



W.P.No.19092 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 08.11.2022

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

WP.No.19092 of 2010

N.Sivakumaran

... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.

2.The Principal Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai-600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the first respondent in G.O.(1-D) No.485 Revenue Dept. Dated 26.11.2009 and quash the same, direct the respondents to reinstate the petitioner in service with all consequential service and monetary benefits.

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For Petitioner : Mr.R.Vijayakumar
for Mr.S.Mahesh
For Respondents : Mr.D.Gopal
Government Advocate

* * * * *

ORDER

The writ petition is filed for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the first respondent dated 26.11.2009 and quash the same and direct the respondents to reinstate the petitioner in service with all consequential service and monetary benefits.

2. The brief facts necessary for disposal of the writ petition are as follows.

The petitioner was appointed as Village Administrative Officer on 11.08.1982. During his tenure, a charge memo containing four charges was issued to him. The Tribunal conducted an enquiry and found that out of 4 charges, charges 1 and 4 were proved. On the basis of the 2 proved charges, the petitioner was removed from service vide order dated 27.08.2003. The



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petitioner preferred an appeal to the first respondent raising several grounds

and prayed to set aside the order of punishment of removal from service. As

there was no response to the petitioner's appeal, the petitioner was

constrained to file O.A.No.6966 of 1993 before the Tamil Nadu

Administrative Tribunal, challenging the order of removal from service. The

Hon'ble Tamil Nadu Administrative Tribunal vide order dated 05.11.1993,

directed the Government to keep the petitioner under suspension, dispose of

the appeal within 3 months and further directed that till such time the order of

punishment should not be given effect to. The first respondent thereafter,

vide order dated 14.12.1995 in G.O.(1-D) No.669, Revenue Department,

rejected the appeal and the petitioner challenged the same before the Tamil

Nadu Administrative Tribunal, Chennai which was later transferred and

re-numbered as W.P.No.27639 of 2006 to the Hon'ble High Court. The

Hon'ble High Court, vide order dated 12.09.2008, set aside the appellate

order passed by the first respondent, dated 14.12.1995 and remitted the

matter for fresh consideration in terms of Rule 23 of the Tamil Nadu Civil

Services (Discipline & Appeal) Rules within 4 weeks. The first respondent

thereafter passed the impugned order, which is the subject matter of challenge



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in this writ petition.

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3. The Deputy Secretary to Government, Revenue Department, Secretariat filed the counter affidavit, wherein the various contentions and allegations of the petitioner were denied. The respondents in the counter affidavit referred to the earlier rounds of litigation and further submitted that the petitioner was dismissed from service, considering the grave nature of misconduct committed by him of accepting illegal gratification. The respondents further submitted that the procedure laid down in Rule 23 of the Tamil Nadu Civil Service (Discipline & Appeals) Rules, was strictly followed and justifiable reasons were given in the impugned order and hence there were no merits in the writ petition and the same deserved to be dismissed.

4. The learned counsel for the petitioner submitted that, inspite of the order of this court in W.P.No.27639 of 2006 dated 12.09.2008, the appellate authority has passed a non speaking order, which is in violation of Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and hence the same deserves to be set aside. The learned counsel further submitted that the



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first respondent has not applied his mind to the grounds raised by the writ petitioner and therefore, the impugned order is passed without application of mind. The learned counsel also submitted that the punishment was disproportionate to the charges levelled against him.

5. In contra, the learned counsel for the respondents submitted that the first respondent as the appellate authority, had followed the procedure contemplated under Rule 23 and had also given justifiable reasons for rejecting the appeal filed by the petitioner. The learned counsel for the respondents therefore prayed that there were no merits in the writ petition.

6. I have heard both the counsels and perused the materials on record.

7. The petitioner was working as Village Administrative Officer in Pottaneri Nallagoundenpatti Village, Mettur Taluk, Salem District and was placed on defense before the Tribunal for disciplinary proceedings based on the findings of the Director of Vigilance and Anti Corruption Madras, for demand and acceptance of illegal gratification, which was in violation of



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Tamil Nadu Government Servants Appeal and Conduct Rules, 1973. Four

charges were framed against the petitioner which are as follows:

