IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 19.04.2023

Orders delivered on 01.06.2023

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.12087 & 12088 of 2013

J.Shantha Lingam ...Petitioner in W.P.No.12087/2013

P.V.Ramachandran ...Petitioner in W.P.No.12088/2013

Vs

1. The Commissioner,
   The Tribunal for Disciplinary Proceedings,
   Salem.

2. The Principal Secretary/
   Commissioner for Revenue Administration,
   Chepauk,
   Chennai - 5.

3. The Secretary to Government,
   Revenue (Pani 7(2)) Department,
   Fort St.George,
   Chennai - 9. ..Respondents in both the W.Ps

PRAYER: Writ Petitions filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records of the respondents 1 to 3 in connection with the impugned order passed in TDP Case No.DE No.5/2003 dated 30.08.2005 , RC.No.SERV(1)/25309/07 dated 28.07.2010 and GO 2D.No.531 Revenue (Pani 7(2)) Dept. & GO 2DNo.530 Revenue (Pani 7(2)) Dept. respectively dated 06.11.2012 and quash the same and further direct the respondents to settle the retirement benefits of the petitioners within a reasonable time.

For Petitioners	:	Mr.Venkatramani, Senior Counsel for Mr.M.Muthappan
For Respondents	:	Mr.Arun, Additional Advocate General assisted by Mr.Kumaravel, Additional Government Pleader.

COMMON ORDER

These writ petitions have been filed challenging (i)the order passed by the 1st respondent dated 30.08.2005, in which, the charges levelled against the petitioners are proved, (ii) the order passed by the 2nd respondent dated 28.07.2010, in which, the petitioners were imposed with the punishment of removal from service and (iii) the order passed by the 3rd respondent dated 06.11.2012, in which, the appeals filed by the petitioners were rejected. The petitioners have also prayed to direct the respondents to settle the retirement benefits to them within a reasonable time.

2. i) The case of the petitioners is that they entered the service as Village Administrative Officers through selection conducted by Tamil Nadu Public Service Commission and appointed to service in 1984 in Kanchipuram District.

ii) While the petitioners were serving as Village Administrative Officer, Kudoor Village & Kinar Village respectively at Madurantakam Taluk, Kancheepuram District, during the year 1992-95, an allegation has been made against them alleging that in the land transaction done in favour of V.P.Lingam of Samundeeswari Public Charitable Trust, they have received gratification in the name of commission to the tune of Rs.1,37,000/- from the Trust while discharging the official duties.

iii) Following a petition sent against the petitioners by one Ragunatha Reddy, Advocate representing the Trust, a preliminary enquiry was conducted on 8.8.1995 by the Tahsildhar and found that the allegations are false and the matter was closed. Inspite of the matter being closed earlier, a charge memo dated 17.06.2001 came to be issued to the petitioners under Rule 17(b) of TNCS (D&A) Rules, containing three charges, alleging that the petitioners while serving as VAO, Kudoor Village & Kinar Village respectively, acted as brokers in the alleged transaction in favour of V.P.Lingam of Samudeeswari Public Charitable Trust, Madras and received an illegal gratification in the name of commission to the tune of Rs.1,37,000/- from the Trust by abusing their official duties and violated the Government Servants Conduct Rules and 2 other allied charges. The petitioners denied the charges by submitting explanation and the matter was closed.

iv) Again, the matter was referred to the Tribunal for Disciplinary Proceedings (TDP), Salem in DE No.5/23 dated 18.02.2003 and the charges were framed against the petitioners on similar lines. The matter was contested before the TDP and 9 witnesses were examined and 18 documents were marked on the side of the prosecution. One document was marked on the side of the petitioners. The TDP, Salem, submitted a report relying upon the statements earlier made by the witnesses in the preliminary enquiry/vigilance enquiry and held that the charges against the petitioners are proved and also based on the report of the Sub-Collector, Madurantakam dated 08.08.2004 and submitted a report on 30.08.2005.

v) On furnishing a copy of the report, the petitioners submitted their further representation for the enquiry officer's report on 06.05.2007. After a lapse of 3 years, the 2nd respondent held that the charges against the petitioners have been proved by accepting the report of TDP, Salem and for the proven charges, imposed a punishment of removal from service in his proceedings dated 28.07.2010. Against which, the petitioners preferred an appeal to the Government on 09.08.2010 & 05.08.2010 respectively. The 3rd respondent vide proceedings dated 06.11.2012, rejected the appeal preferred by the petitioners. Hence, these writ petitions have been filed.

