IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.21357/2017 & WMP.No.22288/2017

C.Ganesan ... Petitioner

Versus

1.The Secretary to Government
Revenue Department,
Fort St George, Chennai 600 009.

2.The Commissioner of Revenue Administration
Chepauk, Chennai 600 005.

3.The District Revenue Officer
Ariyalur District. ... Respondents

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 proceedings issued in Na.Ka.No.A1/7816/2014 dated 27.03.2017 passed by the 3rd respondent and quash the same and consequently direct the respondents to modify the punishment as compulsory retirement to the petitioner.

For Petitioner : Mr. S.Ilamvaludhi

For Respondents : Mr.S.Ravikumar, Spl.GP

ORDER

(1) The writ petition has been filed in the nature of a certiorarified mandamus seeking records relating to the proceedings in Na.Ka.No.A1/7816/2014 dated 27.03.2017 passed by the 3rd respondent, the District Revenue officer, Ariyalur District and to quash the same and to direct the respondents to modify the punishment as compulsory retirement so far as the petitioner is concerned.

(2) The petitioner had joined the service as Village Administrative Officer in the year 1984. In the year 2005, owing to heavy rain, the Revenue Department had directed that particulars of the rain affected agriculturists should be forwarded for giving compensation by the Government. In his capacity as Village Administrative Officer, the petitioner was in-charge of forwarding such a list. Thereafter, owing to the list which had been forwarded and finding that there were discrepancies in the same, a Charge Memo under Rule 17[b] of CCA

[D&A] Rules was served on the petitioner on 26.07.2006. The petitioner participated in the enquiry and had given his reply. The Appointing Authority was the Revenue Divisional Officer at Udayarpalayam. By proceedings dated 14.03.2008, in Na.Ka.No.A1/1381/06, the petitioner was dismissed from service. The petitioner then preferred an appeal before the District Revenue Officer, Ariyalur, on 20.01.2009. An order was passed on 23.01.2009, confirming the order passed by the Revenue Divisional Officer. The petitioner filed WP.No.29201/2008 and an order was passed to consider the representation given by the petitioner. This order was dated 17.12.2008. Parallelly, the petitioner also faced criminal charges and trial was conducted in CC.No.236/2010 by the learned Judicial Magistrate, at Jayamkondam. The petitioner was arrayed as the 1st accused. He was convicted of the charges which were framed under Sections 465, 477-A, 409 and 420 of IPC. There were also six other accused. The petitioner then filed an appeal in Crl.A.No.5/2016. This came up for consideration before the learned Additional District and Sessions Judge, Ariyalur. By judgment dated

28.04.2016, the learned Additional Sessions Judge, Ariyalur, had acquitted the petitioner of all charges. The petitioner then filed WP.No.37227/2016 seeking consideration of this judgment passed by the learned Additional Sessions Judge. The petitioner was directed to give a fresh representation to the respondents. The copy of the representation is not available in the Court bundle. But, however, further order was passed by the 3rd respondent / District Revenue Officer at Ariyalur, on 27.03.2017 in Na.Ka.No.A1/7816/2014. The 3rd respondent confirmed the earlier order passed and found that the proceedings before the Criminal Court and the disciplinary proceedings were two parallel procedures and therefore, the finding of one or the result of one would not have any bearing on the other. Holding as above, the order earlier passed dismissing the petitioner from service, was confirmed. The present writ petition has been filed questioning that particular order.

(3) Learned counsel for the petitioner took umbrage of the fact that the 3rd respondent had completely ignored the findings of the learned Additional Sessions Judge which had actually entered into a discussion on the very same charges as were framed against the petitioner during the departmental proceedings. It is contended that though this Court in WP.No.37227/2016 had directed that the representation should be considered afresh, the 3rd respondent had extracted the previous proceedings and thereafter, in one specific paragraph, had proceeded to confirm the findings against the petitioner herein and also confirmed the order of dismissal from service. It is contended by the learned counsel for the petitioner that this procedure adopted is violative of principles of natural justice and also that due consideration was not given to the representation given by the petitioner herein. It was therefore urged that this Court should interfere with the findings given by the 3rd respondent.

(4) A counter affidavit had been filed.

(5) The learned Special Government Pleader appearing on behalf of the

respondents placed reliance on the same. He pointed out the fact that the charge namely that owing to agricultural loss due to heavy rain in October and November 2005, the petitioner had assessed the loss in his capacity as Additional charge of Village Administrative Offcer at Sathambadi Village and had put forward a proposal for payment of compensation. It had been stated that the petitioner made excess assessment by including Government lands, poramboke lands and lands where Eucalyptus and cashewnut plantations have been cultivated. The loss which was caused to the Government was Rs.5,45,966/-. The learned Special Government Pleader also pointed out that though this particular assessment was primarily based on the list prepared by another individual namely, Rajalingam, the petitioner had given the final approval for the list and therefore, it is urged by the learned Special Government Pleader that the petitioner should owe responsibility for the list which had been forwarded to the Government, on the basis of which, compensation was granted for the alleged loss for the Government land, poramboke land also for the lands where Eucalyptus and Cashewnut trees were planted. It was therefore urged that the order impugned has to be sustained by this Court and the writ petition should be dismissed.

