



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.9839 of 2019 and
W.M.P.(MD).Nos.7732 to 7734 of 2019, 805 of 2021

P.Krishnan

... Petitioner

Vs.

- 1.State of Tamil Nadu
rep.by its Principal Secretary to the Government/Additional Chief
Secretary,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.
 - 2.The Director of Rural Development and Panchayat Raj,
O/o.The Director of Rural Development and Panchayat Raj,
Chennai-15.
 - 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.
 - 4.The Commissioner,
Thirupullani Panchayat Union,
Ramanathapuram District.
 - 5.The Block Development Officer-in-charge,
O/o.The Block Development Officer,
R.S.Mangalam,
Ramanathapuram District.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.A1/3726/2018 dated 28.12.2018 on the file of the respondent No.4 and the consequential impugned order in Na.ka.Nil/64/2019 dated 05.02.2019 on the file of the respondent No.5 and quash the same as illegal and consequently for a direction, forbearing the respondents from effecting any recovery of money from the salary of the petitioner without concluding the disciplinary proceedings initiated against the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/>



For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mr.A.K.Manikkam
Special Government Pleader

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O R D E R

The order impugned dated 28.12.2018 is under challenge in the present Writ Petition.

2. The petitioner was appointed as Record Clerk and promoted to the post of Junior Assistant. Based on the allegation of misappropriation of funds of the Panchayat, the disciplinary proceedings were initiated as against the petitioner and a charge memo under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules was issued. During the pendency of the charge memo, based on the enquiry report, the order impugned has been passed to recover financial loss occurred to the Panchayat.

3. The learned counsel appearing for the petitioner made a submission that no notice or opportunity was provided to the writ petitioner to defend his case in respect of recovery imposed. Thus, the order impugned is in violation of principles of natural justice.

4. The learned Additional Government Pleader objected the said contention by stating that based on the financial loss as pointed out by the Enquiry Officer, the impugned order of recovery has been passed and therefore, there is no infirmity.

5. This Court is of the considered opinion that two fold actions against the servants are permissible. On initiation of disciplinary proceedings under the Discipline and Appeal Rules, the punishment contemplated under the Rules can be imposed after conducting enquiry. In respect of financial loss occurred to the Government, a separate proceedings shall be initiated to recover the financial loss occurred to the Institutions. There is no impediment for initiation of two proceedings (i.e.,) one for recovery and another for misconduct under the Discipline and Appeal Rules.

6. In the present case, the disciplinary proceedings are initiated under Rule 17(b) of the Discipline and Appeal Rules. Thus, the said proceedings imposed go as per the procedures contemplated under the Rules. As far as the recovery is concerned, if at all it is a misappropriated amount, after establishing the misappropriation and loss, the amount is to be recovered. Even before forming an opinion whether the misappropriation has been established or not, if recovery is imposed, then it is to be construed that the delinquent employee has not been provided with an opportunity. In the present case, even a show cause notice has not been issued. Therefore, the petitioner is entitled for an opportunity to establish his case in the manner known to law. In this view of the matter, the following



orders are passed:

(i) The impugned order passed by the fourth respondent in proceedings No.Na.Ka.A1/3726/2018 dated 28.12.2018 and the consequential order passed in proceedings No. Na.ka.Nil/64/2019 dated 05.02.2019 are quashed.

(ii) the respondents are directed to proceed with the disciplinary proceedings already initiated under Rule 17(b) of the Discipline and Appeal Rules and conclude the same as expeditiously as possible by following the procedures.

(iii) As far as the recovery of financial loss occurred to the Panchayat is concerned, after completion of the departmental disciplinary proceedings, if the financial loss is established, then a show cause notice may be issued and thereafter, the final order is to be passed.

(iv) It is made clear that even in case of misconduct of misappropriation has not been established in the disciplinary proceedings and financial loss is ascertained, then also, the Authorities Competent is empowered to recover the financial loss from the persons, who are responsible and accountable for such financial loss occurred to the Panchayat or Government Institutions. Thus, the recovery proceedings and disciplinary proceedings are distinct and different.

7. With these clarifications, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

1.The Principal Secretary to the Government/Additional Chief Secretary,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-600 009.



2.The Director of Rural Development and Panchayat Raj,
O/o.The Director of Rural Development and Panchayat Raj,
Chennai-15.

3.The District Collector,
Ramanathapuram District,
Ramanathapuram.

4.The Commissioner,
Thirupullani Panchayat Union,
Ramanathapuram District.

5.The Block Development Officer-in-charge,
O/o.The Block Development Officer,
R.S.Mangalam,
Ramanathapuram District.

+1 CC to M/s.SPL GP (SR-7421[F] dated 21/02/2022)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-7659[F] dated 22/02/2022)

W.P.(MD) No.9839 of 2019

18.02.2022

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TR(15.03.2022) 4P 8C