



W.P.No.14852 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.14852 of 2016
and W.M.P.Nos.12985 & 12986 of 2016

N.Udayakumar

.. Petitioner

VS

The Principal Secretary / Commissioner of
Revenue Administration, Disaster Management &
Disaster Mitigation Department, Chepauk,
Chennai – 5.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records on the file of the respondent herein in Ser.2(1)/16785/2015 dated 20.02.2016, quash the same and issue consequential directions to the respondent to include the name of the petitioner in the panel for promotion as Deputy Collector in the appropriate place therein and to promote the petitioner as such with retrospective effect from the date of promotion of immediate junior and to permit the petitioner to peacefully retire on service on 31.05.2016 with all consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.S.Ravikumar
Special Government Pleader

ORDER

Writ petition has been filed in the nature of a certiorarified mandamus seeking records on the file of the respondent, the Principal Secretary / Commissioner of Revenue Administration,



W.P.No.14852 of 2016

Disaster Management & Disaster Mitigation Department, Chennai in Ser.2(1)/16785/2015 dated 20.02.2016 and quash the same and issue consequential directions to the respondent to include the name of the petitioner in the panel for promotion as Deputy Collector and thereafter to also promote the petitioner to such other promotional posts with retrospective effect and permit the petitioner to retire from service on 31.05.2016 with all consequential benefits.

2. The petitioner was working as Revenue Divisional Officer / Deputy Collector at Vriddachalam. At that particular point of time, on 20.02.2016, he was issued with the impugned charge-memo. The writ petition has been filed questioning that particular charge-memo. The entire charge related to an earlier order passed in his capacity as Revenue Divisional Officer on 18.09.2013. That particular order, came to be passed since as RDO, he had the authority to confirm grant of patta to beneficiaries who can be categorized as landless poor. In Irulakurichi village, there were substantial lands belonging to the revenue department in survey nos. 266, 267 & 268, which totally measured about 15.5 acres. These lands, were to be sub-divided and patta came to be granted to those who should be categorized as landless poor. The lands were actually sub-divided and one such subdivision was Survey



W.P.No.14852 of 2016

no.268/8 measuring 2 acres. The lands were agricultural lands. The petitioner having had the authority to confirm grant of patta, naturally should follow the rules and guidelines under which such patta has to be granted and, more importantly should also ensure that those who benefit from grant of such patta require such land and could be categorized as landless poor. The patta for this particular land of 2 acres in Survey no.268/8 was granted to one Sudha, who was actually not residing in the said village but residing in another village, Kedilam. Patta no.1192 was issued. Questioning grant of such patta to the said Sudha, a resident of Irulakurichi village, Solaimuthu, had raised a complaint before the petitioner herein.

3. The petitioner, who had to examine whether the patta has been properly granted and in accordance with the Rules and Regulations had passed an order in the petition given by Solaimuthu on 18.09.2013 in Mu.Mu.A3/3187/2011. He rejected the representation given by Solaimathu and justified the grant of patta to the said Sudha.

4. Questioning this particular proceedings of the petitioner herein, Solaimuthu preferred a further representation / appeal



W.P.No.14852 of 2016

before the District Revenue Officer at Cuddalore. By an order dated 12.03.2014, in Na.Ka.V3/25322/2013, the DRO, had set aside this particular grant of patta to Sudha and had restored the entire lands of 15.5 acres back to the Revenue Department and classified them as "punsei tharisu" and had directed that the lands could be again subdivided and allotted to the landless poor in accordance with the guidelines issued by the Government, more particularly, by the Commissioner of Land Administration.

5. After that particular order had been passed, there was an examination of the original order dated 18.09.2013 passed by the petitioner herein and holding that it had been passed in violation of the facts and in violation of the guidelines under which he was expected to perform and discharge his duties, the charge-memo was issued complaining that he had affirmed grant of patta to Sudha without adhering to the Rules and guidelines. This particular charge-memo has been questioned by the writ petitioner in the present writ petition.

6. In the affidavit filed in support of the writ petition, the petitioner stated that it was alleged that he had confirmed an order of grant of free patta and had rejected an appeal preferred against



W.P.No.14852 of 2016

such grant. He also stated that there was an appellate remedy available against the order which he had passed and the party so aggrieved, Solaimuthu, had also actually preferred an appeal before the DRO. It had therefore been stated that since it could be categorized as a judicial order even though he was a quasi judicial authority, motive cannot be imputed against him for passing such an order. It had been stated that an alternative forum was available and even if the order was palpably wrong, it could be addressed by the appellate authority. It had also been stated that initiation of disciplinary proceedings were violative of the policy of the Government, more particularly, as enunciated in Government letter 14353/Per.N/93-1 dated 11.03.1993. It had been stated that therefore, the charge-memo should be quashed by this Court.