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

4. a) Learned senior counsel for the petitioners would submit that there has been inordinate and unexplained delay in the initiation, commencement and conclusion of the disciplinary proceedings and the

delay has not been explained. Initially, a charge memo came to be issued in the year 1996 based on the complaint preferred by Raghunatha Reddy dated 29.05.1995 and after enquiry, it was closed. Again, a charge memo came to be issued dated 17.06.2001 and the petitioners submitted their reply and thereafter, there was no progress. Again, for the third time, a charge memo came to be issued by TPD, Salem, dated 18.02.2003 and after conclusion of the enquiry in 2005, final orders have been passed in 2010. The proceedings have been prolonged from 1994 to 2010 for more than 15 years and there was no proper explanation for the delay.

b) Learned senior counsel would further submit that it is a case of no evidence against the petitioners and none of the witnesses have stated that the petitioners had received Rs.1,37,000/- as brokerage in the land transaction for the purchase of the land in favour of the Trust. One Raghunatha Reddy, an Advocate, issued a legal notice under misapprehension that the petitioners & others are responsible for the delay in the transaction addressed to Tahsildar alleging irregularities in the purchase of the land against them. Subsequently, they came to know that the petitioners are not responsible for the delay in the registration. The Trust have sent a letter dated 19.05.1995 specifically stating that the allegation against the petitioners is incorrect and further stated that they have purchased the property only through a land broker Arunagiri and requested to drop further action against the petitioners but the same has not been accepted by the respondents. Hence, it is a case of no evidence against the petitioners.

c) Learned senior counsel would further submit that there is also no evidence even before TDP, Salem. P.W.1 Sub Collector conducted a preliminary enquiry which cannot be the basis for the proof of the charges. PW2 is also a Sub-Collector who conducted a preliminary enquiry and recorded the statement on 08.08.2005. P.W.3 V.T.Lingam, the main witness has disowned his statement. P.W.4 Yuvaraj has admitted that the petitioners were not involved in the transaction. P.W.5 Venkatakrishnan has also stated that the petitioners had no role to play in the land transaction. PW6 Raghunatha Reddy, Advocate who earlier issued a legal notice has accepted that the petitioners had no role to play in the land transanction. P.W.7 Sekar, who is a broker had specifically stated that the entire transaction was conducted by another broker, Arunagiri. P.W.8 Arunagiri has admitted having purchased the property for the Trust and has specifically stated that the petitioners had no role to play. P.W.9 is an official witness. The petitioners had marked a letter sent by V.T.Lingam, Trustee of the Trust dated 19.10.1995 specifically stating to drop further action against the petitioners. Hence, none of the witnesses have stated anything against the petitioners for having involved in the transaction and received gratification by way of brokerage. But, TDP relied upon the report of the Sub-Collector dated 08.08.1995 in the preliminary enquiry conducted and has come to the conclusion that the petitioners had committed the delinquency and held the charges proved. A finding based on preliminary enquiry cannot be accepted. Hence, on this ground alone, the impugned orders are liable to be set aside.

d) Learned senior counsel would further submit that the TDP, Salem has relied upon the statement given by the witnesses in the preliminary enquiry and also the report of the Sub-Collector, Madurantakam Taluk for coming to the conclusion that the petitioners have committed the delinquency. Any statement made in the preliminary enquiry loses its importance once the oral enquiry has been conducted. A preliminary enquiry does not form the basis for the proof of the charges. The earlier statement made by the witnesses in the preliminary enquiry should not be considered as evidence against a delinquent officers. Hence, the report of TDP lacks merit and liable to be ignored.

e) Learned senior counsel would further submit that the order of the disciplinary authority imposing a punishment is a non-speaking order and the disciplinary authority failed to take into consideration, the further representation of the petitioners for the Enquiry Officer's report. Further, the order of the Appellate Authority is also a non-speaking order and is in violation of the Service Rules. He would further submit that the report of the TNPSC was not furnished to the petitioners which is in violation of principles of natural justice. He would further submit that the punishment imposed is excessive, exorbitant and disproportionate to the nature of the delinquency. Therefore, he would pray to allow the writ petitions.

f) In support of the above contention, the learned senior counsel would rely on the following decisions:

i) AIR 1985 SC 1121 (Anilkumar vs. Preceding Officer & Ors.)

ii) (2002) 7 SCC 142 (Sherbhagathur vs. UOI)

iii) (2008) 8 SCC 236 (State of Uttaranchal & Ors vs. Kharak Singh)

iv) (2008) 3 SCC 172 Vishu Dev Sharma vs. State of U.P.

v) Order in WP.No.22943 of 2015 (A.R.Kannan vs. Revenue Administration)

vi) Writ Appeal No.2620 of 2018 reported in (2023) 1 WLR 324 (Siddheswaran vs. Secretary to Government).