Charge No.1

That while the applicant was working as Village Administrative Officer, Pottaneri Nallagoundanpatti Village and Veerakkalpudur Village, Mettur Taluk, Salem District actuated by corrupt motive and in abuse of his applicant's official position and authority, on 14.02.1987 at about 7.00 A.M. when Thiru. Mohammed Mohideen, S/o Shahul Hameed, Asia Grocery shop, Moolakkadai, Kunjandiyur, Mettur Taluk, met him and showed the memo received by him from the Tahsildar, Mettur requesting him to produce a certificate of his non-involvement in any civil/ criminal cases and also a certificate to the effect that he had sufficient means to run a Grocery Shop, for the purpose of renewal of his licence for dealing in food grains and essential commodities and requested him. (Applicant) to issue the aforesaid certificates, he (Applicant) after going through the memo, demanded from the said Mohammed Mohideen an illegal gratification of Rs.150/- for issuing the certificates. When the said Mohamed Mohideen informed that he had not brought so much money, he (Applicant) told him that he



need not worry since the following two days were holidays, that he could pay the money in the evening and get the certificates. In pursuance of the aforesaid demand and direction, on 15.02.1987 at about 8.30 A.M. he (Applicant) had received the illegal gratification of Rs.150/- from the said Mohammed Mohideen at his (Applicant's) residence at No.36/240 Thermal Plant, V.O.C. Nagar, Thangammapuripattinam, Mettur Dam R.S. and issued him the certificates requested by him.

Charge No.2:

That, While he (Applicant) was working as Village Administrative Officer, Pottaneri Nallagoundanpatti Village and Veerakalpudur Village, Mettur Taluk, Salem District, actuated by corrupt motive and in abuse of his official position and authority, on 11.02.1987 and 12.02.1987 with dishonest motive and with intention to obtain wrongful gain to himself (Applicant) he (Applicant) had collected a total sum Rs.120/- at Rs.15/- each from:

- 1.Tmt. Venkateswari, W/o. Balasubramaniam, Puduchampalli, Veerakalpudur Village.*
- 2.Tmt.Mani, W/o. Madeshan, Puduchampalli.*
- 3.Tmt.Kaveri, W/o. Vijarathinam, Puduchampalli.*
- 4.Tmt. Thulasimani, W/o.Arumugham,*



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Puduchampalli.

5.Tmt. Kaveri, W/o. Angappan, Puduchampalli.

6.Tmt. Pappal, W/o. Sankaran, Karumalaikudal.

7.Tmt. Suseela, W/o. Arjunan, Puduchampalli and

8.Tmt. Narasammal, W/o. Palaniappan, Puduchampalli.

at his (Applicant's) residence at No.36/240, Thermal Plant Road, V.O.C. Nagar, Thangammapuripatinam, Mettur Dam, R.S. for enrolling them under the Labour Insurance-cum- Retirement benefits Special Scheme and accounted for only Rs.80/- at Rs.10/- each by writing the receipt on 15.02.1987 after his (Applicant's) arrest in trap case (Vide Charge-1 above) and he (Applicant) had misappropriated the balance amount of Rs.40/-

Charge No.3:

That, While he (Applicant) was working as Village Administrative Officer, Pottaneri Nallagoundanpatti Village and Veerakalpudur Village, Mettur Taluk, Salem District, between 11.02.1987 and 14.02.1987 he (Applicant) had demanded and received illegal gratification of a total sum of Rs.125/- from the following 11 persons at his residence No.36/240, Thermal Plant Road, V.O.C. Nagar, Thangammapuripattinam, Mettur



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Dam R.S. for issuing community and income certificate to them as detailed below:

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SI. No	Name and address of the person who paid the illegal gratification	Amount of illegal gratification paid	Date of demand & acceptance of illegal gratification
(1)	(2)	(3)	(4)
1.	Tmt. Venkateswari W/o Balasubramaniam, Puduchampalli.	10/-	12.02.1987
2.	Tmt. Mani, W/o Madesh Puduchampalli.	10/-	11.02.1987
3.	Tmt. Kaveri, W/o. Vijayarathinam, Puduchampalli.	10/-	12.02.1987
4.	Tmt. Thulasimani W/o Arumugham, Puduchampalli.	10/-	12.02.1987
5.	Tmt. Kaveri, W/o Angappan, puduchampalli.	10/-	11.02.1987
6.	Tmt. Suseela, W/o Arjunan, Puduchampalli	10/-	12.02.1987
7.	Tmt. Narasammal, W/o Palaniappan, Puduchampalli	10/-	11.02.1987
8.	Tmt. Parvathi, W/o Rajamanickam, Puduchampalli.	15/-	11.02.1987
9.	Tmt. Nageswari, W/o Renganathan, puduchampalli.	15/-	14.02.1987
10.	Tmt. Lakshmi, W/o Siddan, Puduchampalli.	15/-	12.02.1987
11.	Tmt. Pappal, W/o Sankaran, Karumalaikudal	10/-	11.02.1987

Charge No.4:

That, he (Applicant) being a public servant bound by



Tamil Nadu Government Servants' Conduct Rules, 1973, and bound to report to the prescribed authority any transaction concerning any movable property exceeding Rs.2,000/- in value, had failed to report to the prescribed authority the purchase of a Luna Moped Motor Cycle bearing Registration No. TIM-3405 in his Applicant's name for Rs.4,100/- on 21.02.1984 from Tvl. AR.AS & PV.PV., Salem-7 and thereby he (Applicant) had contravened the provisions under rule 7(2) of the Tamil Nadu Government Servants' Conduct Rules, 1973.

