



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2021

PRONOUNCED ON : 07.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.23369 OF 2014 & 5034 OF 2015
AND

M.P.NOS.1 OF 2014, 2 OF 2015 & 3 OF 2015

W.P.NO.23369 OF 2014

K.Murugesan

... Petitioner

.Vs.

1. The District Collector,
Nagapattinam,
Nagapattinam District.

2. The Sub Collector,
Mayiladudurai,
Nagapattinam District.

3. The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.

4. The Tahsildar,
Sirkali,
Nagapattinam District.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the second respondent in her proceeding in Na.Ka.No.1459 of 2013/A3 dated 13.08.2014 and to quash the same.

W.P.NO.5034 OF 2015

G.Murugesan

... Petitioner

.Vs.



WEB COPY

1. The State Rep. by its Secretary,
The Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.
 2. The Special Commissioner & Commissioner
of Revenue Administration,
Chepauk,
Chennai - 600 005.
 3. The District Collector,
Nagapattinam,
Nagapattinam District.
 4. The Sub Collector,
Mayiladudurai,
Nagapattinam District.
 5. The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.
 6. The Tahsildar,
Sirkali,
Nagapattinam District.
- ... Respondents

PRAYER:-

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents culminated in the impugned orders passed by the fourth respondent in his proceeding in R.C.No.1459/2013 (A.3) dated 31.08.2014 and proceeding in R.C.No.1459/2013 (A.3) dated 31.08.2014 and quash the same and consequently direct the respondents herein to settle the retirement benefits to the petitioner with interest at the rate of 24% per annum with effect from 01.09.2014.

For Petitioner : Mr.A.R.Suresh
For Mr.K.Shanmugam
in both W.P's

For Respondents : Mr.E.Veda Bagath Singh
Special Government Pleader
in both W.P's



COMMON ORDER

Heard the learned counsel on both sides.

WEB COPY

2. The petitioner, while serving as a Village Administrative Officer (VAO) was served with a charge memo dated 10.06.2013, stating that owing to the incorrect list of beneficiaries for grant of drought relief to the affected farmers, the Government had incurred a loss of Rs.5,23,050/-. Pursuant to the charges, an enquiry was conducted and based on proved charges under the inquiry report dated 18.03.2014, the second respondent herein had passed the impugned order dated 13.08.2014, directing the petitioner to pay the amount of loss incurred by the Government amounting to Rs.5,06,550/- together with 40% penalty amounting to Rs.2,02,620/-. The said order is under challenge in W.P.No.23369 of 2014. Subsequently, since the petitioner was due to retire on 31.08.2014, he was placed under suspension on 31.08.2014 and on the same day, another order was passed by not permitting him to retire on the date of superannuation. These two orders are under challenge in W.P.No.5034 of 2015.

3. In the enquiry, the only finding against the petitioner was that, in his reply to the charges, he had admitted the lapses committed by him while preparing the beneficiaries list and therefore he is liable for the loss that had occurred to the Government. However, a perusal of the reply, as well as the further representation pursuant to the inquiry report, reveals that though the petitioner has stated that some inadvertent mistakes may have occurred, he had taken a specific stand that after preparation of the beneficiaries list for the drought relief, he had forwarded the same to the Revenue Inspector, Zonal Deputy Tahsildar and Tahsildar, who had all accepted the beneficiaries list. He had further stated that no action has been taken against the other officials, but he had alone been charged for the mistake.

4. In the affidavit filed in support of the present Writ Petitions, the petitioner has raised this specific ground that, though the list of beneficiaries was approved by the Revenue Inspector, Zonal Deputy Tahsildar and Tahsildar, he alone has been targeted. In the counter affidavit filed by the respondents, this fact is admitted, but a stand is taken to the effect that, it is the "primary responsibility" of the petitioner to prepare the beneficiaries list and therefore he alone is liable for the revenue loss to the Government.

5. I am not in agreement with such a stand taken by the respondents. The VAO, who is in the lowest of the ranks among the revenue officials, may have been given the responsibility to



prepare the list of beneficiaries, but such a list is subject to verification and approval by the other higher officials, which includes the Revenue Inspector, Zonal Deputy Tahsildar and Tahsildar. The forwarding of the list of beneficiaries for the drought relief, by the VAO, to the Revenue Inspector, Zonal Deputy Tahsildar and thereafter to the Tahsildar is not an empty formality and these higher officials are not expected to simply endorse the list of beneficiaries. If it is found that there are some mistakes in the list which may cause revenue loss to the Government, then all the officers who had approved the list prepared by the VAO, would equally be responsible for such alleged loss.