5. i) Per contra, the learned Additional Advocate General would submit that the Government, vide order in G.O.(Ms)No.250 Revenue (Ser-7(2)) Department dated 20.08.1998 ordered to frame charges against P.V.Ramachandran and J.Santhalingam, VAO of Madurantakam Taluk for the charges of receiving illegal gratification to the tune of Rs.1,37,000/- for transferring lands in favour of M/s. V.P.Lingam Chanmundeeswari Public Charitable Trust and charges were framed under Rule 17(b) for the Tamil Nadu Civil Services (Discipline and Appeal) Rules by the Sub-Collector, Chengalpattu against the above officials. The petitioners have acted as land brokers and had demanded and received a sum of Rs.1,37,000/- as illegal gratification for the land transaction from V.P.Lingam Chamundeeswari Public Charitable Trust, Madras, by using their official position and thereby

committed grave official misconduct in violation of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

ii) Learned Additional Advocate General would further submit that as per the Government order, the case was remitted to the government for enquiry by the Commissioner of Disciplinary Proceedings. The Commissioner conducted the enquiry and forwarded his findings to the Principal Secretary and Commissioner of Revenue Administration, Chennai, who, after following the usual procedure, passed an order removing both the petitioners from service vide order dated 28.07.2010. Thereafter, the dispelled officers preferred appeal before the Secretary to Government, Revenue Department on 09.08.2010 & 05.08.2010 respectively. The Government, after careful consideration and after obtaining the opinion of the Tamil Nadu Public Service Commission, confirmed the removal order dated 06.11.2012.

iii) Learned Additional Advocate General would submit that the 2nd respondent has clearly discussed the findings of the 1st respondent on each and every charges framed against the petitioners, in particular, the charge relating to illegal gratification to the tune of Rs.1,37,000/- as commission by the petitioners and arrived at the conclusion holding that the charges as proved, relying on the admission of the charge by the petitioners themselves during the enquiry conducted by Sub Collector, Chengalpattu. The 3rd respondent passed an order on 06.11.2012 and along with the said order, a copy of TNPSC letter was also sent to the petitioners and it is not true that the copy was not served on the petitioners. Further, the delay alleged by the petitioners are due to strict observance of various procedure followed in the finalization of the disciplinary proceedings and the petitioners do not deserve any explanation for the same. Further, the petitioners themselves have admitted that they had mediated and acted as a middlemen which itself is a clear proof for the grave irregularity committed by them. The 1st respondent, in his findings, has clearly stated that charge No.1 has been proved relying on the enquiry records of the Sub-Collector, Chengalpattu which mainly relied on the statement given by the petitioners themselves during the aforesaid enquiry and the petitioners have stated that they had received the amount from V.P.Lingam Charitable Trust and that the signature in the receipts are their own signature. Hence, it is clearly evident that the irregularity was committed by the petitioners. The statement given by the petitioners before the Sub Collector, Chengalpattu is an ample proof for the irregularity committed by them and in the appeal preferred by them, they did not produce any evidence to prove the statement given by them before the Sub-Collector, Chengalpattu, as legally invalid.

iv) Learned Additional Advocate General would submit that the petitioners alone are responsible for the alleged delay in the initiation and finalization of the disciplinary proceedings against them, since after the irregularities committed by them were brought to the notice of the authorities, they made lot of attempts to precipitate the whole issue at every stage of preliminary enquiry conducted by the authorities and having failed in their attempts, they finally appeared for enquiry conducted by the Sub-Collector and gave statements regarding the irregularities committed by them. Hence, in order to escape from the clutches of law, the petitioners have now raised the allegation that the inordinate delay has occurred in the disciplinary proceedings. He would further submit that though certain witnesses turned hostile, subsequently, the statement given by the petitioners themselves are clinching evidence which proved the irregularity committed by them. The petitioners have concealed this vital evidence in their writ petitions. Further, the allegation that the order passed by the 2nd and 3rd respondents are non-speaking orders is nothing but vexatious allegation and not acceptable.

v) In support of his contentions, the learned Additional Advocate General relied on the decision reported in AIR 1996 SC 1249 (Municipal Committee, Bahadurgarh v. Krishnan Bihari and Ors.), in which, it has been held that in cases involving corruption, there cannot be any other punishment than dismissal. He also relied on the decision reported in (2005)3 SCC 254 (Divisional Controller, KSRTC (NWKRTC) vs. A.T.Mane, wherein it has been held that when a person is found guilty of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such a person and awarding a punishment of dismissal. Therefore, he would pray to dismiss the writ petitions.