8. The Tribunal after conduct of enquiry, held that out of above 4 charges, charges 1 and 4 were proved and the other 2 charges were not proved. For the proven charges the second respondent vide order dated 27.08.1993 dismissed the petitioner from service. The petitioner aggrieved by the order of the second respondent preferred an appeal to the first respondent and the first respondent vide order dated 14.12.1995 rejected the appeal. The petitioner thereafter filed Original Application in O.A.No.173 of 1996 before the Tamil Nadu Administrative Tribunal, challenging the appellate order of the first respondent which O.A. was transferred to the Hon'ble Madras High Court and renumbered as W.P.No.27639 of 2006. This



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Hon'ble Court in W.P.No.27639 of 2006 by order dated 12.09.2008, allowed the writ petition by setting aside the order of the appellate authority, on the ground that the appellate authority had not assigned any reasons for confirming the second respondent's order and as such the order was vitiated for total non-application of mind and against Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The Hon'ble Court therefore remitted the matter to the first appellate authority for fresh consideration.

9. In pursuance to the above order of this Hon'ble Court the 1st respondent on fresh consideration passed the impugned order rejecting the appeal filed by the petitioner as meritless, thereby confirming the order of the second respondent. The writ petitioner has now challenged the impugned order by this second round of litigation. The writ petitioner in his grounds of appeal before the appellate authority as reflected in the impugned order did not deny the fact that there was a demand and acceptance by him of illegal gratification. The petitioner did not dispute the recovery of the illegal gratification of an amount of Rs.150/- from his drawer.



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10. When specific charge of accepting illegal gratification is made, it

was incumbent on the petitioner to have denied the same on cogent grounds.

Even in the present writ petition, the petitioner has raised general grounds by stating that there was violation of Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, in that the appellate authority failed to consider the vital contradictions in the depositions of P.W.1, P.W.2 and P.W.23 and that the punishment was imposed simply confirming the order of the second respondent without assigning any reasons thereof. The fulcrum of the arguments of the learned counsel for the petitioner was that, the appellate authority inspite of order of this Hon'ble Court in W.P.No.27639 of 2006 had again passed a non speaking order, which was in violation of Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The counsel by referring to the earlier order of this Hon'ble Court submitted that there was total non application of mind by the appellate authority to the grounds raised by the petitioner. It would therefore be relevant to first refer to the grounds raised by the petitioner in the appeal.

"4. The petitioner, in his appeal dated 01.11.1993 raised the following grounds of appeal.



(a) The order of removal from service is unsustainable in law and on facts and is liable to be set aside.

(b) The order of removal from service bristles with arbitrariness which is the outcome of unguided and unfettered powers being violative of Articles 14 and 16 of the Constitution of India.

(c) The order of removal from service is the result of improper appreciation of evidence and the third respondent has based his findings on mere surmises without even probing into the material discrepancies of the case.

(d) The charge no.4 even assuming without admitting that it is proved, the punishment of removal from service is too grave and disproportionate to the said charge. A Censure or Warning alone would be sufficient for the said charge.

(e) The fourth charge can not be held to have been proved as the first charge is not at all proved. As already submitted only 3 witnesses (interesting and official witnesses) have spoken about the first charge namely P.W.1, P.W.2 and P.W.23. Even in the evidence of the said 3 witnesses there are major contradictions.

(f) The material points in the appellant's written submission is not at all taken into account before accepting



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the findings of the enquiry officer and as such the order of removal from service is liable to be set aside.

(g) The order of removal from service is in blatant violation of Articles 23, 312 and 300-A of the Constitution of India.

(h) The order of removal from service is tainted with malafide motives and illegalities. It is against all the principles of natural Justice, fair play, equity and

(i) The findings regarding the charges 2 and 3 themselves would prove that the charges 1 and 4 are also baseless.