(6) I had given careful consideration to the arguments advanced.

(7) It is a fact that criminal Court proceedings and the departmental proceedings are two parallel proceedings which could always be initiated against any public servant, particularly who is charged during the course of his service with an offence which would also attract registration of a First Information Report and further prosecution. The nature of proof varies. But the evidence is the same. It is the analysis of the evidence which varies between the criminal Court and in departmental proceedings. The evidence has to be strong and strict proof is required for passing an judgment of conviction before the criminal Court. The very same evidence would also sustain an order of punishment in the departmental proceedings since, strict proof is not required, but only preponderance of probabilities. The preponderance of probability in this particular case was that though as a fact, Rajalingam had prepared the list and that the petitioner was only holding additional charge as Village

Administrative Officer, and further that Rajalingam had prepared the list with the help of two other individuals, and therefore, the petitioner had only confirmed the list. That fact, is only a presumption which could have been drawn by both the criminal Court and during the departmental proceedings.

(8) The criminal Court had, on the basis of the records, categorically held as follows:-

> *"....*
>
> *A1 who was working as Village Administrative Officer of that Village in relevant period and he was holding additional charge to Sathambadi Village and A1 filed written submission of the preparation of list. That, there was no regular Village Administrative Officer for Sathambadi Village and he was also holding additional charges of Govindhaputhur Village and the accounts of Sathambadi Village was in the hands of A2 and Revenue Inspector and then sent to Thasildar and other higher officials and the beneficiaries list was approved by higher officials. On perusal of documentary and oral evidence placed before the trial Court this Court found that the points*

put forth by appellant/A1 is true. In connection with A1 it is found that the beneficiary list was prepared by A2 and not by this A1. This A1 was holding full additional charge of the Village concerned in which the list of beneficiary list with false particulars was prepared and he was also holding charge of another village. On perusal of evidence and records it is found that the beneficiary list was prepared by A2 and it is admitted. This Court found there is no absolute evidence to prove that this appellant/A1 prepared beneficiary list of flood affected farmers. But it is found that the beneficiary list was also signed by Revenue Inspector and other Revenue Higher officials. If the list is approved by revenue higher officials, how this A1 and A2 above case added as accused is not explained by prosecution. It is also the question before this Court. It is found that Ex.P1 was counter checked and signed Revenue Inspector, Tahsildar and Revenue Divisional Officer and the concurrence given by them for the beneficiary list prepared by A1. Ex.P2 is the mane document for this case. But the persons who gave concurrence and consent were left and this A1 above charged for the allegations. In the above *circumstances this Court decides that this A1 is not responsible for his lapse."*

(9) It is a very specific and direct finding given by the criminal Court. It is not based on presumption alone, but based on documents produced. It is based on the analysis of the documents produced. It is found that the records revealed that the beneficiaries list had been prepared only by the 2nd accused who was Rajalingam. The petitioner had no role in preparing the list. That was the crucial factor which played upon the mind of the disciplinary authority to hold that the charges have been proved against the petitioner herein. But, there is one another factor. Though the learned Additional Sessions Judge had found that it was the 2nd accused Rajalingam who had actually prepared the list, in the departmental proceedings, for reasons best known to the officials, Rajalingam was inflicted with the punishment of cut in increment for five years with cumulative effect. It was also stated that the period of suspension would be treated as one of duty. If that is the punishment which had been imposed on Rajalingam on whom the learned Additional Sessions Judge had found credible evidence, then there is no reason why the petitioner should be discriminated and not

considered in parity with the other delinquent. The principle of parity is a very significant principle in service law. Where two or more delinquents are charged for practically the same offences, then while imposing punishment, there should be consistency. There cannot be one set of punishment given to one delinquent and another punishment more drastic be given to another delinquent.

(10) In view of that particular fact, it would only be appropriate that though this Court cannot interfere with the findings that the charge had been proved since it is passed only on preponderance of probabilities and reasonable presumption can be drawn by the Enquiry Officer, still the Court can interfere with the nature of punishment imposed and grant the same punishment that was granted to Rajalingam, to the petitioner also.

(11) In view of that particular reasoning, I would modify the punishment imposed on the petitioner from dismissal from service to one of cut in increment for a period of five years with cumulative effect and also simultaneously, treat the period of suspension as one of duty for the purposes of calculation of pension. The respondents are directed to

rework the emoluments payable to the petitioner herein consequent to the modification of the punishment as aforementioned. Such proceedings to be issued within a period of sixteen weeks from the date of receipt of a copy of this order.

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

03.08.2023

AP
Internet : Yes

To

1.The Secretary to Government
Revenue Department,
Fort St George, Chennai 600 009.

2.The Commissioner of Revenue Administration
Chepauk, Chennai 600 005.

3.The District Revenue Officer
Ariyalur District.

C.V.KARTHIKEYAN, J.,

AP

WP.No.21357/2017

03.08.2023