



W.P.No.33815 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 10.04.2023

Orders delivered on 01.06.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.33815 of 2015

R.Kannadasan

..Petitioner

Vs

1. The State of Tamil Nadu,
Rep. By its Principal Secretary
to Government,
Revenue Department,
Secretariat, Fort St.George,
Chennai – 600 005.

2. The Principal Secretary/
Commissioner of Revenue Administration,
(Diaster Management & Redressal),
Chepauk,
Chennai – 600 005.

3. The District Collector,
Villupuram District,
Villupuram.

4. The Commissioner of Disciplinary
Proceedings, Vellore,
Vellore District -632 001.

..Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings issued by the 2nd respondent in Se.Mu.No.Pani5(2)/16050/2008 dated 03.01.2010 and the impugned proceedings issued by the 1st respondent in G.O.(2D).No.507 Revenue Department dated 26.06.2014 and the subsequent proceedings issued by the 1st respondent in G.O.(2D).No.364 Revenue Department dated 18.06.2015 and to quash the same and consequently direct the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

For Petitioner : Mr.S.Nedunchezhiyan
For Respondents : Mr.M.Rajendran,
Additional Government Pleader
for R1 to R3

ORDER

This writ petition has been filed challenging the order dated 03.01.2010, passed by the 2nd respondent, imposing the punishment of dismissal from service and the order dated 26.06.2014 passed by the 1st respondent, rejecting the petitioner's appeal by confirming the order of dismissal from service and the subsequent proceedings dated 18.06.2015, passed by the 1st respondent, rejecting the review petition filed by the



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petitioner and consequently, direct the respondents to reinstate the petitioner into service with all consequential and other attendant benefits.

2. The brief facts of the case of the petitioner is as follows:

i) The petitioner was initially appointed as Village Administrative Officer on 24.04.1994 in the Revenue Department in the erstwhile South Arcot District. Thereafter, he was transferred to Ogaiyur Village in Kallakurichi Taluk, Villupuram District, in the year 2002 and worked there till 2004 and thereafter, transferred to Siruvalari Village, Villupuram District.

ii) While so, in the year 2006, three charges were framed against him by the 4th respondent Commissioner for Disciplinary Proceedings, Vellore in D.T.P.No.13 of 2005 dated 07.03.2006, viz., (i) While working as VAO in Ogaiyur Village, Kallakurichi Taluk, demanded Rs.650/- from one Annamalai for processing the application for transfer of patta in January 2004, (ii) demanded a sum of Rs.300/- from one Raja Udaiyar on 27.02.2004 for issuing Chitta and Adangal extract FMB sketch etc., for the purpose of submitting the same for obtaining EB service connection and (iii)



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demanded a sum of Rs.2000/- on 21.02.2004 from one Chellamuthu for issuing Chitta, Adangal extract, FMB for the lands.

iii) Though charge memo was issued, the petitioner was not provided with any opportunity to offer any explanation. Thereafter, show cause notice dated 28.10.2008 was issued to offer the petitioner's explanation on the findings of the report submitted by the 4th respondent but the copy of the enquiry report was not furnished to the petitioner. The petitioner made representation on 15.11.2008 to the 2nd respondent to furnish copy of enquiry report, but there was no response. The petitioner submitted his explanation on 27.11.2008. Since the copy of the enquiry report was not furnished, the petitioner was not able to submit his explanation based on the findings of the Enquiry Officer and statement of witnesses etc. The petitioner was able to answer only for the charges as stated in the show cause notice.

iv) Subsequently, final order was passed on 03.01.2010 holding the charges 1 and 3 as proved and imposed with punishment of dismissal from service and the same was served on the petitioner on 26.01.2010. Against



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which, the petitioner filed W.P.No.5584 of 2010. The petitioner also filed an Appeal before the 1st respondent, challenging the order of 2nd respondent dated 03.01.2010. The writ petition came to be ordered on 25.11.2013 directing the Appellate Authority, viz., the 1st respondent to dispose of the appeal dated 18.03.2010 within a period of eight weeks.

v) The petitioner submitted further representation to the 1st respondent in person on 05.12.2013. However, the 1st respondent did not call for any personal hearing, but passed an order dated 26.06.2014, rejecting the petitioner's appeal, confirming the order of dismissal from service, by referring to the opinion obtained from TNPSC dated 14.02.2014, but the copy of the opinion of TNPSC was not furnished to the petitioner. The petitioner submitted further representation to the 1st respondent stating that the order of appeal came to be issued without perusal of records and without appreciating the real facts based on records and further, the copy of the proceedings issued by TNPSC was not furnished to him as well as the copy of the enquiry report issued by Commissioner for Disciplinary Proceedings Vellore, was not furnished to him and thereby, requested the 1st respondent



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to review the order passed in the appeal dated 26.60.2014. But the 1st respondent rejected the review petition filed by the petitioner without considering the request of the petitioner. Hence, this writ petition.

