



W.P.Nos.36618 & 36619 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.Nos.36618 & 36619 of 2015

R.Balakrishnan Petitioner in both the W.Ps

VS

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

2. The District Collector,
Krishnagiri. Respondents in both the W.Ps.

W.P.No.36618/2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent vide proceedings No.4846/2013/A1 dated 26.09.2015 and and to quash the same and consequently direct the second respondent to reinstate the petitioner in service with all attendant benefits.

W.P.No.36619/2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent vide proceedings No.4846/2013/A1 dated 07.08.2013 and and to quash the same and consequently direct the second respondent to reinstate the petitioner in service with all attendant benefits.



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For Petitioner
in both W.Ps : Mr.S.Vijayakumar

For respondents
in both W.Ps. : Mr.V.Arun,
Additional Advocate General
assisted by Mr.Abishek,
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the impugned charge memo dated 07.08.2013 and the impugned order of suspension dated 26.09.2015.

2. The brief facts of the case are as follows:

i) The petitioner was appointed as Revenue Assistant on 26.07.2004 through Tamil Nadu Public Service Commission and allotted to Taluk Office, Hosur. Later, he was promoted to the post of Deputy Tahsildar on 05.01.2011 at Denkanikottai Taluk, Krishnagiri District and was serving as a Deputy Tahsildar (Election) Denkanikottai Taluk, Krishnagiri District. Though he was eligible for promotion to the post of Tahsildar for the year 2013 (crucial dated 1.7.2013), a charge memo under Rule 17(b) of the T.N.C.S.(D & A) Rules was issued alleging serious misconduct vide Proceedings No.4846/2013/A1 dated 07.08.2013 by the 2nd respondent, consequent to which, he was deprived promotion to the post



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of Tahsildar for the year 2013 and several juniors are serving as Tahsildar and hence, the petitioner was greatly prejudiced. Totally, nine charges were framed against the petitioner.

ii) The main allegation against the petitioner is that he had abused his power by recommending in the note file to issue patta to one C.K.Ramasamy S/o Krishnamachari, Hosur Taluk, Chichurganapalli Village, Hosur Taluk, Krishnagiri District, in respect of S.No.235/3 admeasuring an extent of 2.06.00 hectare. The said land was notified as Anadeenam and therefore, C.K.Ramasamy had sought for grant of patta on account of his continuous possession of more than 100 years.

iii) In respect of the subject matter, this Court in W.P.No.1701/12 dated 8.3.2012 directed the Tahsildar to grant patta in the light of the decree passed in O.S.No.24/2009 dated 09.06.2010. The 2nd respondent accepted the order of this Court and issued express memo for compliance. The Sub-Collector, in his proceedings dated 30.05.2012, directed the Tahsildar to consider the order passed in O.S.No.24/2009 and the order passed in W.P.No.1701/2012 for issuance of patta in favour of the said Ramasamy. Therefore, the petitioner put up a note disclosing the facts and suggested for consideration of the request for grant of patta in the light of the order passed by this Court and based on the express memo sent by the 2nd respondent. The file was forwarded to Tahsildar,



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who is the ultimate authority for passing appropriate orders for granting patta.

The Tahsildar, after referring the order passed by the Civil Court, Krishnagiri and the order passed by this Court and after obtaining opinion from the Assistant Settlement Officer, who is the custodian of the government records for grant of patta, issued patta in favour of C.K.Ramasamy vide proceedings dated 15.06.2012.

iv) While so, the charge memo was issued to the petitioner on 07.08.2013 to submit his explanation on 07.10.2013. An enquiry officer was appointed on 12.09.2013 and the enquiry was conducted on 07.10.2013. While so, the 2nd respondent issued an order of suspension dated 26.09.2015 under Rule 17(e)(1) of the T.N.C.S.(D & A) Rules, when there is no public interest/imminent necessary is involved. Hence, the above writ petitions are filed.

3. Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents.

