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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.30753 of 2018

(Through Video Conferencing)

M.D.Krishnamurthy

... Petitioner

Vs

1.The Principle Secretary to Government
Revenue and Disaster Management Department,
Service Wing, Service 2(1) Section,
Fort St.George, Chennai - 9.

2.The Sub-Collector,
Thiruvallur,
Thiruvallur District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned orders issued by the respondents 1 & 2 in G.O.Ms.No.383, Revenue and Disaster Management Department, Service Wing, Service.2(1) Section dated 05.10.2018 and Rc.3361/2012/A1 dated 30.08.2012, R.No.3361-2012-A1 dated 31.08.2012 respectively and quash the same and further direct the respondents to disburse the family pension and other benefits and grant such other further relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.R.Dhineshkumar

For Respondents : Mr.L.S.M.Hasan Fizal

ORDER

The Petitioner has challenged the impugned order of the first respondent in G.O. (Ms) No.383, Revenue and Disaster Management Department Services Wing, Service 2(1) Section, dated 05.10.2018.

2. The petitioner is working as a Village Administrative Officer (VAO). During 2006, while implementing the scheme introduced by the Government for grant of free dry land to the landless farmers for their welfare, a Committee consisting of



the following members was constituted.

- i. Village President
- ii. Assistant Agricultural Officer
- iii. Village Administrative Officer
- iv. Rural Welfare Officer
- v. Ward Member

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3. The petitioner was one of the members of the aforesaid Committee. The petitioner was issued with a charge memo dated 08.02.2011 pursuant to a complaint given by Mr.P.Nagaraj, Mrs.V.Latha, Mr.S.Mari and Mrs.Indhirani. The allegation of these persons was that the petitioner had issued pattas to the landless farmers by collecting bribe along with Village Assistant and Tahsildar who were also issued with separate Charge Memo.

4. The charges against the petitioner and two other persons, namely Tahsildar and Village Assistant are as under:-

CHARGE

1) That you (Accused Officer 1) while working as Tahsildar, Uthukottai Taluk, Tiruvallur District, you (Accused Officer 2) while working as Village Administrative Officer, Nambakkam Village, Uthukottai Taluk, Tiruvallur District and you (Accused Officer 3) while working as Village Assistant, Nambakkam Village, Uthukottai Taluk, Tiruvallur District, being public servants, has actuated by corrupt and dishonest motive and in abuse of your (Accused Officer's 1 to 3) official position and authority, during the year 2006 had demanded and in some instance accepted illegal gratifications for yourselves (Accused Officer's 1 to 3) from the following persons on various occasions for including their names in the beneficiaries list in special scheme of patta distribution of two acres of porambokku land in Nambakkam Village, though they encroached dry poroambokku lands in Nambakkam Village which was cultivated by them since 1995 and you (Accused Officer's 1 to 3) did not allot these lands to them due to their inability to pay the bribe amount and issued patta of these lands to some other persons who have not been cultivating these lands by obtaining illegal gratifications from them in violation of rules and regulations.

(i) During the above said period, you (Accused Officer's 1 to 3) have demanded a sum of Rs.10,000/- each as illegal gratification from one Tr.B.Nagaraj, S/o.Balan, No.10, Ariyapakkam Village, Bajanai Koil Street, Nambakkam Post, Uthukottai Taluk, Tiruvallur District, from one Tmt. B.Latha, W/o Poongavanam, Ariyapakkam Village, Bajanai Koil Street, Nambakkam Village, from one



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Tr.S.Mari, S/o.Sekar, Bajanai Koil Street, Nambakkam Village and from one Tmt Indirani Ammal, W/o Kathirvel (Late) Nelvoi Coloy, Uthukottai Taluk, Tiruvallur District, for including the names to the above said beneficiaries list, though they have been cultivating these dry porambokku lands in S.No.13/2, 157/8, and 161 of Nambakkam Village respectively.