7. When the matter came up for admission, a learned Single Judge of this Court had taken note of the judgment of the Hon'ble Supreme Court in the case of *Zunjarrao Bhikaji Nagarkar v Union of India* (1997) 7 SCC 409 and stated that a charge-memo cannot be issued against a quasi judicial authority who had discharged statutory duties and more particularly, in the absence of motive, had stayed all further proceedings.



W.P.No.14852 of 2016

8. A counter affidavit had been filed on behalf of the respondents, wherein it had been stated that the land for which patta was issued, was specifically identified for distribution to landless poor agricultural families. There was also a circular in this regard and it had been stated that according to the guidelines, patta should be granted only to the landless poor of the same village and not to anybody who is outside the village. It was also contended that before confirming the grant of patta, a field inspection should have been done by the petitioner herein and without determining the actual facts, the petitioner had affirmed grant of patta to the said Sudha. It had been stated that it was an issue of fact and not of wrong interpretation of law and it had been therefore stated that, without making necessary or proper inquiry, the petitioner had confirmed the grant of patta to Sudha. The issuance of the charge-memo was justified by the respondents.

9. Heard Mr.M.Ravi, learned counsel for the petitioner and Mr.S.Ravikumar, learned Special Government Pleader for the respondent.

10. Learned counsel for the petitioner had brought to the notice of this Court the facts of the case and stated that the



W.P.No.14852 of 2016

beneficiary Sudha had actually been identified only by the Village Level Committee consisting of VAO, Tahsilar, Panchayat President and such other officers and thereafter the patta had been granted by the Tahsildar to Sudha. It had been stated that subsequently a petition had been addressed to the petitioner herein that patta to the land had been irregularly granted to the said Sudha, and on that particular petition, the petitioner had passed an order rejecting the petition.

10.1 It had been contended by the learned counsel that it was an order which was appellable in nature and quite rightly the petitioner who suffered an adverse order had also preferred an appeal before the DRO, who had set aside the grant of patta to Sudha. It is therefore contended that since there is an appellate remedy available, parallely issuing a charge-memo, was quite contrary to the rules and regulations and was violative of the protection granted to the petitioner, as a public servant.

10.2 Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in *Zunjarrao Bhikaji Nagarkar v Union of India* (1997) 7 SCC 409.



W.P.No.14852 of 2016

10.2.1 In the said judgment, the Hon'ble Supreme was concerned with an order passed by the appellant therein, who was working as Collector of Central Excise, Nagpur in the year 1995. He had passed an order favouring M/s.Hari Vishnu Packaging Ltd., Nagpur in an assessment proceedings and it was alleged that such order had been passed against the provisions of Central Excise Rules 9,49,52A, 53, 173G and 226. It had been stated that consequent to such order, the beneficiary had benefited non-payment of duty of Rs.4,81,950/-.

10.2.2 On that ground, when a charge-memo was filed, the appellant therein had originally approached the Central Administrative Tribunal, which had initially granted an interim stay and later vacated the stay. Questioning the order vacating the stay, the appellant had filed a writ petition before the High Court and suffered an order of dismissal. The appeal filed by the appellant before the Division Bench was also dismissed. Thereafter, the appellant filed an appeal before the Hon'ble Supreme Court. In the order of the Hon'ble Supreme Court, the portion relied on by the learned counsel for the petitioner is extracted below:-

"If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to



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W.P.No.14852 of 2016

be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

10.3 It is therefore contended by the learned counsel for the petitioner that since there is an appellate remedy available, which had also been taken recourse to by the original complainant, the charge-memo necessarily will have to be quashed by this Court.

11. Learned Special Government Pleader, however, pointed out the facts of the case. He pointed out that the petitioner had the responsibility of ensuring that patta was granted only to those who could be classified as landless poor. Substantial government lands had been vested with the revenue department and thereafter when a decision was taken to grant patta to landless poor, the petitioner,



W.P.No.14852 of 2016

having control of the lands, had affirmed grant of patta to an individual Sudha, who could not be classified as either landless or poor and as a matter of fact, was a resident of another village. She was also not doing cultivation in the said village.

11.1 Learned Special Government Pleader, therefore, stated that without making basic inquiry and without conducting any field inspection, the petitioner had affirmed grant of such patta in the order passed. It had also been stated that had the complainant therein not preferred any appeal, then valuable land would have been vested with the said Sudha and landless poor would have been denied the benefit of the policy of the Government. It was therefore contended that the charge-memo had been issued only with respect to dereliction of duty by the petitioner herein. The charge-memo was justified. It was contended by the learned Special Government Pleader that the writ petition should be dismissed.

12. I have carefully considered the arguments advanced and perused the records.

13. The petitioner was working as Revenue Divisional Officer at Vriddhachalam. At that particular point of time, one Solaimuthu



W.P.No.14852 of 2016

had preferred a petition before him that free patta for land measuring 2 acres in Survey No.268/8 in Irulakurichi village had been allotted to one Sudha who was not even a resident of that particular village. It had been complained that the petitioner therein Solaimuthu was doing agriculture and overlooking his credentials, the land had been allotted to the said Sudha.