6. In the instant case, the respondents have chosen to initiate departmental action only against the VAO and have made him a scapegoat. Thus, non initiation of such departmental action against the Revenue Inspector, Zonal Deputy Tahsildar and Tahsildar, would amount to hostile discrimination and hence cannot be sustained. Since each of these officials will also be equally responsible for the charges framed against the petitioner alone, such an enquiry against the VAO alone and imposing a punishment for payment of the loss amount together with penalty, can also be termed to be an act of 'perversity'.

7. The Hon'ble Supreme Court in Bongaigaon Refinery & Petrochemicals Ltd., and Others V. Girish Chandra Sarma reported in 2007 (7) SCC 206, had held that in a domestic enquiry when one person alone is made scapegoat for collective decisions in which others have also pursued, the penalty levied under such departmental enquiry, cannot be sustained. The relevant portion of the order reads as follows:-

"18. After going through the report and the finding recorded by the Division Bench of the High Court, we are of opinion that in fact the Division Bench correctly assessed the situation that the respondent alone was made a scapegoat whereas the decision by all three committees was unanimous decision by all these members participating in the negotiations and the price was finalized accordingly. It is not the respondent alone can be held responsible when the decision was taken by the committees. If the decision of the Committee stinks, it cannot be said that the respondent was alone stink, it will be arbitrary. If all fish stink, pick one and say it stinks only is unfair in the matter of unanimous decision of the Committee.

...



WEB COPY

22. Learned Additional Solicitor General has submitted that since learned counsel for the respondent-writ petitioner has already abandoned the plea of perversity i.e. that the finding is perverse, the same is not open for learned counsel for the respondent- writ petitioner to press again before the Division Bench of the High Court. Since the writ appeal is in continuation of the original order passed in the writ jurisdiction by learned Single Judge, it cannot operate as an estoppel against learned counsel for the respondent to press the same. If the finding recorded by the Inquiring Officer is not sound and it relates to perversity then the appellate court in writ appeal cannot estop the counsel from raising the same. More so, the Division Bench after considering the matter has found that the whole approach was perverse because the respondent alone has been made a scapegoat. When the decision of all the three committees was unanimous, then to take one and put the entire blame on him is definitely perverse approach and the Court cannot stand to the technicalities so as to defeat the ends of justice. Thus, the submission of learned Additional Solicitor General has no merit."

8. The aforesaid extract is self explanatory. By applying the aforesaid findings of the Hon'ble Supreme Court and in the light of the observations made by this Court, the impugned order dated 13.08.2014, directing the petitioner to pay the loss amount together with penalty at the rate of 40%, cannot be sustained.

9. Since this Court had held that the entire departmental proceedings is vitiated owing to hostile discrimination and perversity, the order of suspension, as well as the order not permitting the petitioner to retire, cannot be sustained. Consequently, it requires to be held that the period of suspension, is deemed to be treated as "duty period" for all purposes.

10. In the light of the above observations, the impugned order dated 13.08.2014, the suspension order dated 31.08.2014 and the order not permitting the petitioner to retire dated 31.08.2014 are quashed. Consequently, there shall be a direction to the respondents to forthwith settle the entire retirement benefits payable to the petitioner, together with other pensionary benefits, within a period of four weeks from the date of receipt of a copy of this order. In case, the respondents had already recovered the amount ordered under the interim order



dated 28.08.2014, the same shall be refunded to the petitioner, along with other benefits referred to above.

11. Both the Writ Petitions stand allowed accordingly. Consequently, the connected Miscellaneous Petition(s) is/are closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary,
The Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.
2. The Special Commissioner & Commissioner
of Revenue Administration,
Chepauk, Chennai - 600 005.
3. The District Collector,
Nagapattinam,
Nagapattinam District.
4. The Sub Collector,
Mayiladudurai,
Nagapattinam District.
5. The Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.
6. The Tahsildar,
Sirkali,
Nagapattinam District.

W.P.NOS.23369 OF 2014 & 5034 OF 2015 AND
M.P.NOS.1 OF 2014, 2 OF 2015 & 3 OF 2015

RR(CO)
PBS/22/02/2022