IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.09.2023**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.23743 of 2021
and W.M.P.24998 of 2021

M.Alagirisamy ... Petitioner

vs

1. The Principal Secretary to Government,
Revenue & Disaster Management Department,
Services Wing (Ser.2(3)) Section,
Fort St George, Chennai - 9.

2. The Additional Chief Secretary,
Commissioner of Revenue Administration,
Revenue Administration & Disaster,
Management Department,
Chepauk, Chennai - 5. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, calling for the records of the first respondent in connection with the impugned order passed by him in G.O.(2D) No.272, Revenue and Disaster Management Department, Services 2(3) Section dated 27.11.2019 and quash the same.

For petitioner : Mr.K.Venkataramani

Senior Counsel
for Mr.M.Muthuappan

For respondents : Mr.T.Cheziyan
Addl.Government Pleader

O R D E R

This writ petition impugns G.O.(2D) No.272 Revenue and Disaster Management Department Services 2(3) dated 27.11.2019 issued by the first respondent by and which the Government had imposed a punishment of stoppage of increment with cumulative effect for three years .

2. The case of the petitioner is as follows:

2.1. The petitioner entered into service as Junior Assistant on compassionate ground on 11.12.1981 in Salem Revenue Unit. He was promoted as Assistant on 20.11.1992 and further promoted as Deputy Tahsildar on 09.07.2005. His name was included for promotion to the post of Tahsildar in the panel for the year 2004. His promotion was due for the post of Tahsildar for the panel year 2008, but, he was not promoted, as disciplinary proceedings were pending against him. Subsequently, he was promoted as Tahsildar on 27.03.2013 by including his name in the panel for the year 2008.

2.2. While the petitioner was working as Assistant in the office of the Special Deputy Collector (Stamps), Salem District, during the period 11.03.1998 to 30.04.1999, he had made a note recommending release of 24 documents on the basis of remittance copy of challan, which was found to be bogus.

2.3. In every Sub-Registrar office, certain number of documents will be retained for valuation based on deficit stamp duty and in case, any deficit is found, these documents shall be retained for nonpayment of deficit stamp duty and finally, it will be collected by the Special Tahsildar (Stamps). The Special Revenue Inspector is entrusted with the collection of the deficit stamp duty under the Tamil Nadu Revenue Recovery Act and he should verify whether the amount collected by him is properly remitted in full. Similarly, the Special Tahsildar (Stamps) and Special Deputy Tahsildar (Stamps), Salem District were entrusted with the work of taking action in this regard. The Special Tahsildar (Stamps) 3,4,5, before returning Form No.II, should make their recommendations for the release of the documents and the Special Deputy Collector should verify with the State Bank of India

(Treasury), whether the amount mentioned in the challan was fully remitted into the bank and the challan produced was genuine. If this exercise had been properly done at their level, then, the amount mentioned in the challans would have not been remitted, detection of bogus challans would have happened and release of documents would not have been initiated. Hence, the Special Tahsildar, Special Revenue Inspector and the Special Deputy Collector who are the superior officers of the petitioner, are squarely responsible for the same.

2.4. When the petitioner was working as Assistant, as there was a huge number of cases pending in this regard, the petitioner was not a position to verify all the challans and hence, he proceeded further on the hope that these 2 challans were verified by his superiors. But, on verification, in respect of 2 challans, the petitioner found that the date mentioned for remittance was 01.01.1999 and that being a holiday (New's Year day), he further cross-verified with the Special Tahsildar concerned and found that those 2 challans were bogus and this was brought to the notice of the Deputy Collector, Stamps, Salem. Only on the basis of the petitioner's information, a detailed inspection was conducted by the

Inspection Cell and V&AC Department, Salem and it was found that 55 documents were released based on the bogus challans and no amount was remitted. Subsequently, this matter was also enquired by the Revenue Department and the Government, *vide* its order in G.O.(D) No.529, Revenue Department dated 12.09.2007, dropped further action against the Deputy Collector (Stamps) and 13 others, including the petitioner. But, the petitioner was issued with a charge memo dated 18.09.2008 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules by the second respondent for the following allegations :

> *"1.That M.Alagirisamy, while working as Assistant, O/o the Special Deputy Collector (Stamps), Salem during the period from 11.3.1998 to 30.4.1999 had put up a note recommending for release of certain documents on the basis of the remitted copy of the challan which were later found to be bogus and thereby he had exhibited lack of devotion to duty while in service.*
>
> *2. That M.Alagirisamy, while working as Assistant, O/o the Special Deputy Collector (Stamps) Salem during his tenure had put up a note recommending for release of the 24 documents which were later found to be bogus. Thereby he had failed to maintain absolute integrity and lack of devotion to duty and thus he had acted in a manner unbecoming of a member of the service. Thus he had violated Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules, 1973."*

2.5. The petitioner denied the charges framed against him and submitted a detailed explanation which stated that he was only an Assistant serving in the office and there were superior officers for verification of challans before directing him to release the documents based on the challan. A common enquiry was conducted against the petitioner and 3 others and in respect of one person, action was dropped. The Enquiry Officer, viz., the District Revenue Officer, Erode, did not examine any witness and directed the petitioner to give a statement and based on his statement, the Enquiry Officer submitted a report on 09.12.2009 thereby proving the charges against the petitioner.