4. The gist of charges levelled against the petitioner are as follows:

Charge No.1:

That the petitioner R.Balakrishnan, Zonal Deputy Tahsildar has abused



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his power by recommending in the note file No.N.Di.7103/2012 C2 dated 30.2.2013 in this file note file Page No.2 and 3 to issue the patta to one Thiru C.K.Ramasamy, S/o Krishnamachari, Hosur Taluk - Chichurganapalli Village, S.No.235/3 to an extent of 2.06.0 Hectare.

Charge No.2.

That the petitioner failed to intimate to the Tahsildar Hosur to file appeal against the judgement delivered in O.S.No.24/09 by the Principal District Judge, Krishnagiri on the suit filed by one C.K.Ramasamy against the order passed by Special Tahsildar in his S.R.06/ACA 26/63 dated 6.4.71 on the ground that Civil Court has no jurisdiction and the suit is barred by limitation.

Charge No.3

Even though Collector, Krishnagiri, has been shown as second respondent in the court of the Principal District Judge, Krishnagiri in the original Suit No.24/09, the Zonal deputy Tahsildar, Hosur, has failed to prepare and file counter affidavit in the above said case through Tahsildar, Hosur and thereby committed misconduct.

Charge No.4.

That the petitioner failed to obtain the legal opinion from the Government Pleader, High Court, Madras on the judgement delivered in the court of the Principal District Judge, Krishnagiri in O.S.No.24/09 and for the



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orders passed by this Hon'ble High court of Madras on W.P.No.1701/12 dated 8.3.12.

Charge No.5.

That the Sub-Collector, Hosur has informed to consider to issue the patta to C.K.Ramasamy, S/o Krishnamachari in S.No.235/3 Chichurganapalli, Hosur Taluk, in his Roc.3401/2011/B2 dated 30.5.12, whereas the Zonal Deputy Tahsildar has recommended to issue the patta to C.K.Ramsamy based on the decree passed in O.S.No.24/09 dated 9.6.10 by the Court of the Principal District Judge, Krishnagiri and High Court order in W.P.No.1701/12 dated 8.3.12.

Charge No.6

Though the District Collector was shown as second respondent in W.P.No.1701/12 filed by Thiru.C.K.Ramasamy, s/o Krishnamachari, the said case was listed on 8.3.12 and that on the same day, order was passed in favour of C.K.Ramasamy and against the government. No reasonable opportunity was given to the District Collector, Krishnagiri, before the order is passed on 8.3.12. Despite the above, the Zonal Deputy Tahsildar has not taken any steps/action thereby acted in favour of C.K.Ramasamy to secure an order on 15.6.12 by recommending for issue of patta, thereby acted against the interest of the government.



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Charge No.7.

Even though the District Collector, Krishnagiri has been shown as second respondent in W.P.No.1701/12, the Zonal Deputy Tahsildar has acted on his own without obtaining any concurrence/orders from the District Collector, thereby abused his position for passing orders in favour of C.K.Ramasamy on 15.6.12.

Charge No.8

That the Zonal Deputy Tahsildar, has failed to take any action to prefer an appeal against the order made in W.P.No.1701/12 and also in the decree made in O.S.No.24/09 on the file of Principal District Judge, Krishnagiri and obtained stay of the orders in favour of the petitioner.

Charge No.9.

That the petitioner has failed to discharge his duties in terms of Rule 20(1)I of the Tamil Nadu Government Servant Conduct Rules.

5. (i) Learned counsel for the petitioner would submit that the Tahsildar has passed orders granting patta in favour of C.K.Ramasamy by making entry in the revenue records. Admittedly, the said Ramasamy filed a Civil Suit in O.S.No.24 of 2009 on the file of Principal District Court, Krishnagiri, against the Assistant Settlement officer (South), Chepauk, Chennai-5 and the State of Tamil Nadu, rep. by its District Collector, Krishnagiri and sought for a decree



