



Writ Appeal No.1978 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

Coram:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1978 of 2018

and

C.M.P.No.15762 of 2018

1.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George,
Chennai – 600 009.

2.The Director of Town Panchayats,
Kuralagam,
Chennai – 600 108.

: Appellants/Respondents

Vs.

N.Sampath (Deceased)

: Respondent/Petitioner

2.Nirmala

3.Indumathi

4.Sarumathi

: Respondents

[Respondent R1 died, R2 to R4 brought into record as Lrs of the deceased 1st Respondent, vide Court order dated 09.09.2021 made in C.M.P.No.12152 of 2021 in W.A.No.1978 of 2018 (SVNJ & AANJ)]

Writ Appeal filed u/s.15 of Letter Patent against the order passed by this Court in W.P.No.17527 of 2013, dated 04.09.2017.



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For Appellants : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

For Respondents : Mr.V.Vijay Shankar
2 to 4

R-1 Died

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN.J.)

The challenge in this Writ Appeal is by the Government to the order of Writ Court setting aside the major punishment of removal from service imposed on the first respondent by the disciplinary authority and confirmed by the appellate authority.

2.Charges were laid against the first respondent, who was working as Head Clerk in the Chengam Selection Grade Town Panchayat, accusing him of manipulating documents and inflating the expenses. The very framing of charges was pursuant to the audit objections by the Local Fund Audit party. The Assistant Director of Town Panchayat, Tiruchirappalli Zone, was appointed as the Enquiry Officer. The Enquiry Officer filed a report on 24.11.2008 stating that the charges have been proved. Accepting the report of the Enquiry Officer, the disciplinary authority imposed the major penalty of removal from service



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which was confirmed by the appellate authority on receipt of opinion from the Tamil Nadu Public Service Commission. Aggrieved by the dismissal of his appeal, the first respondent approached this Court in W.P.No.17527 of 2013.

3.Before the Writ Court, it was contended that no enquiry was conducted, no witnesses were examined and the Enquiry Officer had based his conclusions on certain answers given by first respondent to the questions put by him. Considerable reliance has been placed by the Enquiry Officer on the audit objection that have been raised in paragraph 27 of the audit report. It was also pointed out to the Writ Court that the objections raised in paragraph No.27 of the audit report has been subsequently withdrawn. It was also contended that the appellate authority which under Rule 27 is bound to examine the matter on merits and consider each and every objection raised by the delinquent employee has not chosen to undertake the said exercise but has chosen to rely upon the opinion of the Tamil Nadu Public Service Commission and confirmed the order of punishment of dismissal by a non-speaking order.

4.The Writ Court agreed with the contentions of the learned Counsel for the first respondent and held that no enquiry was conducted and there was no evidence of any wrong doing on the part of the first respondent employee. In



support of its conclusion, the Writ Court relied upon the judgment of this Court

in ***Tamil Nadu Housning Board -vs- R.Chakrapani*** reported in ***2012 (6) CTC***

69 wherein the Division Bench of this Court had held that the practice of putting questions and eliciting answers from the delinquent employee is against the settled principles laid down by the Hon'ble Supreme Court in ***State of Uttaranchal and others -vs- Kharak Singh***. reported in ***(2008) 8 SCC 236***.

The Writ Court also found that the appellate authority's order was laconic inasmuch as the appellate authority has merely reproduced the opinion of the Tamil Nadu Public Service Commission and has chosen to confirm the order of the original authority. We may add that the order of the original authority is no better. The original authority has just accepted the report of the Enquiry Officer and imposed a punishment without considering the objections raised by the first respondent. Upon the above conclusions, the Writ Court allowed the Writ Petition and set aside the punishment.

5.Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the appellants would vehemently contend that there was enough material to prove the case and the Enquiry Officer has, after examining the documents and reply by the first respondent, come to the conclusion that the first respondent is guilty. He would also add that once the Head Clerk is



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accused of manipulation of documents, imposition of a major penalty is justified.

6.Contending contra, Mr.V.Vijay Shankar, learned Counsel appearing for first respondent's legal representatives (the first respondent is now no more) would contend that in a disciplinary enquiry there should be some evidence, though not evidence beyond doubt, to implicate the delinquent employee. In the case on hand, no enquiry was conducted and no witness was examined. The Enquiry Officer based his conclusions on the basis of the answers given by the delinquent employee at the time of interaction. This practice has been deprecated by the Hon'ble Supreme Court time and again. He would also add that the entire charges are based on paragraph 27 of the audit objection. By the proceedings dated 26.02.2010, the Assistant Director of Local Fund Audit had informed the Executive Officer of the Chengam Selection Grade Town Panchayat withdrawing paragraph 27 of the audit report. Therefore, according to the learned Counsel for the first respondent, the very basis for the disciplinary proceedings has disappeared. He would invoke us to apply the principle “if the basis goes, the consequence disappears”.

7.We have considered the rival submissions.



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8. We are inclined to agree with the contentions of the learned Counsel for the respondents and the conclusions of the Writ Court for the reason that the report of the Enquiry Officer does not show that an enquiry was conducted. He has merely gone by the documents that were handed over to him and certain questions put to the delinquent employee. This cannot be a substitute for a regular departmental enquiry. We are alive to the fact that proof beyond doubt is not necessary in departmental enquiry but at the same time, there must be some evidence to connect the delinquency with official charged. In the case on hand, there is no such evidence. Moreover, the appellate authority has not applied its mind independently. It has merely reproduced the opinion of the Tamil Nadu Public Service Commission and has confirmed the findings of the disciplinary authority. Unfortunately, even the order of the disciplinary authority in the case on hand is laconic. The disciplinary authority even if it accepts the report of the Enquiry Officer has to consider the objections of the delinquent employee to the report and give its reasons for not accepting the said objections. Such an exercise is totally absent in the proceedings of the original authority also. Adding to the above is the communication dated 26.02.2010 wherein the entire paragraph No.27 of the audit objections has been withdrawn by the appropriate authority. As rightly contended by the learned counsel for the respondents, the very basis of these proceeding has disappeared and



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therefore, the consequent punishment should also be set aside.

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9.For the foregoing reasons, finding no merit in the Writ Appeal, the appeal is dismissed. Since the first respondent is no more, his Legal Representatives would be entitled to the benefits including family pension. Considering the fact that the employee is no more, the Government will do well to disburse the benefits within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

[R.S.M.,J] [S.S.K., J]
21.12.2022

Index: Yes/No
srm

To

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