



WEB COPY



WA No. 2912 / 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED : 30.10.2023

CORAM

**THE HONOURABLE Mr. JUSTICE R. MAHADEVAN**  
**AND**  
**THE HONOURABLE Mr. JUSTICE MOHAMMED SHAFFIQ**

W.A. No. 2912 of 2023  
and  
C.M.P. No. 24163 of 2023

S. Vijayalakshmi

... Appellant

Vs.

1.The Secretary to Government,  
Personnel and Administrative Reforms (Q) Department,  
Secretariat,  
Chennai – 600009.

2.The Joint Secretary to Government,  
Health and Family Welfare Department,  
Secretariat,  
Chennai – 600009.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order dated 27.07.2023 passed by the learned Judge in W.P. No. 22161 of 2023.



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For Appellant : Mr. R.Srinivas, Senior Counsel  
for Ms. V. Mythili.

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### JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN, J.]

This writ appeal has been filed by the appellant / writ petitioner against the order dated 27.07.2023 passed by the learned Judge in W.P. No. 22161 of 2023.

2. According to the appellant, while she was working as Assistant Section Officer, P&E Department, Secretariat, Chennai – 9, she was placed under suspension on 27.06.2008 and was issued with a charge memo vide Government Lr.No.29054/Q/2008-5 dated 27.06.2008 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, alleging that she being one of the Directors (Office Bearers) of Tamil Nadu Secretariat Staff Co-operative Housing Society Limited, had entered into criminal conspiracy with the other office bearers of the said Society and private individuals, committed grave malpractices in the allotment of residential and public purpose plots under Okkiyam Thoraipakkam Scheme,



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in violation of Bye-laws of the said Society and condition stipulated by the Government and shown favouritism by way of allotting the public purposes plots to the family members / relatives/ friends of the office bearers of the society and thereby gained unlawful pecuniary advantages to them constituting offences punishable under section 120B IPC, 13(1)(c) & (d) r/w 13(2) and 15 of the Prevention of Corruption Act, 1988 and thus, she had failed to maintain absolute integrity and devotion to duty and acted in the manner unbecoming of a member of the service and violated Rule 20(1) of the TNGSCR, 1973. Thereafter, the disciplinary authority issued another charge memo in Letter No.29054/Q2/2008-25 P&AR Department, dated 27.06.2012 under Rule 17(b) of the TNCS(D&A) Rules, containing 10 charges on the same allegations.

3.It is further stated by the appellant that consequently, the second respondent was appointed as the Enquiry Officer by order dated 14.03.2014 to conduct enquiry into the charges framed against the appellant. She submitted her explanation and participated in the enquiry. Upon completion of the same, the Enquiry Officer filed his report to the first respondent on



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17.08.2017 with a finding that charges 1 to 10 are held “not proved”.

However, the first respondent sent the letter no.29054/08/72 P&AR dated 05.02.2018, disagreeing with the findings of the second respondent / Enquiry Officer and holding that the charges 1 to 10 are proved, to which, the appellant sent her explanation on 12.03.2018 to the first respondent and the same is pending consideration. While so, vide communication dated 25.05.2023, it was informed to the appellant that the first set of charges against him, are dropped. Stating that the letter dated 05.02.2018 sent by the first respondent disagreeing with the findings of the Enquiry Officer, is arbitrary, illegal and contrary to the provisions of the statutory rules, the appellant preferred WP.No.22161 of 2023 to quash the same and consequently, direct the first respondent to exonerate the appellant from all the charges framed against her, based on the enquiry report 17.08.2017 submitted by the second respondent and permit the appellant to retire from service on 30.10.2012 and settle all the arrears and service benefits due to her, within a time frame to be fixed by the writ court.



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4. By order dated 27.07.2023, the learned Judge has disposed of the

aforesaid writ petition, with the following observations:

*“3....On perusal of the entire Annexure, reasons recorded for disagreeing the enquiry officer, thereafter, the impugned show cause notice is issued.*

*4. Such view of the matter, let the disciplinary authority consider the representation of the petitioner and provide one opportunity to the petitioner and pass final orders on its own merits. At this stage, the learned Senior Counsel appearing for the petitioner submitted that the petitioner may make an additional representation to the respondents. Hence, the petitioner is permitted to make such additional representation which shall also be considered by the disciplinary authority.”*

Aggrieved by the aforesaid order passed by the learned Judge, the appellant / writ petitioner has preferred the instant appeal before this court.

5. The learned senior counsel for the appellant submitted that when the enquiry proceedings are in conformity with the statutory requirement, the 2<sup>nd</sup> show cause notice is only an illusion and the first respondent has decided pre-emptively and has not considered the enquiry officer's report with an open mind and in an unbiased manner. Further, without providing any opportunity to the appellant, the first respondent has decided to hold that the charges 1 to 10 are proved, which were held as not proved by the Enquiry Officer, after conducting full fledged enquiry. Therefore, the order of the first



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respondent holding the charges as proved, is illegal and unsustainable in law. In support of the same, the learned senior counsel placed reliance on the decision of the Hon'ble Supreme Court in *Yoginath D. Bagde v. State of Maharashtra and another* [(1999) 7 SCC 739], wherein, it was held that if the disciplinary authority does not agree with the findings of the Enquiry Officer that the charges are not proved, it has to provide at that stage an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the Enquiry Officer were just and proper. Thus, according to the learned senior counsel, all these aspects have not been considered by the learned Judge, while disposing the writ petition filed by the appellant herein.

6. However, the learned Senior Counsel appearing for the appellant ultimately submitted that it would suffice, if the appellant is given liberty to approach the learned Judge who passed the order impugned herein, by filing necessary petition, with a request to consider certain grounds, which were not taken into consideration on the earlier occasion.

7. In view of the above submission made on the side of the appellant,



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this writ appeal stands disposed of, granting such liberty to the appellant.

No costs. Consequently, connected miscellaneous petition is closed.

**J.]**

ay

Index: Yes / No

Speaking order/ Non-speaking order

Neutral Citation: Yes / No

To

1.The Secretary to Government,  
Personnel and Administrative Reforms (Q) Department,  
Secretariat,  
Chennai – 600009.

2.The Joint Secretary to Government,  
Health and Family Welfare Department,  
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**[R.M.D., J.]**

30.10.2023

**[M.S.Q.,**



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AND  
MOHAMMED SHAFFIQ, J.**

*ay*

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