3. i) Learned counsel for the petitioner would submit that though the charge memo was issued by the 4th respondent dated 07.03.2006, the petitioner was not given any opportunity to offer any explanation. He was straight away summoned to appear for enquiry before the 4th respondent. The prosecution witnesses alone were examined and statements were obtained and the petitioner was not examined and he was not given any opportunity to defend himself.

ii) Learned counsel would further submit that when the petitioner was working at Ogaiyur Village as VAO, one Annamalai, S/o Ayyadurai, made an application for transfer of patta to avail electricity service connection for agricultural purposes and the petitioner has made statement before Tahsildhar that he is not eligible to get separate patta as there are other joint owners inasmuch as the land belong to Pajanai Madam Kovil. The said



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Annamalai took all efforts to get a separate patta, but it was not legally possible. The petitioner has discharged his official duty in accordance with law to his conscience, without any deviation. Further, when one Chellamuthu, S/o Nagamuthu, made an application for transfer of electricity pump connection in his favour consequent to the demise of his father, the petitioner called upon him to obtain Death Certificate and Legal heir Certificate from Thasildhar. At the time of granting of legal heir certificate, the said claimant was asked for appearance of his mother, brother and sisters and he refused to bring them. However, as per the procedure, the personal appearance of family members were insisted and the statements were obtained from all other legal heirs and enquiry was also conducted with personal appearance of legal heirs and thereafter, the certificate was issued. The petitioner had carried out his official duty as per the procedure, but Chellamuthu was dissatisfied with the above action.

iii) Learned counsel would further submit that it is found that Annamalai and Chellamuthu along with another seems to have filed false complaints against the petitioner before the Vigilance & Anti Corruption



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Department as if he demanded money. Based on which, the 3rd respondent passed an order of transfer, transferring the petitioner for Kallakurichi Taluk to Villupuramm Taluk. Thus, the charges are ill-motivated based on the false complaint made by the two individuals.

iv) Learned counsel would further submit that along with the show cause notice, copy of the enquiry report was not furnished to the petitioner. Non-furnishing of enquiry report can be evident from the fact that when the show cause notice was served through the office of Thasildhar, Kallakurichi, his signature was obtained only at the bottom of show cause notice and he was not served with any enquiry report as well as statement of witnesses examined and other documents produced at the time of enquiry. Though the petitioner made representation on 15.11.2008 to the 2nd respondent requesting to furnish copy of the enquiry report, there was no response. Since the petitioner was given only 30 days time to offer his explanation, he submitted his explanation stating that the charges are framed based on false complaint and he cannot be held responsible for the alleged charges.

v) Learned counsel would further submit that after the final order was



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passed imposing the punishment of dismissal from service, the petitioner filed an appeal before the 1st respondent challenging the order of the 2nd respondent dated 03.01.2010, but the same was rejected vide G.O.(2D).No.507 dated 26.06.2014, confirming the order of dismissal from service passed by the 2nd respondent, by referring the opinion obtained from TNPSC dated 14.02.2014. Again, the copy of the said opinion of TNPSC was not furnished to the petitioner along with the said G.O. which is the basis for passing the order dated 26.06.2014 by the 1st respondent. The order came to be issued without providing any opportunity of hearing.

vi) Learned counsel for the petitioner would submit that the enquiry was conducted by the 4th respondent in a farce manner without providing any reasonable opportunity to the petitioner and the petitioner was not even examined during the enquiry. That apart, the petitioner was not provided with any opportunity to adduce his evidence or to produce witnesses on his behalf. Therefore, the enquiry was conducted in the manner not known to law and the same is vitiated.

vii) Learned counsel would further submit that the 2nd respondent has



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not considered that the complainants, Annamalai and Chellamuthu, have given false complaint, since the petitioner has not yielded to the pressure of complainants and acted in a fair manner in dealing with their applications. The Thasildhar is the competent authority to issue patta as well as legal Heirship Certificate and the petitioner, being a VAO, has to make statement before Thasildhar on the applications based on records. Therefore, by no stretch of imagination, the petitioner can be connected with the allegations. Further, there is no evidence to state that the petitioner has received money from the complainants except the statement of complainants that they have given money to the petitioner. Even the said statement found to be false since it is alleged that Raja Udayar had handed over the money to the petitioner whereas the Raja Udayar has denied any such incident. Therefore, the charges are stated to be proved merely based on the statement of complainants without any proper verification of records and circumstances.