(ii) During the above said period, you (Accused Officer's 1 to 3) have demanded an illegal gratification of a sum of Rs.15,000/- for yourselves (Accused Officer's 1 to 3) and accepted a sum of Rs.6,000/- from one Tr.C.Selvam, S/o.Chinnasamy, Nambakkam Colony, Uthukottai Taluk, Tiruvallur District, for including the said Tr.C.Selvam's name in the beneficiaries list, though he is cultivating the dry porambokku land in S.No.161/1 and 158/1 of Nambakkam Village.

(iii) During the above said period, you (Accused Officer's 1 to 3) have demanded a sum of Rs.10,000/- and accepted a sum of Rs.5,000/- as illegal gratifications for yourselves (Accused Officer's 1 to 3) from one Tr.G.Sreenivasan, S/o.Gopal, Ariyappakkam Colony, Uthukottai Taluk, Tiruvallur District for including the said Tr.G.Sreenivasan's name in the above said beneficiaries list who is cultivating the dry porambokku land in S.No.161/1 of Nambakkam Village.

2) During the year 2006 you (Accused Officer's 1 to 3) have demanded and accepted illegal gratifications for yourselves (Accused Officer's 1 to 3) ranging from Rs.2,000/- to Rs.5,000 from 70 beneficiaries as detailed below in Nambakkam Village, Arapakkam Village, Atirambakkam Village and Nelvoy Village for including their names in the beneficiaries list in the first and second phase and issued pattas to these persons, consisting of those who already had pattas in violation of rules and regulations.

(i) During the year 2006 you (Accused Officer 2 and Accused Officer 3) have demanded illegal gratifications for yourselves (Accused Officer 2 and Accused Officer 3) from the following person for including their names in the beneficiary list:-

1) Tmt Kala, W/o Subramani, No.307, Nelvoy Village, Uthukottai Taluk, Tiruvallur District,

2) Tmt S.Sarala, W/o Subramani, Bajanai Koil Street, Nambakkam Colony,



Uthukottai Taluk, Tiruvallur District,
3) Tmt P.Geetha, W/o Panneerselvam,
Perumal Koil Street, Nambakkam Colony,
Uthukottai Taluk, Tiruvallur District.

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(ii) During the year 2006 you (Accused Officer 2 and Accused Officer 3) have given patta to the following persons inspite of the reason that they already had cultivable patta lands in their name:-

1) Tmt M.Malliga, W/o Krishna Naidu,
No.2/46, Kumaran Street, Thulukka Street,
Nambakkam Colony, Uthukottai Taluk,
Tiruvallur District.

2) Tmt Muniammal, W/o Muthusamy Yadev,
No.1/133, Kulakarai Street, Attrambakkam
Village, Uthukottai Taluk, Tiruvallur
District.

3) Tr.M.Kumar, S/o Muthusamy, Yadev,
No.1/133, Kulakarai Street, Attrambakkam
Village, Uthukottai Taluk, Tiruvallur
District.

4) Tmt Lakshmi, W/o Ponnaiyam, No.21,
Palla Street, Attrambakkam Village,
Uthukottai Taluk, Tiruvallur District.

5) Tmt Sasikala, W/o Parthasarathy,
No.21, Palla Street, Attrambakkam Village,
Uthukottai Taluk, Tiruvallur District.

6) Tmt Nagammal, W/o Pappaiyan, 166,
Mettu Street, Attrambakkam Village,
Uthukottai Taluk, Tiruvallur District.

7) Tmt Amsa, W/o Loganathan, No.143-A,
Kulakarai Street, Attrambakkam Village,
Uthukottai Taluk, Tiruvallur District.

(iii) During the year 2006 you (Accused Officer's 1 to 3) have given pattas to persons who are relatives of you (Accused Officer - 3) found in serial nos.18,22,26,28,35,36,37,38,49,41 and 47 under the Scheme in Phase-I and Phase-II.

(iv) During the year 2006 you (Accused Officer's 1 to 3) have allotted land and free pattas to the beneficiaries who are not residents of Nambakkam Village found in SI.Nos.40 & 67 under Phase-II classification-I.