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declaring the title to the suit property and for a mandatory injunction directing the defendants therein (Assistant Settlement Officer and District Collector), to grant ryotwari patta for the suit land in favour of the plaintiff(Ramasamy). The said suit was resisted by the State on merits and ultimately, the learned Principal District Judge, Krishnagiri, on 9.6.2010 decreed the suit as prayed for. Aggrieved by the judgment and decree, the Assistant Settlement Officer, sought opinion from the Government Pleader, Krishnagiri who opined that it is not a fit case for filing the appeal. Learned counsel would further submitted that the Government Pleader in his letter dated 12.09.2010 opined that the appeal is not necessary for the case. Similar opinion was obtained from another Additional Government Pleader in Krishnagiri on 27.04.2012 who also opined that the suit property belongs to the private inamdars and hence, the decree and judgment of the learned Principal District Judge, is correct. Learned counsel would further submit that the Assistant Settlement Officer sought opinion from Additional Government Pleader (O.S.) of this Court and by letter dated 5.8.2010, he opined that it is not a fit case to move appeal before this Court. Learned counsel would further submit that in the meanwhile, aggrieved by non-compliance of the judgment and decree, the said Ramasamy moved this Hon'ble Court in W.P.No.1701/2012 for a mandamus directing the Tahsildar, Hosur to grant patta in the light of the judgment and decree dated 9.6.2010



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passed in O.S.No.24/2009. This Hon'ble Court was pleased to pass an order on 8.3.2012 directing the respondents to pass appropriate orders within two months. Thereafter, the Tahildar passed an order granting patta in favour of Ramasamy by making entry in the revenue records. From the above, it is seen that the Tahsildar, Hosur has granted patta on the strength of the judicial orders made in O.S.No.24/2009 dated 9.6.2010 and W.P.No.1701/2012 dated 8.3.2012 and also based on the instructions given by the District Collector, Krishnagiri, Sub Collector, Hosur and DRO, Krishnagiri, besides, it has been clearly opined by the respective Government Pleader that the decree passed in O.S.No.24/2009 is not fit for filing an appeal.

ii) Learned counsel would further submit that the District Collector along with the Assistant Settlement Officer moved this Hon'ble Court against the judgment and decree passed in O.S.No.24/2009 in M.P.No.2/2015 in A.S.SRNo.122206/2013 by filing an appeal under section 96 C.P.C. with a petition for condonation of delay of 883 days in filing the appeal. This Hon'ble Court has dismissed the said petition confirming the order passed in O.S.No.24/2009. While so, the 2nd respondent has issued the impugned charge memo dated 7.8.2013 alleging that the petitioner has committed a serious misconduct in putting up a note for grant of patta in favour of Ramasamy by the Tahsildar and also alleging that the petitioner ought to have taken steps to



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file first appeal against the order, but have not done so and caused loss to the Government in granting patta. Thereafter, the petitioner was suspended from service after a period of two years by proceedings dated 26.09.2015 under section 17(e) of the T.N.C.S.(D&A) Rules.

iii) Learned counsel would further submit that insofar as the impugned charge memo is concerned, this Court was pleased to stay the entire proceedings in M.P.No.1/2015 in W.P.No.36619/2015 and vacate stay petitions were filed by the respondents in W.V.M.P.No.917 and 918 of 2017 and this Court rejected the same and the stay was made absolute on 19.05.2018.

iv) Learned counsel for the petitioner would submit that the impugned charge memo is vague and passed in non-application of mind. The petitioner has merely set out the facts as borne out of records and put up the file to his immediate superior viz., Taluk Tahsildar, Hosur. The Tahildar, in turn, has put up a note and forwarded it to the superior officer viz., District Revenue officer for appropriate instructions. Being the subordinate official, the role of the petitioner is only to place the facts on record and he is neither a competent authority nor has power to grant patta. The petitioner has followed the judicial verdict in the above and submitted the same for appropriate orders to his immediate superior officer. There is no serious misconduct on the part of the petitioner. The petitioner has only complied with the directions given by his



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superior officers. Learned counsel would therefore submit that the subordinate officer, who had put up a note on instructions from the higher officials, cannot be made responsible and if he fails to follow the instructions, he would be taken to action by the higher officials. Hence, the charge memo is liable to be quashed.

