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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.22130 & 22131 of 2013

S.Jayashree ...Petitioner in WP.22130/2013

L.Ravichandran ...Petitioner in WP.22131/2013

-Vs-

1. The Secretary to Government,
Rural Development & Panchayat
Raj Department,
Fort St. George, Chennai - 9.

2. The Assistant Director/Secretary,
District Panchayat,
Cuddalore District.

...Respondents in both WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st respondent in connection with the impugned order passed by him in GO.D.No.317, Rural Development & Panchayat Raj (E2) Department, dated 02.07.2013 and GO.D.No.316, Rural Development & Panchayat Raj (E2) Department, dated 02.07.2013 and quash the same.

For Petitioners : Mr.K.Venkataramani, Sr. Counsel
(in both WPs) for Mr.M.Muthappan

For Respondents : Mr.T.Chezhiyan,
(in both WPs) Additional Government Pleader

COMMON ORDER

With the consent of both the parties, these writ petitions are heard together and a common order is passed.

2. The petitioners herein are husband and wife, who are employed in two different departments of the Government. Both of



them were subjected to domestic enquiry, owing to charges levelled on 03.10.2008 to the effect that they had acquired movable and immovable properties without obtaining permission of the concerned department. Not being satisfied with the explanation rendered by them to the authorities, an enquiry was conducted and through the report dated 24.02.2012, the Enquiry Officer had held the charges to be proved. Consequently, the impugned orders of punishment are passed by the first respondent herein on 02.07.2013, imposing the punishment of stoppage of increment for a period of 5 years with cumulative effect.

3. The learned Senior Counsel appearing for the petitioners submitted that the enquiry itself was not done in a manner known to law. According to the learned Senior Counsel, no witnesses were examined in the oral enquiry nor any documents were marked to prove the allegations against the petitioners.

4. The learned Additional Government Pleader, on the other hand, placed reliance on the averments in the counter affidavit and submitted that no witnesses are required to be enquired with regard to the charges against the petitioners, unless the names of the witnesses are included in the report of the appropriate investigating authority. According to him, acquiring of the properties without permission itself is opposed to the rules and therefore, the non-examination of witnesses or non-production of documents will not be fatal to the department.

5. Rule 7(1) of the Tamil Nadu Government Servants Conduct Rules, 1973 provides that, no Government servant shall, except after notice to the Government, acquire or dispose of any immovable property, either in his name or in the name of any member of his family. The cumulative effect of the charges levelled against these petitioners is that they had acquired such properties either in one of their names or in the name of their spouse. These charges are required to be substantiated and established in the domestic enquiry through proper evidences, both oral and documentary. Such a requirement is mandatory, owing to various decisions of the Hon'ble Supreme Court, as well as this Court. In the case of State of Uttaranchal and others Vs. Kharak Singh reported in 2008 (8) SCC 236, the principles for conducting a domestic enquiry was laid down in the following manner:-

"11. From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of



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the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

6. Likewise, in the case of Roop Singh Negi Vs. Punjab National Bank and others reported in 2009 (2) SCC 570, the Hon'ble Supreme Court held that the contents of the documents before an Enquiry Officer requires to be proved by examination of witnesses. The relevant portion of the judgement reads as follows:-

"10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by



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the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

7. The aforesaid extracts are self explanatory. In the light of these rulings, the stand taken by the learned Additional Government Pleader that witnesses need not be examined in the domestic enquiry when there was substantial evidence by way of a report with regard to acquisition of properties, cannot be sustained.

8. As a matter of fact, Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, in which the present enquiry was held, mandates that when the department proposes to take action on a set of charges, the charge memo should be reduced to a form of definite charges with a statement of allegation on which the charge is based and on any other circumstances which it is proposed to take into consideration, in passing orders on the case. Insofar as the enquiry is concerned, the rule provides that even if a person charged has waived of an enquiry, such enquiry shall be held by the authority concerned in respect of the charges and at that inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the delinquent should be extended opportunity to cross-examine the witnesses. Thus, establishing the charges requires to be done only on the basis of the evidences, as provided for under Rule 17(b).

9. When the domestic enquiry, in the instant case, was not done in accordance with the procedure contemplated under Rule 17 (b), as well in the decisions rendered by the Hon'ble Supreme Court in Kharak Sing and Roop Singh Negi (supra), the enquiry itself would stand vitiated.

10. However, one incidental aspect which requires to be



considered is that the petitioners herein have admittedly not obtained prior permission from the Government with regard to acquisition of the properties in their respective names. This aspect is not denied by the petitioners also. Though the enquiry itself stand vitiated for violation of the procedure contemplated, this Court has taken cognisance of the admitted fact that prior permission was not taken before the properties were acquired and therefore is of the view that the punishment imposed by the respondents could be reduced.

11. The learned Senior Counsel for the petitioner, at this juncture, submitted that owing to the currency of punishment, the petitioners' promotions have been denied.

12. In the light of the above findings, the impugned orders passed by the first respondent herein in G.O.(D).No.317 and G.O.(D).No.316, Rural Development & Panchayat Raj (E2) Department, dated 02.07.2013, insofar as it imposes the punishment of stoppage of increment for 5 years with cumulative effect, are quashed. Consequently, there shall be a direction to the first respondent to pass appropriate orders, imposing punishment of stoppage of increments for a period of 1 year without cumulative effect, within a period of 6 weeks from the date of receipt of a copy of this order. On passing of such orders modifying the punishment, if the petitioners are entitled for notional promotion, the first respondent herein shall also pass such orders for notional promotion on par with their immediate juniors.

13. Accordingly, the Writ Petitions stand partly allowed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
Rural Development & Panchayat
Raj Department,
Fort St. George, Chennai - 9.



2. The Assistant Director/Secretary,
District Panchayat,
Cuddalore District.

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+4ccs to Mr.M.Muthappan, Advocate, S.R.Nos.25026 & 25027

+1cc to the Government Pleader, S.R.No.25765

W.P.Nos.22130 & 22131 of 2013

GSM(CO)
SU(28/04/2022)