IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.41030 of 2016

V.Rajendran ... Petitioner

Vs.

1.The Secretary to Government,
Adi-Dravidar and Tribal Welfare,
(ADW-1) Department,
Secretariat, Chennai 600 009.

2.The Commissioner,
Adi-Dravidar Welfare Department,
Chepauk, Chennai 600 005.

3.The District Adi-Dravidar and Tribal Welfare
Officer, Karur,
Karur District. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to G.O.(Pa) No.80, Adi Dravidr & Tribal Welfare (ADW-1) Department dated 31.03.2015, to quash the same and to issue consequential direction to the respondents to refund the deducted DCRG amount Rs.1,61,409/- recovered if any.

For Petitioner : M/s.V.Thirupathi

For Respondents : Mr.D.Gopal
Government Advocate.

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent relating to G.O.(Pa) No.80, Adi Dravidr & Tribal Welfare (ADW-1) Department dated 31.03.2015, to quash the same and to issue consequential direction to the respondents to refund the deducted DCRG amount Rs.1,61,409/- recovered if any.

2. The case of the petitioner is that the petitioner joined as a Junior Assistant in the Office of the District Adi Dravidar & Tribal Welfare on 06.12.1982. Subsequently, he was promoted as Superintendent on 13.07.2005 and retired on 31.12.2008 on attaining the age of Superannuation. The petitioner was issued with the charge memo dated 26.07.2007 with regard to neligence in maintaining the records. In the said

Charge Memo, two charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules), against the petitioner. In his explanation dated 21.02.2008 to the Director, Adi Dravidar and & Tribal Welfare Department, Karur, the petitioner has stated that on 31.03.2006, a sum of Rs.8,07,048/- was transferred for official purpose, for which, the concerned staff failed to maintain the records.

3. It is the further case of the petitioner that an enquiry officer was appointed and enquiry was conducted no witnesses were examined and no documents were marked and the finding of the enquiry officer is that the charges leveled against the petitioner were proved. The Director, Adi Dravidar and & Tribal Welfare Department, has issued a show cause notice dated 09.06.2008 along with enquiry report and called upon the petitioner to submit his explanation to the said enquiry report.

4. Pursuant to the above said show cause notice, the petitioner has submitted his explanation on 26.08.2008 to the second respondent through the third respondent. The second respondent vide proceedings dated 31.12.2008 permitted the petitioner to retire from service with effect from

31.12.2008. Since the petitioner had attained the age of superannuation, in pursuance of the above said order, the third respondent by an order dated 31.12.2008 relieved the petitioner from service. Subsequently, the third respondent by his proceedings dated 18.02.2009 sanctioned provisional pension to the petitioner.

5. It is the further case of the petitioner that again the respondent has appointed Joint Director as an Enquiry Officer to conduct the enquiry based on the charge memo dated 26.07.2007 issued against the petitioner. The above said enquiry officer has conducted the enquiry on 10.02.2010. Thereafter, the second respondent by his proceedings dated 21.04.2010 issued fresh show cause notice along with enquiry report calling upon the petitioner for explanation. The petitioner has again given explanation on 10.05.2010 in respect of the same allegation to the third respondent.

6. During the interregnum, the first respondent sent a letter dated 07.09.2011 called upon the petitioner to give option for the proposed punishment of cut in pension at Rs.500/- p.m.for a period of two years and also recovery for a sum of Rs.1,61,409/- from the DCRG on the basis of the

conclusion of the enquiry proceedings. Thereafter, the petitioner sent a representation dated 17.10.2013 to the third respondent with a request to withheld the recovery amount of Rs.1,61,409/- from DCRG. Due to family circumstances, the petitioner was willing to receive the remaining amount of DCRG and pension .

7. The petitioner had meanwhile filed Writ Petition No.24503 of 2014 and prayed for a direction to the first respondent to pass final order on the basis of the show cause notice dated 07.09.2011. On 10.09.2014, the said writ petition was disposed with a direction to the first respondent to pass final order on the basis of the show cause notice issued by him, dated 07.09.2011 within a period of four weeks, if no order has been passed till date. Thereafter the 1st respondent passed the impugned order dated 31.03.2015 by imposing a punishment of cut of Rs.500/- every month from the monthly pension payable to the petitioner for a period of two years and also recovery a sum of Rs.1,61,409/- from the DCRG in lumpsum. Aggrieved by the said impugned order dated 31.03.2015, the petitioner has preferred the present writ petition.

8. The respondents have filed a counter affidavit, wherein, it is stated that the petitioner has admitted the fact that the concerned staff failed to maintain the records. As the petitioner has to supervise the work in the capacity as Superintendent, he has failed to discharge the duties and therefore the charges were framed by the second respondent.