14. The petitioner who was working as Revenue Divisional Officer / Deputy Collector, had the responsibility and duty to ensure the Government land is allotted only to those who would benefit by the same and who could be categorized as landless poor. The Government land is not meant to be fettered away to anybody or everybody who seeks allotment of such land.

15. The facts stated by the Solaimthu could have been very easily determined by the petitioner herein had he an inspection of the said lands. It was evident that the said Sudha was not a resident of Irulakurichi village. She belonged to Kedilam village. The petitioner had not even verified that particular fact. The petitioner had not even verified whether she was doing at least agriculture in Irulakurichi village. She was not doing such agriculture. She was not at all entitled for grant of land by way of free patta. Two acres of



W.P.No.14852 of 2016

agricultural land would have provided necessary income and would have provided solace to those who can be only categorized as landless poor. Identifying them was the responsibility of the petitioner herein and even if it is the Tahsildar who so recommends, the petitioner as RDO had the duty to ensure that the Tahsildar discharged his duty properly. Merely because, the petitioner had passed a quasi judicial order, which is appealable in nature, it cannot be stated that the petitioner should never be proceeded against departmentally. The petitioner had let down the good intentions of the Government and also the policy of the Government. He had also acted in contravention of the policies.

16. In this connection, learned Special Government Pleader had also brought to the notice of this Court to the Circular issued, wherein guidelines have been prescribed as to whom the patta could be granted. The conditions are that the total annual income of the family should not exceed 16,000/- and the beneficiary should be a resident of the village where the land lies and the beneficiary should do direct cultivation in the encroached land.

17. The beneficiary in this case Sudha did not qualify in any one of the three conditions. With respect of her income, it was an



W.P.No.14852 of 2016

ascertainable fact. The petitioner had however not taken that particular effort. He will have to suffer the consequences of explaining as to why he had affirmed grant of patta to the said Sudha. That opportunity would be granted to him during the course of departmental inquiry. The departmental inquiry cannot be scuttled at the stage of charge-memo itself.

18. It is also a fact that the beneficiary was not a resident of the Irulakurichi village. It is a fact that the beneficiary Sudha therefore could not do direct cultivation of the lands. Overlooking these two facts, the petitioner had affirmed grant of patta to her. Naturally he should explain the reasons and the respondents have a duty to proceed against him departmentally. It is a weak argument to hold that since the order is appealable, the petitioner cannot be proceeded with departmentally.

19. The judgment referred to by the learned counsel for the petitioner *Zunjarrao Bhikaji Nagarkar (supra)* is distinguishable on facts. There, the charge was a mistake or an error on application of law while passing the order. Here there was no law involved. It was a determination of the fact. The determination of the facts were whether Sudha was a resident of Irulakurichi village, whether Sudha



W.P.No.14852 of 2016

was doing direct agriculture in the same village where the land was situated and about her income. Even a cursory look at her address would have shown that she was not a resident of Irulakurichi village. This would also lead to a conclusion that she could not do agriculture directly. Once she is disqualified, the petitioner should not have affirmed grant of patta to her. It is also weak argument to hold that it was a Village Committee which had proposed the name Sudha and that the Tahsildar had granted patta. The petitioner cannot hide behind that screen.

20. Records produced by the learned Special Government Pleader reveal that the respondents had also proceeded, not only against the petitioner herein but also against the VAO and also against the Tahsildar. Thus, the entire issue had been examined by the respondents and all the officials who were responsible for wrongful grant of patta to an ineligible person had been examined in their proper light. They had been proceeded with departmentally. . The reasons surrounding the order passed by the petitioner will have to be examined and the petitioner can explain those reasons during the course of the inquiry.

21. At this stage, the learned counsel for the petitioner also



W.P.No.14852 of 2016

stated that there is no misappropriation allegation in the charge which had been framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is evident that when valuable agricultural land of 2 acres is fettered away to a person who is not eligible, naturally there may not be direct misappropriation of money, but land is also valuable and fettering away of such land, would naturally invite framing of charge under Rule 17(b). The argument raised by the petitioner is therefore rejected.

22. I hold that the charge-memo will have to be proceeded with further. The stay granted is vacated. The respondents are permitted to proceed further with the charge-memo and call for an explanation and proceed with the departmental enquiry.

23. Writ petition stands dismissed. No Costs. Connected miscellaneous petitions are closed.

14.09.2023

Index:Yes/No
Neutral Citation:Yes/No
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W.P.No.14852 of 2016

C.V.KARTHIKEYAN,J.

ssm

To

The Principal Secretary / Commissioner of
Revenue Administration, Disaster Management &
Disaster Mitigation Department, Chepauk,
Chennai – 5.

W.P.No.14852 of 2016

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