   Commissioner of Revenue Administrtion,
   Chepauk, Chennai-5.

3. The District Collector,
   Kanchipuram District, Kanchipuram.

4. The Additional Chief Secretary,
   Commissioner of Revenue Administration,
   Chepauk, Chennai-5.

+1 cc to the Government Pleader, Sr.51278

W.P.Nos.30561 & 30079 of 2008 and
W.P.No.17339 of 2014 and
MP.Nos.1 of 2008 & 1 of 2015

NR[co]
NSK 25/11/2021