v) Learned counsel would also contend that there is inordinate delay at every stage of the proceedings. When the suit for declaration was filed in the year 2009 and the same was decreed on 09.06.2010, the petitioner was not at all in the picture and he was not serving as subordinate official during the said period. He joined as Zonal Deputy Tahsildar, Hosur only on 06.11.2011, i.e., after a period of two years. Moreover, two Government Pleaders at Hosur, Sub Collector and also Government Pleader of Madras High Court have categorically opined that it is not a fit case for appeal. Further, the First Appeal filed with condonation of delay of 883 days was also dismissed by this Court by passing detailed order in A.S.SR.No.12206/2013 dated 25.04.2016. The petitioner is deprived of his legitimate promotion to the post of Tahsildar and Deputy Collector which fell due long ago and the same is purposely delayed by the respondents, taking advantage of the pendency of the writ petition. Therefore, the charge memo as well as the order of suspension are contrary to the service rules and hence, they are liable to be set aside and consequently,



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direct the 2nd respondent to reinstate the petitioner in service with all service and attendant benefits.

vi) In support of the above contentions, the learned counsel would rely on the following decisions.

a) W.P.(MD) No.2857/2006 dated 27.7.2006 (V.Abdul Rahim vs. The District Collector, Sivagangai)

b) W.P.No.16280/2011 dated 19.10.2012 (V.Saravanan Vs.Principal Secretary to Government and others)

c) W.P.No.9004/2016 dated 02.08.2018 (K.G.Thulasirangan vs. Secretary to Government and others)

vii) Learned counsel for the petitioner would further submit that pursuant to the interim order granted by this Court in M.P.Nos.1 & 1 of 2015 in W.P.Nos.36618 & 36619 of 2015 dated 18.11.2015, the suspension order of the petitioner was revoked by the 2nd respondent in his proceedings dated 09.12.2015 and he was posted as Head Assistant in 'S' Section of Collectorate, Krishnagiri by the 2nd respondent vide proceedings dated 11.12.2015.

6. Contrary to the above contentions, the learned Additional Advocate General would contend that petitioner has committed grave misconduct in recommending for grant of patta in favour of an ineligible person for which



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appropriate disciplinary action under Rule 17(b) of the T.N.C.S.(D&A) Rules has been instituted against him. He would further submit that the petitioner did not verify about the existence of title and possession of the land with the said C.K.Ramasamy. He has recommended for grant of patta of not only for a huge extent of land but also in respect of a highly valuable land which is beyond the power of the Tahsildar. He has recommended for grant of patta in favour of C.K.Ramasamy who had already sold the said land measuring an extent of 5.10 acres to Tvl.Ravindra, Muni Reddy and Tmt.Radamma vide Document No.2528/2008 dated 22.02.2008 on the file of Sub Registrar, Hosur, on 22.02.2008 itself. The petitioner failed to verify and confirm about the absence of title and possession of the land with the said C.K.Ramasamy. Further, immediately after receipt of the court order in W.P.No.1701/2012 dated 08.03.2012, the petitioner ought to have taken appropriate action to file an appeal against the said order by submitting a note accordingly to Tahsildar as per the instructions already issued by the Principal Secretary and Commissioner of Land Administration, Chennai dated 14.02.2011, but he had not done so. The petitioner has paved way for a heavy loss to the Government. The petitioner being the Zonal Deputy Tashildar, has not only failed to safeguard the Government land but also paved way to grant the Government land to an ineligible person which continued all these years as a Government land



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(Anadheenam). The recommendation made by the petitioner is also against the provisions of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act 1963. Learned counsel would further contend that the petitioner is not eligible for promotion to the post of Tasildar for the year 2013 as alleged by him as he has not rendered unblemished record of service in the Department and the petitioner is fit to be imposed with major penalties for the grave misconduct committed by him.

