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W.P.No.29080 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29080 of 2023
and W.M.P.Nos.28670 & 28671 of 2023

G.Dhanalakshmi

...Petitioner

Vs

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2. The Director/Commissioner,
Rural Development and Panchayat Raj Department,
Panakal Building,
Saidapet, Chennai – 600 015.

3. The District Collector,
Dharmapuri District.

4. The Project Director cum Member Secretary,
District Rural Development Agency,
Dharmapuri, Dharmapuri District.

5. The Block Development Officer,
Karimangalam Panchayat Union,
Karimangalam, Dharmapuri District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 3rd respondent vide Na.Ka.No.15212/2020/K2 dated 09.06.2023 imposing punishment of stoppage of increment for three months without cumulative effect to the petitioner and quash the same as arbitrary and against the principles of natural justice.

For Petitioner : Ms.A.Pramila

For Respondents : Mr.P.Ganesan
Government Advocate [R1 to R3]

Mr.A.M.Ayyadurai
Government Advocate [R4 and R5]

ORDER

This writ petition is filed to quash the impugned order of the 3rd respondent vide Na.Ka.No.15212/2020/K2 dated 09.06.2023 imposing punishment of stoppage of increment for three months without cumulative effect to the petitioner.

2. Through a charge memo dated 02.10.2020, the petitioner, who was serving as a Deputy Block Development Officer, Karimangalam Town Panchayat, during the year 2017-2018, was levelled with eight(8) charges under Rule 17(b) of Tamil Nadu Civil Services (Disciplinary and



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Appeal) Rules, 1955. All the charges relate to alleged dereliction of duties in the preparation of Social Economic Caste Census, 2011 [in short, 'SECC,2011'] in individual cases of one Murugesan, Saroja, Ranganathan, Chinnasamy, Chinnavan. On the same set of charges, the Block Development Officer viz., M.Vadivelan was also levelled with charges of dereliction of duties in preparation of SECC, 2011. However, charges against the co-delinquent was framed under Rule 17(a) Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, 1955. After the charges were framed against the Block Development Officer, he had given his explanation to the charge memo. The Disciplinary Authority, had accepted the explanation of the Block Development Officer and exonerated him from the charges.

3. Ms.A.Pramila, learned counsel appearing for the petitioner submitted that since almost all the charges against the petitioner herein are the same as that of his co-delinquent/BDO, the present charges against the petitioner itself cannot be sustained. While that being so, the enquiry conducted based on the charges levelled against the petitioner and consequential imposition of punishment of stoppage of increment for



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a period of three months without cumulative effect also requires to be interfered with.

4. *Per contra*, Mr.P.Ganesan, learned Government Advocate appearing for the respondents 1 to 3 placed reliance on the averments in the counter affidavit and submitted that when the petitioner was working as Deputy Block Development Officer in Karimangalam Panchayat Union, for the period from 08.01.2018 to 03.01.2019 there were serious lapses committed by him in release of funds to five beneficiaries and therefore, the charges have been framed against him. He also submitted that since the Enquiry Officer had held that the charges levelled against the petitioner 'proved', the punishment of stoppage of increment for a period of three months without cumulative effect has been imposed, which punishment is proportionate to the charges levelled against him.

5. I have given my anxious consideration to the submissions made on either side.

6. The issue as to whether the two delinquencies, on a same set of charges can be proceeded with a departmental action and two distinct



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punishments could be imposed, had come up before this Court on various occasions, whereby it has been held that such two punishments, in which one is a lesser punishment would amount to hostile discrimination. This Court, in the case of ***S.David Thirugnanam Vs. The State of Tamil Nadu, Additional Chief Secretary, Revenue and Disaster Management Department*** in ***W.P.(MD).Nos.27144 of 2019 and 6390 of 2021*** dated **29.08.2023**, has considered this aspect in the following manner:

“8. Insofar as the dropping of action against the proposed co-delinquent, Thiru.P.Thangaraj, is concerned, it is seen that he had retired from the services on 31.07.2011 itself. Under Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, though the Department are entitled to institute action against such a retired employee, after obtaining the sanction of the Government, it is further held therein that no such action can be commenced for an event that took place more than four years before such proposed institution. Apparently, the co-employee, P.Thangaraj, had retired four years prior to the framing of charges and hence, dropping him out of the disciplinary proceedings cannot be found fault with and hence, such an action may not amount to hostile discrimination.”



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7. A similar view was also taken in the case of ***P.S.Ramalingam Vs. State of Tamil Nadu, Secretary to Government, Tourism, Culture and Religious Endowments Department*** reported in **2023 (2) CWC 285**.

8. In the instant case also, the delinquency attributed to the petitioner is similar to that of a co-delinquent (M.Vadivelan/BDO), apart from certain minor changes, which are irrelevant for the purpose of this case. If that be so, the exoneration of the Block Development Officer from the same set of charges and imposing a punishment on the petitioner would amount to a hostile discrimination and thus, the punishment itself cannot be sustained.

9. Accordingly, the impugned order dated 09.06.2023 passed in Na.Ka.No.15212/2020/K2 is hereby quashed and the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed.

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Index: Yes
Speaking order
Neutral Citation: Yes
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M.S.RAMESH,J.

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