6. This Court considered the submissions made on either side and perused the materials available on records.

7. The main allegation against the petitioners is that they have received a sum of Rs.1,37,000/- as illegal gratification in the name of commission from the Shamundeeswari Public Charitable Trust for purchase of lands in favour of the Trust, by abusing official position and committed grave misconduct violating Rule 20 of TNGSC Rules, 1973.

8. The charges levelled against the petitioners are as follows:

Charge No.1

That when the petitioners were working as Village Administrative Officer, Kinnar Village, Madurantakam Taluk during the year 1992 - 95, they acted as brokers in the land transactions in favour of V.P.Lingam Chamundeeswari Public Charitable Trust Madras and received an illegal gratification in the name of commission to the tune of Rs.1,37,000/- from the Trust by abusing their official position and thereby committed grave official misconduct in violation of Rule 20 of the Tamil Nadu Government Servants Conduct Rules , 1973.

Charge No.2

That as Village Administrative Officers, they used their official position for personal gains and acted as brokers in the purchase and sale of private lands.

Charge No.3

That they deliberately failed to perform the legitimate duty with good faith and sincerity as expected by them and committed an irregularity by misusing their official capacity.

9. Initially, one of the partners and Trust Advocate by name, Ragunatha Reddy, had sent a legal notice to the petitioners stating that they have received Rs.1,37,000/- as brokerage from the Trust but refused to register the documents for 300 acres of land in Mullivilagam and Murugambakkam villages, Madhurantakkam Taluk in favour of the Trust. The said notice was sent as early as on 14.11.1993, but it was found that the petitioners have got nothing to do with the said transaction and a preliminary enquiry was conducted on 08.08.1995 and the matter was closed. Again, another charge memo came to be issued on 17.06.2001, containing 3 charges and the same was also enquired into, and after receiving reply from the petitioners, action has been dropped. Again, for the 3rd time, a charge memo was issued for the same allegations against the petitioners placing them before TDP, Salem. After enquiry, the TDP, Salem, relying upon the statement earlier made by the witnesses in the preliminary

/vigilance enquiry, has held that the charges against the petitioners are proved, based on the report of the Sub Collector, Madurantakkam dated 8.8.2004 and submitted a report on 30.08.1995. On this aspect, it is relevant to point out the decision cited by the learned senior counsel reported in (2023) 1 WLR 324 (Siddheswaran vs. Secretary to Government), wherein it is held that the evidence adduced in the oral enquiry alone should be taken into consideration. Statement made in the preliminary enquiry cannot be accepted for the proof of the charges. In the present case, the 1st respondent, in his report, had solely relied upon the statement made by the witnesses in the preliminary enquiry which has been subsequently, disowned by them and all of them have turned hostile but the authority had come to the conclusion that the petitioners have committed the delinquency. Once the oral enquiry has been conducted, the preliminary enquiry loses its importance and the evidence recorded in the oral enquiry alone has to be taken into consideration for purpose of coming to the conclusion. The 1st respondent, ignoring the material evidence available on record, has solely relied upon the earlier statement and had come to the conclusion that the petitioner has committed the delinquency. Merely because PW1 Sub

Collector has given a report and deposed before the 1st respondent, cannot be taken as a sole ground for coming to the conclusion that the petitioners had committed the delinquency. On this ground, the report of the 1st respondent lacks merit.

10. Further, the order of the 2nd respondent namely, the disciplinary authority agreeing with the findings of the Enquiry Officer's report is a non-speaking order. The petitioners, after receiving the report of TDP, had submitted their explanation in respect of all the three charges levelled against them, but none of the points raised by the petitioners has been met by the 2nd respondent before arriving at a conclusion that the petitioners had committed the delinquency. As per Service Rules, the disciplinary authority has to take into consideration, the further representation made by the petitioners for the Enquiry Officer's report, before arriving at a conclusion. But the order of the 2nd respondent /disciplinary authority has simply relied upon the findings of the 1st respondent which has no basis.

