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WP.No.5324/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.5324/2017 & WMP.No.5668/2017

K.Selvamaran

... Petitioner

Versus

The Principal Secretary to Government
Commissioner of Agriculture,
Agriculture [Ve.Ni.5] Department
Fort St George, Chennai 600 009.

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records connected with the Government Order issued in G.O[3D] No.263, Agriculture [Ve.Ni.5] Department dated 09.11.2016 passed by the respondent and quash the same and consequently direct the respondents to disburse the entire DCRG and other terminal benefits to the petitioner.

For Petitioner : Mr.S.Ilamvaludhi

For Respondent : Mr.U.Bharanidharan, AGP

ORDER



WP.No.5324/2017

WEB COPY

- (1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to G.O.[3D] No.262, Agriculture [Ve.Ni.5] Department dated 09.11.2016 passed by the respondent, the Principal Secretary/Commissioner of Agriculture, Agriculture Department, and to quash the same and consequently, direct the said respondent to disburse the entire DCRG and other terminal benefits to the petitioner herein.
- (2) The petitioner had joined the services as Village Administrative Officer. The date of his retirement on attaining the age of superannuation was 30.06.2015. In the interregnum period, he was placed under suspension on 29.06.2015, just a day before his date of retirement. It had been stated in the suspension order that enquiry is to be conducted against the petitioner for grave charges under Rule 17[b] of the Tamil Nadu Civil Service [Discipline and Appeal] Rules.
- (3) The entire charge surrounded disbursement of drought relief fund for Pudhur Village in Natham Taluk in Dindigul District, during May 2003. During May 2003, the Government found that owing to drought, there were several coconut trees which withered and which



WP.No.5324/2017

WEB COPY

could not properly yield. Therefore, the Government brought about a policy to disburse drought relief fund. This was to be given for withered coconut trees and also for partially withered coconut trees. The beneficiaries who can get the drought relief, will have to be identified by the Village Administrative Officer/petitioner herein and also by the Assistant Agriculture Officer.

- (4) Subsequently, it was found that though the Government had sanctioned substantial amount towards such relief, it was found that 17 of the beneficiaries had been wrongly identified and wrongly paid the drought relief. In effect, this was the basis of the charge memo which was proposed to be issued to the petitioner and consequent to which, he was placed under suspension on 29.06.2015 and not permitted to retire. Thereafter, the charges were actually served on the petitioner herein.
- (5) There were three charges which had been served on the petitioner herein. All three were surrounded the improper distribution of the drought relief fund which had been forwarded by the Government and to be distributed to the beneficiaries who are to be identified by the



WP.No.5324/2017

WEB COPY

petitioner and the Assistant Agriculture Officer. The first charge was that, to the 17 individuals, it had been mentioned that a sum of Rs.46,400/- had been improperly given towards drought relief. The second charge was consequential that since there was bad utilisation of the drought relief fund, the petitioner had not discharged his duty expected as a public servant. The third charge was also consequential that he had failed in his duty as a public servant while handling Government fund. In effect, the only charge which surrounded monetary loss to the Government was the sum of Rs.46,400/- which had been determined after enquiry by the Revenue Divisional Officer.

- (6) The petitioner was also a little vigilant after the charge had been framed and had taken efforts to get back the amounts so disbursed. A total sum of Rs.46,400/- which was paid back to the Treasury. The enquiry however proceeded. In the enquiry, the Enquiry Officer then placed reliance on the Report of the Deputy Director of Agriculture who was directed by the Joint Director of Agriculture, Dindigul, to examine the entire issue. The Report forwarded by those officials were relied by the Enquiry Officer. It is asserted by the learned



WP.No.5324/2017

WEB COPY

counsel for the petitioner that a copy of such Report was not given to the petitioner herein and the petitioner had no opportunity to question such a Report or test its correctness and veracity.

- (7) The learned Additional Government Pleader appearing on behalf of the respondents though stated that it has to be verified whether a copy of the Report of the Deputy Director of Agriculture was actually forwarded to the petitioner herein. On the basis of the records available, it is evident that a copy was not so forwarded. Be that as it may, if the Enquiry Officer wanted to place reliance on such Report of the Deputy Director of Agriculture, then the charges originally framed, should have been withdrawn, and an opportunity must be given to the petitioner to give his explanation on that particular Report and on the basis of the explanation, a decision should be taken whether to proceed further with the enquiry and charges to be framed and thereafter, specific charges should be framed on the basis of that Report. There are no records that the respondent undertook that particular exercise. During the course of enquiry, this particular Report of the Deputy Director of Agriculture, was relied on by the



WP.No.5324/2017

WEB COPY

Enquiry Officer. This is a very serious procedural violation by the Enquiry Officer. Judicial review may not strictly lie on the punishment imposed after the enquiry is conducted. But, judicial review always lie on imperfect procedure adopted during the course of enquiry.