9. He further submits that while the petitioner was working as a Superintendent in the office of the District Adi Dravidar and Tribal Welfare Officer, Karur, an amount of Rs.8,07,048/- allotted for execution of various works sanctioned in G.O.(3D) No.32, Adi Dravidar and Tribal Welfare Department dated 14.10.2004 was drawn from the treasury at the fag end of the financial year 2005-06. During the inspection, the records revealed that some item of works were given to one person on paper but the work was undertaken by someone without following the Tamil Nadu Transparency in Tenders Act, 1998(Tamil Nadu Act 43 of 1998). Thereby the officials involved in the misappropriation of public money by not selecting the implementing agencies by following the rules in force. It was also found that the work was not completed, records for the work and the registers for

encashment of the public money from the treasury were not maintained properly. Therefore, following charges were framed against the petitioner along with four others involved in the misappropriation of public money under the Tamil Nadu Civil Services (Discipline and Appeal) Rules,

Charge I :

> While Thiru V.Rajendran holding the post of Superintendent in the office of the District Adi Dravidar and Tribal Welfare Officer, Karur a sum of Rs8,07,048/- was encashed on 31.03.2006. For that there are no files or records maintained by the Technical Staff and failed to supervise the attitude of the subordinates.
>
> Charge II :
> Thereby, violated the Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973

10. The learned Government Advocate further submitted that the petitioner has given an explanation on 1.02.2011 but the Director, Adi Dravidar Welfare was not satisfied with the explanation of the petitioner. Thereafter, an enquiry officer was appointed and conducted enquiry and submitted his report held that the charges were proved. Based on the enquiry

report, the Director, Adi Dravidar Welfare had issued a show cause notice along with enquiry report and called upon the petitioner to submit his explanation. The petitioner has given an explanation on 26.08.2008. The District Adi Dravidar Welfare Officer has forwarded the same to the Director, Adi Dravidar Welfare for further action. In the meantime, the petitioner attained the age of superannuation on 31.12.2008. The Director, Adi Dravidar Welfare permitted the petitioner to retire from service with effect from 31.12.2008 without prejudice to the charges/enquiry pending against the petitioner and subsequently sanctioned the provisional pension to him.

11. The learned Government Advocate further submits that the enquiry was conducted properly. Further enquiry was ordered by appointing the Joint Director of Tribal Welfare as Enquiry Officer dated 31.12.2009. The Enquiry Officer has held that the charges were proved against the petitioner. The penalty had been imposed on the petitioner vide G.O.(D)No.80 Adi Dravidar and Tribal Welfare Department dated 31.03.2015 after following the procedures contemplated under Tamil Nadu Civil Services (Discipline and Appeal) Rules. The penalty of recovery had

been imposed only when it has established that the petitioner was also responsible for the act of breach of orders. Hence, this writ petition is liable to be dismissed.

12. The learned counsel for the petitioner would submit that the first respondent has failed to consider the explanation of the petitioner and erred in holding that the charges had been proved. The petitioner had explained the situation under which the bill for the works was prepared on the last day of the financial year 2005-06 and sent to the Treasury for encashment as otherwise the sanctioned amount for the works would lapse and further the drawing officer also signed the bills.

13. The learned counsel for the petitioner would further submit that the first respondent has failed to consider that the findings of the enquiry officer are perverse and no enquiry was conducted expect the petitioner's statement and no documents were produced to prove the charges. Hence, the impugned order passed by the first respondent dated 31.03.2015 is liable to be set aside.

14. Defending the impugned order of the first respondent, the learned Government Advocate submits that the impugned order was well considered order and therefore requires no interference. The learned Government Advocate for the respondents further submits that all the submissions of the petitioner have been also considered in the impugned order and in this background, the impugned order passed are liable to be upheld.

15. This Court has considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondents and has also perused the impugned order along with this Writ Petition.

I6. This Court has gone through the averments of the petition as well as the counter affidavit. It could be seen that generally a person who is a Superintendent has to supervise and monitor the work done by the concerned authority while implementing the Government circular. An amount of Rs.8,50,000/ - was sanctioned for the financial year 2005-2006. Out of which, an amount of Rs.8,07,048/- has been approved by the District

Collector, Karur for expenses. On 31.03.2006 i.e. last day of the financial year 2005-2006, the amount has been released by the petitioner without verifying as to whether the work has been completed or not. Further, in respect of the above transaction, there are no records maintained by the petitioner's subordinates. It is the duty of the petitioner to supervise as to whether the records were maintained by his subordinates. After satisfaction only, the petitioner should have released the above said amount. As a responsible Government Servant, he ought to have verified the work done and have acted accordingly. In the absence, this Court cannot interfere.

17. The explanation of the petitioner that during the relevant period the then overseer who had maintained the records who is the superior officer of the petitioner, the said overseer has objected to produce the records before the petitioner for his perusal and reference, he could not verify the documents, i.e. register of the tenderers, valuation report, tender register, M.Book, Demand Draft, Register of Income Tax statement, EMD Register, Bond Register and Appropriation Register and on the insistence of the District Adi Dravidar Welfare Officer only he has issued the cheque in respect of the the above said amount and he is not aware about the fact that

whether the cheque has been released or not, is not acceptable. Therefore, this Court is of the view that no illegality is found in the said impugned order and the same is hereby confirmed.

18. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2023

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking Order
kkd

To

1.The Secretary to Government,
Adi-Dravidar and Tribal Welfare,
(ADW-1) Department,
Secretariat, Chennai 600 009.

2.The Commissioner,
Adi-Dravidar Welfare Department,
Chepauk, Chennai 600 005.

3.The District Adi-Dravidar and Tribal Welfare
Officer, Karur,
Karur District.

V.BHAVANI SUBBAROYAN,J.
kkd

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