2.6. The charge memo contained as many as 50 documents and 15 witnesses. The petitioner, in his statement on 01.06.2019, had specifically stated that none of the witnesses had alleged that the deficit stamp duty was paid to him. In addition to the above said findings with respect to two challans, another 24 bogus challans were found, during his tenure as Assistant serving in the Office of the Special Deputy Collector (Stamps), Salem District. In spite of the above said facts, though he does not hold the sole responsibility, he was alleged that he should have verified with the Government Treasury before making a note for the release of the documents based on the challans. Further, he was issued with a copy of the Enquiry Officer's report and was directed to submit the same on 04.11.2010.

2.7. The Government, after a lapse of four years, issued an order in G.O.Ms.No.709 Revenue (Services 2(3)) dated 03.11.2014 without taking into consideration any point raised by the petitioner in his explanation and the first respondent imposed a punishment of stoppage of increment with cumulative effect for a period of three years and an order was issued accordingly. He filed a writ petition in W.P.No.7160 of 2015 before this Court challenging the order of punishment issued. This Court, by order dated 12.04.2019, found that the order passed by the disciplinary authority was a non-speaking order and there was no clue as to why the punishment was imposed on him. The relevant portion of the said order is extracted below:

> *"On the other hand, the disciplinary authority had extracted a portion of the finding rendered by the Enquiry Officer and finally observed that the charge was proved. Further, his EO report was not been taken into consideration before imposing a punishment. Hence the this Court that held that it was a non-speaking order and set aside the punishment holding that it was a non-speaking order and directed the 1st respondent to pass a reasoning order in accordance with law. There was also direction to pass such an order within a period of 12 weeks from the date of receiving a copy of the order."*

2.8. Subsequently, the first respondent, once again, issued an order in G.O.(2D) No.272, Revenue (Ser.2(3)) Section dated 27.11.2019 confirming the punishment, wherein none of the points raised by the petitioner was taken into consideration and paragraph 3 of the impugned order dated 27.11.2019, which is the subject matter of this writ petition, was passed after the remitting order was passed by this Court and it does not speak anything about the further representation made by the petitioner for the Enquiry Officer's report and it did not meet all the points therein. There was no evidence in the departmental enquiry in order to prove the charges against the petitioner, except the fact that he had released the documents based on bogus challans. Further, none of his explanations was taken into consideration and there was no oral evidence to prove any misappropriation.

2.9. There was a long delay in the initiation, commencement and conclusion of the disciplinary proceedings. The said allegation took place in the year 1998 for which vigilance enquiry was ordered in the year 1999, a charge memo was issued in 2008, the enquiry was completed on 09.12.2009, and the first respondent passed an order after a lapse of 4 years on 03.09.2014. Due to the delay, the petitioner was highly prejudiced and his promotion as Tahsildar from the year 2007-2013 has been deferred. He has been implicated in similar charges in another charge memo in respect of releasing documents based on the forged challans and he was proceeded departmentally and the department found that the petitioner was not the person concerned and exonerated him from the said charges and he was promoted as Tahsildar in the year 2013, even though his claim ought to have considered for the year 2007 itself. The petitioner's batchmates have already been promoted and they are serving in a higher post and their claim for promotion to the post of District Revenue Officer is being considered. When the punishment itself is without any basis and there is a violation of procedure followed in respect of conducting the disciplinary proceedings, the petitioner has come forward with the present writ petition, seeking the relief as stated in the opening paragraph.

3. The respondents have filed a counter affidavit dated 21.07.2023 and the relevant portions are extracted hereunder:

"*8. With regard to averments made in para 9 of affidavit, it is submitted that the disciplinary proceedings were initiated* *against the Petitioner once information relate to bogus challans was brought to light. In strict compliance with Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955, charges were framed against the Petitioner and once he was found guilty of both the charges in the enquiry process,final order was issued in G.O.(2D) No.709, Revenue [Ser.2(3)] Department, dated 03.09.2014 wherein the Petitioner is imposed the punishment of stoppage of increments for a period of 3 years with cumulative effect.*

9. With regard to averments made in para 10 and 11 of the affidavit, it is final orders in G.O.(2D) No.272, Revenue and Disaster Management [Ser.2(3)] Department, dated 27.11.2019, has submitted that, the Government, before issuing final orders taken into account every aspect of the enquiry procedure including charges levied, statement of the Petitioner in his defence, findings of the Enquiry Officer and the additional representation submitted by the Petitioner on the findings of the Enquiry Officer and the directions issued by the Hon'ble High Court of Madras in W.P.No.7160 of 2015, dated 12.04.2019. The Enquiry Officer is categorical in charges on the grounds that the Petitioner had processed the connected 24 documents involved in the case and solely holding the Petitioner guilty of both the charges responsible for recommendation and release of the documents based on bogus challans. It is also proved that the bogus challans were prepared and included in the 24 S.R.files and thus responsible for misappropriation of the deficit stamp duty amount of Rs.2,44,396/-. The said amount was collected and misappropriated during 24 S.R. files and thus responsible for the year 1998 and paid into the Government account only in 2004."