- (8) The cardinal principles are that opportunity must be given to the delinquent to address the charge against him. Such opportunity should not only be an opportunity in letter but also in spirit, which would indicate that effective opportunity must be given. Effective opportunity can be granted only when all documents relied on by the respondents are forwarded to the delinquent and the delinquent is given an opportunity to question those documents in manner known to law and also summon the author of the documents and examine him to determine the veracity of the findings and the basis of which, the said findings were arrived at by the said Officer.
- (9) In the instant case, the Enquiry Officer had taken into record, the Report of the Deputy Director of Agriculture without that being tested in manner known to law. Therefore, reliance placed by the Enquiry



WP.No.5324/2017

WEB COPY

Officer of such Report vitiates the entire enquiry proceedings. The Enquiry Officer had found as a fact that the petitioner had disbursed the amount of Rs.46,400/- to 17 beneficiaries and also found as a fact that the amount had been recovered by him and paid back to the Treasury Account. On the basis of that particular act, the Enquiry Officer could have given his findings because charges surrounded that particular aspect. The Enquiry Officer had however gone beyond the scope of his enquiry and had spoken about the Report of the Deputy Director of Agriculture and expanded the scope of the enquiry by also including a loss of Rs.4,99,900/-. It was found that the petitioner was responsible for that particular loss to the Government. The petitioner is still in the dark as to how he could be called upon to explain that particular loss. If at all that was a loss, there are no documents produced as to how that amount was crystalised. There are no documents produced as to who are the persons to whom the said amounts have been forwarded and because of such forwarding of the drought relief fund, that amount came to be crystalised. There are no details as to how many coconut trees were withered and partially



WP.No.5324/2017

WEB COPY

withered, consequent to which that amount was crystalised. In the absence of all such details, placing reliance of the Report of the Deputy Director of Agriculture, in my opinion, is a serious flaw by the Enquiry Officer and cannot and should not be permitted to stand any further on record.

- (10) The respondent herein as a disciplinary authority, went further. In this juncture, one submission made by the learned counsel for the petitioner, is also to be noted. It is stated by the learned counsel that the respondent herein had taken upon the honours of being the disciplinary authority and thereby, this had put the petitioner to disadvantage since the petitioner had lost opportunity of filing an appeal against the finding or the punishment imposed and also lost an opportunity of filing a review before the Government since the respondent who had passed orders which is impugned in this writ petition, represents the Government. Therefore, on all grounds, the petitioner had been put to serious disadvantage not only during the process of enquiry but also subsequently. The respondent herein had then taken a decision to apportion the said amount of Rs.4,99,900/-



WP.No.5324/2017

WEB COPY

into two equal halves and had mulcted one half of the loss against the petitioner herein without there being any finding as to whether both the petitioner and the Assistant Agricultural Officer were to be mulcted with equal responsibility for identifying the beneficiaries. But, the roles are different. The Village Administrative Officer only identifies the individuals. The Assistant Agricultural Officer identifies the trees and assess the loss for the trees. Therefore, there cannot be equal division of the amount, which amount itself is questionable and has been rejected by this Court.

- (11) On all counts, unfortunately the petitioner has been put to very serious disadvantage. Learned Additional Government Pleader in his arguments pointed out the Enquiry Report and also the impugned order and stated that statistics had been given as to the number of trees which had been withered and the number of trees for which the amount was sanctioned and stated that there was a loss to the Government to a sum of Rs.4,99,900/-. The issue before this Court is whether the loss could be mulcted on the petitioner herein without any charge being framed on that count. There has been no charge framed,



WP.No.5324/2017

WEB COPY

no opportunity was given, and enquiry was not conducted in proper manner. Unfortunately, the entire proceedings stands vitiated. The Court will have to strike down that particular punishment which had been imposed on the petitioner to pay one half of the sum of Rs.4,99,900/-, which is Rs.2,49,950/-. That portion of the punishment will have to be interfered with. However, the other punishment of cut of Rs.100/- per month in the pension for a period of one year would stand good.

- (12) A perusal of the records shows that at the time of admission on 02.03.2017, stay of recovery of Rs.2,49,950/- from DCRG of the petitioner had been granted by the learned Judge. The said interim stay is made absolute and it is held that there cannot be any recovery of that particular amount from DCRG and if DCRG and other emoluments have not been paid to the petitioner herein, after making adjustment of an amount of Rs.100/- per month from the pension for a period of one year, the other benefits which are available to the petitioner, may be disbursed by the respondent herein. Such proceedings in that regard may be issued within a period of sixteen



WP.No.5324/2017

weeks from the date of receipt of a copy of this order.

(13) The writ petition stands **partly allowed**. No costs. Consequently, connected miscellaneous petition is closed.

26.07.2023

AP

Internet : Yes

To

The Principal Secretary to Government
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WEB COPY



WP.No.5324/2017

C.V.KARTHIKEYAN, J.,

AP

WP.No.5324/2017

26.07.2023