11. Further, as per Service Rules, the appellate authority, who is the

highest authority in respect of the merit of the charges, has to decide whether the findings of the disciplinary authority is supported by legal evidence available on record for the proof of the guilt of the accused officers, for arriving at a conclusion that in the departmental enquiry, the evidence has been properly considered, besides the quantum of punishment. But the order does not state any of the above ingredients. There is no discussion on the points raised by the petitioners in the appeal petition submitted by them. The order passed by the 3rd respondent is bereft of particulars. The appellate authority has simply referred the matter to TNPSC, who have accepted the findings of the 1st and 2nd respondents and based on their findings, the 3rd respondent has confirmed the order. It reflects the non-consideration of the defence of the delinquent officers and non-application of mind on the part of the authorities. Further, for the alleged transaction said to have been committed during 1992-1995, the punishment was imposed in the year 2010. It is seen that the proceedings have been prolonged for more than 15 years. There has been inordinate delay in the initiation, commencement and conclusion of the proceedings.

12. It is seen that before the TDP, out of 9 witnesses examined on the side of the prosecution, no witness has stated as against the petitioners. P.W.1 is the Sub Collector, who conducted the preliminary enquiry. P.W.2 is also a Sub Collector who conducted the preliminary enquiry and recorded statements on 8.8.95. P.W.3. V.P. Lingam has disowned the statement earlier made and has not supported the prosecution case. P.W.4 U.Yuvaraj has admitted that the petitioners were not involved in the transaction and also further stated that the petitioners had no role to play. P.W.5 Venkatakrishnan, one of the Trustees has also stated that the petitioners had no role to play and he was treated as hostile witness P.W6 Raghunatha Reddy has specifically stated that the petitioners had no role to play. P.W.7 Sekar the land broker has also stated that the entire transaction was conducted by another person Arunagiri. P.W.8 Arunagiri, the land broker who purchased the land for the Trust has specially stated that the petitioners had no role to play and he was also treated as hostile witness. P.W.9 Bharathidasan is the official witness. The petitioners, on their side marked the letter sent by VP Lingam, the Trustee of the Charitable Trust dated 19.10.95 specifically stating to drop action against the petitioners. Hence, none of the prosecution

witnesses have stated against the petitioners for having involved in the land transaction and received illegal gratification. The alleged receipt said to have been signed by the petitioners, though marked, the handwriting has not been proved. It is only the land broker, Arunagiri who had stated that he has signed the receipt. Moreover, the receipt itself stands in the name of another person and hence, it cannot be construed that the petitioners had signed the receipt. Further, the TDP has relied upon the report of the Sub-Collector dated 8.8.95 in the preliminary enquiry and has come to the conclusion that the petitioner has committed the delinquency and hence the charges have been proved. The preliminary enquiry report cannot form the basis for the proof of the delinquency. The delinquency has to be proved by examining the witnesses by adducing acceptable evidence. A preliminary report, based on the statements recorded from the witnesses, cannot be accepted as evidence for the purpose of coming to the conclusion that the delinquency has been proved.

13. At this juncture, it has to be pointed out that any preliminary enquiry report based on which, a charge memo is framed loses its legal

sanctity once the oral enquiry has been conducted. It is also the contention of the petitioners that the statement given by them in the preliminary enquiry said to have been made before the Sub-Collector, Chengalpattu is concocted and the same cannot be relied upon for the purpose of coming to the conclusion that the petitioners have committed the delinquency. The evidence of PW1, Sub Collector, cannot be taken as a solemn evidence for the purpose of coming to the conclusion that the petitioners have committed the delinquency. Moreover, any statement given behind the back of the petitioners, cannot be relied upon for the purpose of coming to the conclusion that the petitioners had committed misconduct. Further, the petitioners were also not given an opportunity to cross examine the evidence of PW1. Similarly, the evidence of PW2, another Sub-Collector cannot be relied upon. The original stamp receipts for the alleged commission of the sale transaction executed, involvement of the Trust is not available. The signature found therein was not subjected to scientific investigation/analysis and in the absence of the same, it cannot be conclused that the petitioners have committed the delinquency. Thus, there is no evidence against the petitioners and none of the witnesses have stated that the petitioners have received the amount as brokerage in the land transaction for the purchase of land in favour of the Trust. There is also long delay in the initiation, commencement and conclusion of the disciplinary proceedings. Even after the report of the TDP in the year 2005, final orders have been passed in the year 2010.

14. For the reasons stated above, this Court is of the opinion that the charges levelled against the petitioners have not been proved beyond reasonable doubt and hence, the impugned orders are liable to be set aside. Accordingly, the Writ Petitions are allowed. The impugned orders dated 30.08.2005, dated 28.07.2010 and dated 06.11.2012 are hereby quashed. Consequently, the respondents are directed to settle the retirement befits of the petitioners within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

01.06.2023

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

To

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Pre-delivery order made in
W.P.Nos.12087 & 12088 of 2013

01.06.2023