(v) During the year 2006 you (Accused Officer's 1 to 3) have issued patta to persons who are working as Supervisors in TASMACH, Chennai and also as driver Hi State Transport Corporation is found in SI.No.11 & 12 under Phase-II Classification I and II.



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Thereby you (Accused Office's 1 to 3) had committed grave official misconduct, misdeameanor and failed to maintain absolute integrity and devotion to duty and violated the Rule 20 of Tamil Nadu Government Servant Conduct Rules, 1973.

5. The petitioner was thereafter suspended from service on 30.08.2012 and not allowed to retire, though the petitioner has attained the age of superannuation. An enquiry was conducted by the Tribunal for the disciplinary charges levelled against the three delinquents. The disciplinary proceedings culminated in the impugned order dated 05.10.2018 of the first respondent after the enquiry. The first respondent has found the petitioner guilty in disciplinary proceedings and has dismissed the petitioner from service.

6. Challenging the impugned order, the learned counsel for the petitioner submits that the impugned order has been passed merely based on the alleged complaint of Mr.P.Nagaraj, Mrs.V.Latha, Mr.S.Mari and Mrs.Indhirani.

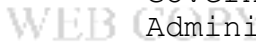
7. It is submitted that the land was allotted by the Committee consisting of Village President, Assistant Agricultural Officer, Village Administrative Officer, Rural Welfare Officer and Ward Member and therefore the allegation against the petitioner that he had demanded bribe and the first respondent had not allotted to the complainants did not satisfy the test of Preponderance of Possibility. It is further submitted that there is a huge delay in commencing the disciplinary proceedings in respect of alleged delinquency of the year 2006, for which, a Charge Memo was issued only on 08.02.2011 and the impugned order has been passed on 05.10.2018 long after the petitioner after the petitioner attained the age of superannuation.

8. It is submitted that the entire proceedings is vitiated. The learned counsel for the petitioner placed reliance on the following decision of this Court:-

i K.G.Thulasirangan Vs. The Secretary to Government,
Revenue Department and another, in W.P.No.9004
of 2016,
dated 02.08.2018.

ii M.Nainar Mohameed Vs. The State of Tamil Nadu,
rep. by the Principal Secretary to Government,
and
Another, in W.P.(MD) Nos.21428 to 21430 of 2016.

9. It is submitted that entire proceedings and suspension just one day before the age of superannuation on 30.08.2012 was clearly vindictive with a view to deny the right to retire with dignity. It is submitted that the impugned order passed by the first respondent vide G.O. (Ms) No. 383, Revenue and Disaster Management Department, Services



10. Appearing on behalf of the respondents, the learned Government Advocate submits that the petitioner as a Village Administrative Officer had vital role in selecting the beneficiaries. It is further submitted that the petitioner allowed the Village Assistant, the third delinquent to list the beneficiaries on behalf of the petitioner even though the Village Assistant was not a member of the Committee to either select the beneficiaries or grant benefit under the scheme.

12. The respondents further justified the impugned order stating that the petitioner took steps to grant patta to one Muniammal and M.Kumar, i.e. Wife and son of late Muthusamy Yadev, even though both were living in the same village and same house. He further submits that the petitioner committed serious delinquency in as much as the petitioner has not allotted free land to B.Nagarajan and B.Latha and not informed the same to the Committee or to the Tahsildar and there is preponderance of possibility for indulging corrupt practices. It is therefore submitted that the impugned order is liable to be upheld and this Writ Petition deserves to be dismissed.

"4. A Committee was formed with five members at village level, (1) Village President, (2) Assistant Agriculture Officer, (3) Village Administrative Officer, (4) Rural Welfare Officer and (5) Ward member. The petitioner is one of the Committee member, basically the petitioner's duty is handling all the village accounts which contains full details of the land owners in respect of classification, extent of lands and all the activities in the lands. By handling / having the village accounts, the petitioner know well about the ownership / enjoyment of all the lands in the village, hence, the petitioner is the competent authority than the other four members in respect of initiating the beneficiaries based on the records which are handing by the petitioner. From the above facts, it is well known that the petitioner having more access to violate the process of selecting the beneficiaries."