4. i) Per contra, the learned Additional Government Pleader appearing for the respondents would submit that charge Nos.1 and 3 have been proved



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by the prosecution witnesses 1 and 2 viz., Annamalai and Chellamuthu, who have confirmed that the petitioner has demanded and accepted bribe amount from them for issuing certificate to get Electricity service connection and recommending patta transfer and charge No.2 was not proved.

ii) Learned Additional Government Pleader would further submit that it is false to state that the petitioner was not provided with any opportunity to offer his explanation. A detailed enquiry was conducted and the petitioner was given opportunity to present his case and he filed written arguments and also made oral presentation. He was allowed to cross examine the official witnesses. The Tribunal for Disciplinary Proceedings, has conducted the enquiry only in a free and fair manner as evident from the report of the Tribunal for Disciplinary proceedings. Further, charges 1 and 3 are held as proved based on circumstantial evidence. The explanation of the petitioner that the evidence of official witnesses is false, cannot be accepted, since the petitioner has not proved that there exists enmity between the petitioner and the official witnesses. The findings of the Tribunal that charge No.1 as proved, is therefore accepted. Regarding charge No.3, Chellamuthu was



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given deposition that the petitioner has demanded and accepted illegal gratification. Further, on cross examination also, Chellamuthu denied the statement of the petitioner that he has not demanded any illegal gratification and confirmed that the petitioner has demanded illegal gratification. Further, the official witness-1 Annamalai also confirmed that the petitioner has received the bribe amount.

iii) Learned Additional Government Pleader would further submit that the contention of the learned counsel for the petitioner that the official witness 2 and his mother, sister and brother were called to the office to sign in person for issuing legal heir certificate was misconstrued for demanding money and a false compliant was given, cannot be accepted, since the official witness-2 has deposed that the petitioner demanded money for issuing copy of Chitta, Adandal and Field Measurement book and not for the legal heir certificate. The finding of the tribunal that the 3rd charge as proved is accepted. Further, the report of the Tribunal for Disciplinary Proceedings was communicated to the petitioner on 28.10.2008 and he has submitted his explanation on 27.11.2008. Therefore, the argument that the petitioner has



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not received the copy of the findings is not tenable.

iv) Learned Additional Government Pleader would further submit that both the counsels for the petitioner and the prosecution had filed the written arguments and the Tribunal for Disciplinary Proceedings has also heard the petitioner. Thus, the Tribunal has conducted the enquiry in a proper manner. Every necessary records were furnished to the petitioner and the review petition was also carefully dealt with and dismissed on merit. Further, the petitioner was given ample opportunity to prove his innocence as per the principles of natural justice. The 1st respondent passed the order in appeal, confirming the order passed by the 2nd respondent. The 2nd respondent accepted the findings of the Tribunal that the charges 1 and 3 are proved and for the proven charges, which are grave in nature, the punishment of removal from service was ordered in the interest of justice. Therefore, he would pray to dismiss the above writ petition as devoid of merits.

5. This Court considered the submissions made on either side and perused the materials available on record.



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6. It is seen that the charge memo dated 07.03.2006, containing three charges, was issued as against the petitioner. The three charges are (i) While working as VAO in Ogaiyur Village, Kallakurichi Taluk, demanded Rs.650/- from one Annamalai for processing the application for transfer of patta in January 2004, (ii) demanded a sum of Rs.300/- from one Raja Udaiyar on 27.02.2004 for issuing Chitta and Adangal extract FMB sketch etc., for the purpose of submitting the same for obtaining EB service connection and (iii) demanded a sum of Rs.2000/- on 21.02.2004 from one Chellamuthu for issuing Chitta, Adangal extract, FMB for the lands. The final order has been passed holding the two charges, viz., 1st and 3rd charges, as proved and the 2nd charge as not proved.