4. Heard both sides and perused the materials available on record.

5. The petitioner was working as Assistant in the office of the Special Deputy Collector (Stamps), Salem District during the year 11.03.1998 to 31.04.1999 and the allegation against him was that he had made a note recommending the release of 24 documents on the basis of remittance copy of challans, which were found to be bogus.

6. The contention of the learned Senior Counsel appearing for the petitioner is that the Special Revenue Inspector was entrusted with the collection of the deficit stamp duty under the Tamil Nadu Revenue Recovery Act and he should have verified whether the amount collected by the petitioner was properly remitted in full; the Special Tahsildar (Stamps) and the Special Deputy Tahsildar (Stamps), Salem District were entrusted with the work of taking action in this regard and if the exercise had been properly done at their level, then, the amount mentioned in the challans would have not been remitted and detection of bogus challans would have been possible; thus, the Special Tahsildar, Special Revenue Inspector and the Special Deputy Collector who are the superior officers of the petitioner, are responsible for the same; during that time, on verification, **in respect of 2 challans, the petitioner found that the date mentioned for remittance**

was 01.01.1999 and that being a holiday (New Year Day), he further cross-verified with the Special Tahsildar concerned and found that those 2 challans were bogus and this was brought to the notice of the Deputy Collector, Stamps, Salem. Only on the basis of the petitioner's information, a detailed inspection was conducted by the Inspection Cell and V&AC Department, Salem and 24 bogus challans were found. Subsequently, the matter was enquired by the Revenue Department and the Government, *vide* order in G.O.(D) No.529, Revenue Department dated 12.09.2007, dropped further action against the Deputy Collector (Stamps) and 13 others, including the petitioner.

7. However, subsequently the petitioner was issued with a charge memo dated 18.09.2008 under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules by the second respondent with the charges extracted in paragraph 2.4, *supra*.

8. **The first respondent, after a lapse of 4 years, issued an order in** G.O. (2D) No.709 Revenue (Services 2(2)) dated 03.09.2014 imposing the punishment of stoppage of increment with cumulative effect

for a period of 3 years and the same was challenged by the petitioner. In the order dated 12.04.2019 passed by this Court in W.P.No.7160 of 2015, **it is held that the order passed by the first respondent was a non-speaking one and there was no finding for imposing the punishment. Hence, the order dated 03.09.2014 passed by the first respondent was set aside and the first respondent was directed to pass a speaking order in accordance with law. The operative portion of the order dated 12.04.2019 is extracted below for ready reference:**

> *"5. Therefore, this Court is of the view that the impugned order is a non-speaking one and therefore, cannot be sustained. Since this Court is inclined to remit the matter back to the First Respondent, it is not expressing any view on the merits of the charges leveled against the Petitioner. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the First Respondent to pass fresh orders with reasons and findings on merits and in accordance with law. Such exercise shall be done by the First Respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."*

9. **Despite the above order dated 12.04.2019 passed by this Court in W.P.No.7160 of 2015, the first respondent once again issued an order *vide* G.O.(2D) No.272, Revenue (Ser.2(3)) Section dated 27.11.2019, confirming the punishment without taking into**

consideration the points raised by the petitioner in his representation to the Enquiry Officer. It is to be noted that the order dated 27.11.2019 is only a replica of the earlier order dated 03.09.2014, from the first line of the order till the end, it is one and the same, and this kind of attitude by the first respondent cannot be appreciated by this Court. It is unfortunate that the first respondent who is a senior level officer in the rank of Additional Chief Secretary to the Government, has not passed the order in compliance with the order dated 14.04.2019 passed by this Court.

10. At this juncture, it is pertinent to note that the alleged irregularities took place in the year 1999 and charge memo was issued in the year 2008 **after a lapse of 9 years** and enquiry was completed on 09.12.2009. The first respondent issued an order dated 03.09.2014 **after a lapse of over 4 years. There is an inordinate delay on the part of the respondents** in conducting the enquiry right from the beginning and the punishment imposed on the petitioner for the alleged delinquency is irrational for which the petitioner is not responsible and the senior officials are squarely responsible for the same as stated supra.

11. In view of the above factual matrix of the case, the order passed by the first respondent in G.O.(2D) No.272, Revenue (Ser.2(3)) Section, dated 27.11.2019 is liable to be quashed and the same is accordingly quashed.

In the result, this writ petition stands allowed. No costs. Consequently, connected writ miscellaneous petition is closed.

29.09.2023

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Index : Yes/No
Speaking Order : Yes/No

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J.SATHYA NARAYANA PRASAD,J.

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