11. The grounds raised by the petitioner in the grounds of appeal before the appellate authority is extracted above to show that a bare reading of the same establishes that the petitioner has not denied the demand and acceptance of bribe, but merely stated that there was an improper appreciation of evidence and the same was based on mere surmises. The petitioner further failed to point out the contradictions which he alleged, where there in the evidence of P.W.1, P.W.2 and P.W.23 and in the absence of specific reference to instances of contradictions mere general statements



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will be of no avail.

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12. It is seen from the impugned order, that the appellate authority had given reasons stating that there were material evidences to show that, P.W.1 approached the petitioner for issue of certificate and the petitioner had demanded and accepted illegal gratification of Rs.150/-, which was proved by the Phenolphthalein test conducted on the petitioner. The first respondent also referred to the recovery of sum of Rs.150/- from the petitioners drawer. The said facts according to the first respondent, were corroborated by the evidence of the official witnesses P.W.1 and P.W.23. Therefore, it cannot be said that the first respondent had not applied his mind to the facts of the case.

13. The Hon'ble Supreme Court as early as in 1964 in the case of ***Union of India Vs. H.C.Goel*** reported in ***1964 SCC 364*** held that “if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued”. The said Judgment was followed by the Hon'ble Supreme Court in the latest Judgment

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in the case of ***Union of India Vs. Dalbir Singh*** in ***CIVIL APPEAL NO.5848***

OF 2021, wherein the same legal position has been reiterated.

14. The Hon'ble Supreme Court in the case of ***B.C Chaturvedi v. Union of India & Others*** reported in ***(1995) 6 SCC 749*** held that “Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.” The relevant paragraph is extracted hereunder.

*12.Judicial review is not an appeal from a decision
but a review of the manner in which the decision is made.
Power of judicial review is meant to ensure that the
individual receives fair treatment and not to ensure that the
conclusion which the authority reaches is necessarily
correct in the eye of the court. When an inquiry is
conducted on charges of misconduct by a public servant,
the Court/Tribunal is concerned to determine whether the*



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inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules



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prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13.The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.”

15. In my considered view the above said Judgments squarely apply to the facts of the case as by no stretch of imagination can it be said that the



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order passed by the Appellate authority confirming the order of the Disciplinary Authority is perverse or based on no evidence. One vital aspect to be noted is that the writ petitioner has not challenged the report of the phenolphthalein test conducted on him.

16. The Hon'ble Supreme Court in the context of illegal gratification arising out of the Prevention of Corruption Act applied the principles of *res ipsa loquitur*. In the facts of the present case, it is seen that the phenolphthalein test was conducted and proved positive and also the currency notes were recovered from the drawer of the writ petitioner. In the absence of any plausible explanation or contra evidence, invoking the principles of *res ipsa loquitur*, it can be safely concluded that the petitioner was guilty of demand and receipt of illegal gratification. I am fortified by the Judgment of the Hon'ble Supreme Court in the case of ***Raghubir Singh Vs. State of Haryana*** reported in ***(1974) 4 Supreme Court Cases 560***, wherein the Hon'ble Supreme Court held as follows:

“11.... But we may notice that even if the



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statutory presumption unavailable, courts may presume what may in the ordinary course be the most probable inference. That an Assistant Station Master like the accused has in his hand a marked currency note made over to him by a passenger whose bedding has been detained by him for which no credible explanation is forthcoming, and he is caught red-handed with the note, is a case of res ipsa loquitur. The very thing speaks for itself in the circumstances.”

17. Applying the principles to the facts of the present case, I am of the view that the finding of the Appellate authority on the basis of the phenolphthalein test and recovery of the currency notes from the drawer of the petitioner cannot be faulted, moreso, when no independent contra evidence was let in by the petitioner to controvert the same.

18. In so far as the charge No.4 is concerned, the Appellate authority has categorically found that there was absolutely no evidence to show that the



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petitioner informed the Appointing authority about the purchase of the motor vehicle. In the absence of any evidence by the petitioner to show that he had informed about the purchase of the motor vehicle to the Appointing authority no fault can be found with the Appellate Authority for his conclusion.

19. On the quantum of punishment the learned counsel for the petitioner submitted that the punishment imposed was disproportionate to the nature of charges. In my considered view the said submission cannot be countenanced as the petitioner was found to have demanded and accepted illegal gratification and as such by no stretch of imagination can it be said that the punishment of dismissal was disproportionate to the serious and heinous misconduct.

20. For all the above reasons, I find that there are no merits in the writ petition and the same deserves to be dismissed.

21. Accordingly, this Writ Petition stands dismissed. However, there shall be no order as to costs.

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Speaking Order: Yes/No

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To

- 1.The Secretary to Government,
Revenue Department,
Fort St.George, Chennai-600 009.
- 2.The Principal Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
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