IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.989 of 2015

K.Manickam ...Petitioner

-Vs-

1. The Secretary to Government, Revenue (Service 7(1)) Department, Fort St. George, Chennai - 9.

2. The Commissioner of Revenue Administration, Chepauk, Chennai - 5.

3. The District Collector, Salem, Salem District.

4. The District Revenue Officer, Collectorate, Salem - 636 001.

5. The Revenue Divisional Officer, Mettur Taluk, Salem District.

6. The Tahsildar, Mettur Taluk, Salem District. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in pursuant to the G.O.(IT) No.467 dated 12.12.2013 passed by the 1st respondent, quash the same and consequently direct the respondents to settle the entire retirement benefits payable to the petitioner.

For Petitioner : Mr.M.Elango

For Respondents: Mr.T.Chezhiyan, Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2.Based on the charge that the petitioner herein, while serving as a Village Administrative Officer, had altered the village records by classifying the Poramboke land to house site, he was subjected to departmental enquiry and a charge memo dated 29.06.2010 was issued to the petitioner, which was served on him prior to the date of his superannuation. The charge memo dated 29.06.2010 refers to two witnesses to be examined during the course of enquiry, namely, the Tahsildar and the Village Administrative Officer of Alamarathupatti Village, Mettur Taluk. However, in the enquiry, no witnesses were examined and based on the village records alone, the charges against the petitioner came to be held as proved. Based on the proven charges, the fifth respondent herein had imposed the punishment of dismissal from service, through the order dated 26.05.2011. The appeal against the order of dismissal came to be rejected on 10.08.2012 by the fourth respondent herein. Subsequently, the petitioner had preferred a further appeal to the first respondent herein and by a Government Order in G.O.(1T) No.467 dated 12.12.2013, the same was rejected. Challenging the said order, the present writ petition has been filed.

3.While the learned counsel for the petitioner submitted that no witnesses were examined in the departmental enquiry, for the purpose of proving the charges, the learned Additional Government Pleader appearing for the respondents submitted that the charges are grave in nature and the falsified village record itself is a proof for the misconduct conducted by the petitioner and therefore, the punishment is also proportionate to the charges.

4.The learned counsel for the petitioner placed reliance on a decision of the Hon'ble Supreme Court in the case of A.Savariar Vs. The Secretary, Tamil Nadu Public Service Commissioner and another passed in Civil Appeal Nos.1078 and 1079 of 2013 dated 15.02.2013 and submitted that non-examination of witnesses during a departmental enquiry would be fatal to the department.

5.It is not in dispute that no witnesses were examined in the enquiry conducted pursuant to the charge memo dated 29.06.2010. The Hon'ble Supreme Court in A.Savariar's case (supra) had held that the Enquiry Officer performs a quasi-judicial function and the charges levelled against the delinquent officer must be proved on the basis of the witnesses and mere production of documents in the enquiry will not prove the contents thereof. The relevant portion of the order reads as follows:-

> "13. An analysis of the above reproduced rule makes it clear that holding of an oral enquiry is sine qua non for recording a finding by the inquiring authority and the report of inquiry must contain sufficient record of evidence and a statement of the findings together with grounds thereof.
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> ....
>
> 15.On behalf of the Commission oral evidence is said to have been adduced to substantiate the allegations leveled against the appellant but neither the report of the Enquiry Officer nor the orders passed by the Controller of Examinations or the Chairman of the Commission made a mention of that evidence and none of them relied upon the same for recording a finding that the appellant had arrogated to himself the powers of his superiors and unauthorisedly appointed Invigilators. As a matter of fact, Enquiry Officer simply referred to the statement of the appellant, analysed the same and concluded that Charges No.1, 2 4 and 6 have been proved against him. It is thus evident that the inquiry report was not prepared in consonance with Rule 17(b)(i) of the Rules.
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> .....
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> 19.In Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570, this Court considered the question whether mere production of the document by the department is sufficient for holding the employee guilty and observed:
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> > Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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 herein before that the only basis evidence whereupon reliance has been placed by 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. The 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."

6.The aforesaid order is self explanatory. Thus, when the department relies on any documents in the course of an enquiry, the content thereof is required to be proved by examination of a proper witness. A mere production of documents will not suffice. While that being so, in the present case, the first respondent have produced the village records and the Enquiry Officer, on perusal of the same, had come to the conclusion that such alteration in the entries in the village records was made by the petitioner, which was not based on the statements of a witness. This apart, when the charge sheet refers to two witnesses, namely, the Tahsildar and the Village Administrative Officer, as the proposed witnesses, none of them were examined.

7.In the light of the aforesaid decision of the Hon'ble Supreme Court, the action initiated by the respondents, pursuant to the enquiry conducted without examination, cannot be sustained.

8.In the result, the impugned order dated 12.12.2013 passed by the first respondent is quashed. Consequently, the first and second respondents shall pass appropriate orders, permitting the petitioner to retire on his date of attaining the age of superannuation and consequentially disburse all the retirement benefits, including the pensionary benefits, within a period of 12 weeks from the date of receipt of a copy of this order. The Writ Petition stands thus allowed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
   Revenue (Service 7(1)) Department,
   Fort St. George, Chennai - 9.

2. The Commissioner of Revenue
   Administration,
   Chepauk, Chennai - 5.

3. The District Collector,
   Salem, Salem District.

4. The District Revenue Officer,
   Collectorate,
   Salem - 636 001.

5. The Revenue Divisional Officer,
   Mettur Taluk,
   Salem District.

6. The Tahsildar,
   Mettur Taluk,
   Salem District.

+1cc to Mr.M.Elango, Advocate, S.R.No.21967

+1cc to the Government Pleader, S.R.No.22729

W.P.No.989 of 2015

KK(CO)
RGA(18/04/2022)