7. This Court considered the rival submissions made and perused the materials available on record.

8. Admittedly, the petitioner has put up a note to the Tahsildar, recommending for grant of patta in favour of C.K.Ramasamy, based on the express memo sent by the 2nd respondent. The file was forwarded to Tahsildar, who passed orders granting patta in favour of C.K.Ramasamy. The said C.K.Ramasamy, before submitting his application for grant of patta, filed a Civil Suit in O.S.No.24/2009 before the Principal District Court, Krishnagiri, against the Assistant Settlement Officer, (South), Chepauk, Chennai and the State of Tamil Nadu rep. by District Collector, Krishnagiri and sought for a decree declaring the title to the suit property and for a mandatory injunction



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directing the defendants to grant ryotwari patta in his favour and the said suit was also decreed in his favour.

9. It is also seen from the records that the First Appeal filed against the said decree with condonation of delay of 883 days was also dismissed by this Court by passing a detailed order in A.S.SR.No.12206/2013 dated 25.04.2016. Based on the directions given by the superior officials such as District Collector, Krishnagiri, Sub Collector, Hosur, Tahsildar, Hosur, the petitioner prepared the proceedings dated 2.5.2012 and forwarded the same to the District Revenue Officer through Sub Collector, Hosur for appropriate instructions to grant patta within the stipulated period prescribed for two months by this Court by order dated 8.3.2012 in W.P.No.1701/2012. The petitioner is not entrusted or empowered with the task of granting patta. Being the subordinate official, the petitioner has only placed the file after referring to the decree passed in the suit dated 9.6.2010 and the order passed by this Court dated 8.3.2012. In order to attract serious misconduct, there must be wilful dishonest intention on the part of the delinquent. In the present case, the petitioner has only complied with the directions in obedience of the instructions given by his superior officials. As a subordinate working in the office, it was only his duty to implement the orders passed by the higher authority. In view of this factual



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situation, there is absolutely no difficulty in coming to the conclusion that the petitioner cannot be implicated even by remotely. The Subordinate officials are entitled to record their views in the note file but it is open to the higher officer to express his views with respect to a subject matter in a particular manner. Merely because the officer has given a particular opinion, it cannot be said that he has taken a decision consciously to help a particular person. The Supreme Court in various decisions has observed that notings are only opinion of the concerned officer and it would not constitute a decision.

10. Further, pursuant to the interim stay order granted by this Court, the petitioner was reinstated in service and is continuing in service. Though the petitions to vacate the interim stay was filed, the same were rejected by this Court and the stay granted was also made absolute on 19.05.2018.

11. It is also seen that the charge memo was issued on 7.8.2013 and only after two years, the petitioner was placed under suspension i.e., on 26.09.2015. Hence, there is an inordinate delay. In this regard, a learned Single Judge of this Court, in the case of Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others passed in W.P.No.15231 of 2006 dated 05.11.2008, had an occasion to refer to various decisions of the Hon'ble



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Supreme Court and ultimately held that the inordinate delay in initiating and completing the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself, is vitiated. The said decision will apply to the present facts of the case. Further, as a matter of fact, the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the punishment.

12. The petitioner has expressed his opinion in the note file only on the strength of the judicial orders made in O.S.No.24/2009 dated 9.6.2010 and W.P.No.1701/2012 dated 8.3.2012 and also based on the instructions given by the District Collector, Krishnagiri, Sub Collector, Hosur and DRO, Krishnagiri. Further, the appeal filed against the decree dated 9.6.2010 along with condonation of delay was rejected by a detailed order passed by this Court. Therefore, this Court is of the opinion that the basis on which the charges were framed and the consequent suspension order passed against the petitioner, cannot be sustained.

13. For the foregoing reasons, the impugned orders dated 07.08.2013 and dated 26.09.2015, are quashed. Consequently, there shall be a direction to the first respondent to extend all service and monetary benefits to the



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petitioner. Such orders shall be passed by the respondents within a period of twelve weeks from the date of receipt of a copy of this order. Accordingly, both the Writ Petitions are allowed. No costs.

03.01.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

(2/2)

To

1. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai - 5.
2. The District Collector,
Krishnagiri.



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