7. The charges have been framed based on the complaint given by Annamalai, Chellamuthu along with another before the Vigilance & Anti Corruption Department alleging that the petitioner had demanded money from them. Further, when the show cause notice was issued to the petitioner,



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the enquiry report as well as the statement of witnesses examined and other documents produced at the time of enquiry, were not furnished to the petitioner. Thus, the petitioner was able to answer for the charges alone as stated in the show cause notice dated 28.10.2008 and was not able to submit his explanation based on the findings of the Enquiry Officer and the statement of witnesses etc. The non-furnishing of the enquiry report is evident from the fact that when the show cause notice was served through the office of the Tahsildar, Kallakurichi, the petitioner's signature was obtained only at the bottom of show cause notice and no signature was obtained for the service of enquiry report. Though the respondents would state that the enquiry report and other documents were served on the petitioner, there is proof produced by the respondents to substantiate the same. Hence, reasonable opportunity was not given to the petitioner by furnishing sufficient documents and thus, there was miscarriage of justice.

8. It is also the contention of the petitioner that initially, in the year 2004, the said Annamalai had made an application for issuance of separate



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patta to the Tahsildar, based on which, hearing was conducted by Tahsildar in March 2004, in which, the petitioner has deposed that the said Annamalai is not entitled for separate patta and he is eligible only for joint patta as the land belong to Pajanai Madam Kovil and Annamalai was issued with joint patta, contrary to his request. Thus, the said Annamalai has developed grudge against the petitioner and made a complaint to Revenue Divisional Officer along with few others in the name of villagers that the petitioner demanded money for the purpose of disbursement of Drought Relief. The said complaint was enquired into and the same was proved to be false. Therefore, the present complaint given by Annamalai was with ulterior motive only to harass the petitioner and thus, the genuineness of the complaint was not proved beyond reasonable doubt.

9. Further, as per the statement of the complainants viz., Chellamuthu, Annamalai and Raja Udayar, it is found that Chellamuthu has given statement that he has received Rs.300 from Raja on 27.02.2009 and handed over the same to the petitioner. The statement reads that when the



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money was given by Annamalai, it was seen by Chellamuthu and when the money was given by Chellamuthu, it was seen by Annamalai and the money was borrowed from Raja Udayar to be handed over to the petitioner. However, Raja Udayar had deposed that he has not handed over any money to Chellamuthu nor the petitioner had demanded any money from him. Thus, there are major discrepancies in the version of the complainants with regard to the very alleged demand of bribe. As there is contradiction in the statement given by the complainants, their statement cannot be believed and thus, the genuineness of the complaint has not been properly proved. Therefore, from their evidence, it becomes doubtful insofar as the alleged demand of bribe by the petitioner from the complainants is concerned.

10. Further, the petitioner was not given sufficient opportunity by furnishing relevant documents to give proper explanation to the show cause notice to disprove the charges, but the final order has been passed holding the charges as proved. There was no evidence to state that the petitioner has received money from the complainants except the statement of the



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complainants that they have given money to the petitioner. Even the said statement is found to be false since the complainant Chellamuthu had given statement that he had received money from Raja Udayar and handed over the same to the petitioner whereas Raja Udayar had denied such incident. The respondents have held the charges as proved based on presumption and assumption and without verification of records and the statement of the witnesses.

11. Further, this Court, by order dated 25.11.2013 made in W.P.No.5584 of 2010 filed by the petitioner, directed the 1st respondent to opass orders on the appeal petition dated 18.03.20910 on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner. The petitioner also submitted further explanation to the 1st respondent enclosing all the documents and materials and requested the 1st respondent for personal hearing, whereas the impugned order was passed by the 1st respondent without providing any personal hearing to the petitioner, which amounts to violation of principles of natural justice.



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12. For the reasons stated above, this Court is of the opinion that the impugned orders are liable to be set aside. Accordingly, the Writ Petition is allowed. The impugned proceedings passed by the 2nd respondent dated 03.01.2010, the impugned proceedings passed by the 1st respondent dated 26.06.2014 and the subsequent proceedings issued by the 1st respondent dated 18.06.2015, are hereby quashed. The respondents are directed to notionally reinstate the petitioner into service with continuity of service and grant all other attendant benefits, however, without backwages. The said exercise shall be completed by the respondents 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

1. The State of Tamil Nadu,
Rep. By its Principal Secretary



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to Government,
Revenue Department,
Secretariat, Fort St.George,
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2. The Principal Secretary/
Commissioner of Revenue Administration,
(Diaster Management & Redressal),
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4. The Commissioner of Disciplinary
Proceedings, Vellore, Vellore District -632 001.

J.NISHA BANU, J.



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vsi

Pre-delivery order in
W.P.No.33815 of 2015

01.06.2023