14. It was further submitted that during the selection process, the petitioner's role is vital of listing the beneficiaries on the basis of records handled by him. The Village Assistant is the subordinate staff of the Village Administrative Officer, hence the Village Assistant verified the list of beneficiaries on behalf of the petitioner, also the Village Assistant is not the Committee member, hence, the Village Assistant, is not the authority to select the beneficiaries beyond the list furnished by the petitioner.

15. As per the contention of the petitioner, the complainants namely (1) Thiru.B.Nagarajan and (2) Tmt.B.Latha are from one family and their widow mother Tmt.Kamalammal was already granted patta, hence their claim was rejected by the Committee. Even though they are born in one family, they have got married and living with their own family members, hence they are eligible for getting free land in the said scheme. Also I submit that the petitioner initiate to provide patta in this scheme to one Tmt.Muniammal W/o Muthusamy Yadev and Thiru M.Kumar S/o. Muthusamy Yadev, even though both are living in 1/133, Kulakarai Street, Atrambakkam Village, Uthukottai Taluk and subsequently both of them have sanctioned patta.

16. The names of the complainants i.e., (1) Thiru.B.Nagarajan and (2) Tmt.B.Latha were not included in the list of beneficiaries and the fact was not informed neither to the Committee nor to the Tahsildar by the petitioner. Hence, by the preponderance of possibility the allegations levelled against the petitioner were held proved.

17. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

18. No doubt the respondents are not governed by strict rules of evidence but have to proceed based on the Principle of Preponderance of Probability. The allegation that the petitioner may have received bribe cannot be based on a mere complaint of a person who has not been allotted land under the scheme on this Court. Imposition of a drastic penalty of dismissal from service cannot be sustained at best. A minor penalty could have been imposed.

19. It is further noticed that the alleged delinquency pertains to the year 2006 and a Charge Memo was issued in the year 2011. The petitioner was therefore suspended from service on 30.08.2012. The disciplinary proceedings cannot be allowed to linger for a longer period of time and suspension of the petitioner on the date of superannuation is to be frowned upon as it not only denies a right to retire with dignity but also has severe evil consequences on a Government Servant who enters the financial of his life. If delinquency was noticed in the year 2006, it ought to have been proved then and there and the petitioner should have been suspended immediately and



a Charge Memo ought to have been issued for initiating disciplinary proceedings against the petitioner.

20. Initiation of Departmental Proceedings long after the alleged cause of action itself is to frowned upon particularly when a Government Servant is reaching the age of superannuation.

21. However, the respondents have taken their own sweet will and time to issue a Charge Memo only on 08.02.2011, at the fag end of the career of a Government Servant. Such practice is to be deprecated as it is intended to only harass a Government Servant who is to retire very soon. The Departmental Proceedings are not always a means for dismissing a delinquent officer from service, they are also intended for correct the errant Government Servants.

22. It is also not clear why the Vigilance Department was in slumber wakes up at a later point of time. The end of result of such practices are neither giving chance for Government Servants to correct himself or herself or give an opportunity to defend themselves meaningfully.

23. There is no evidence to substantiate the petitioner had actually demanded bribe. Question of imposing even minor penalty on the petitioner does not arise. Considering the same, this impugned order removing the petitioner from service long after the date of superannuation is quashed. Therefore, this Court is compelled to quash the impugned order.

24. Respondents are directed to release terminal benefits of the petitioner by making necessary corrections in the service register of the petitioner for grant of pension.

25. This exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order.

26. This writ petition stands allowed with the above observations. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rgm/drl
To

1.The Principle Secretary to Government
Revenue and Disaster Management
Department,
Service Wing, Service 2(1) Section,
Fort St. George, Chennai - 9.



2.The Sub-Collector,
Thiruvallur,
Thiruvallur District.

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+1 cc to Mr.R.Dhineshkumar, Advocate Sr.NO. 51527
+1 cc to Government Pleader Sr.NO. 52000

W.P.No.30753 of 2018

KSM CO
A.SK(22.11.2021)