



W.P.No.34481 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **22.06.2023**

DELIVERED ON : **12.07.2023**

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.34481 of 2022
and W.M.P.Nos.33927 & 33928 of 2022

S.A.Anbazzhagan,
Formerly Head Quarters Deputy Block Development
Officer (General),
Ariyalur Panchayat Union,
Ariyalur District.

... Petitioner

Vs

- 1.The Secretary to Government,
Rural Development and
Panchayatraj Department,
Fort St. George, Chennai – 600 009.
- 2.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai – 600 015.
- 3.The District Collector,
Ariyalur District, Ariyalur.
- 4.The Director,
Directorate of Government Examinations,
DPI Campus, College Road,
Chennai – 600 006.



W.P.No.34481 of 2022

5.The Secretary,
Directorate of Government Examinations.
DPI Campus, College Road,
Chennai – 600 006.

6.The Director and Chemical Examiner to Government,
Forensic Sciences Department, (Forensic House),
Kamarajar Salai,
Chennai – 600 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of a) the District Collector, Ariyalur District, Ariyalur the third respondent herein made in Na.Ka.No.4255/2009/OoVa2 dated 06.08.2019, b) proceedings of the Director of Rural Development and Panchayatraj, Chennai the second respondent herein made in Na.Ka.No.42036/2019/DBC 3.2 dated 21.11.2020, and c) Government Order passed by the Secretary to the Government, Department of Rural Development and Panchayatraj, the first respondent herein made in G.O.(Pa)No.193, Rural Development and Panchayatraj (Pa.A-6) Department dated 29.07.2022, and quash the same and order that the petitioner is deemed to be continuing in service in the post of Deputy Block Development Officer with effect from the date of dismissal from service in Ariyalur District Rural Development unit and salary from the date of the order with all consequential continuity of services, attendant benefits, service benefits and disburse all the arrears within the time frame fixed by this Court.



W.P.No.34481 of 2022

WEB COPY

For Petitioner : Mr.V.T.Balaji for Mr.N.K.Ponraj

For Respondents : Mr.P.Gurunathan,
Additional Government Pleader

ORDER

The brief facts of the case are as follows:

1.1. The petitioner had originally joined as a part time Clerk in village panchayat on 01.05.1978. Though he was unsuccessful in completing the SSLC examination in the year 1978, he claims to have successfully completed the SSLC in the month of October 1985. Thereafter, he was promoted as Junior Assistant on 31.01.1995, which was also regularised. On completion of probation, he was promoted to the post of Assistant on 28.10.2006. Subsequently, he was promoted to the post of Deputy Block Development Officer on 05.07.2010.

1.2. Through the charge memo dated 19.02.2018, under Rule 17(b) of 'the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955', (hereinafter referred to as 'Rules'), five charges were levelled against the petitioner. Among the five, the first charge was that the



W.P.No.34481 of 2022

WEB COPY

petitioner had submitted bogus school education certificate for his promotion to the post of Deputy Block Development Officer from Assistant. The second charge was that when the District Collector / third respondent had issued a show cause notice dated 01.08.2017, based on the report of the State School Education Committee on the bogus school certificate of the petitioner, he had failed to give his reply even though three opportunities were given.

1.3. After enquiry, the charge Nos.1, 2 and 5 were held as proved and the remaining charges 3 to 4 were “not proved”. The petitioner had submitted his further representation to the proven charges on 04.01.2019. Consequently, the disciplinary authority had sent a letter to the Directorate of Government examinations on 19.03.2019, seeking for further clarification about the certificates submitted by the petitioner. Through their report dated 06.06.2019, the Joint Director of Government Examinations had replied stating that the original records were not available for verification and hence, they had referred the petitioner's certificates to the Forensic Science Department for verifying its genuineness. The Forensic Science Department in turn had given a



W.P.No.34481 of 2022

WEB COPY

report dated 09.08.2019, to the Directorate questioning the genuinity of the numerals in the certificate, as well as the facsimile impressions therein and the plates used for making the printed matter on the certificate. The Directorate of Government Examination through its letter dated 06.06.2019 had enclosed the report of the Forensic Science Department to the disciplinary authority. By placing reliance on the report of the Joint Director of Government Examination and on the basis of the investigation report of the Forensic Science Department, the disciplinary authority had imposed a major penalty of dismissal from service through the impugned order dated 06.08.2019.

1.4. As against the order of dismissal, the petitioner preferred an appeal on 26.08.2019 under Rule 19 to the second respondent herein, which was rejected, through the second impugned order dated 21.11.2020. The further review petition dated 18.02.2021 to the first respondent was also rejected on 29.07.2022. Both the second respondent and the first respondent while dismissing the appeal and review respectively, had also placed reliance on the report of the Joint Director of Government Examination, which in turn relied on the report



W.P.No.34481 of 2022

WEB COPY

of the Forensic Science Department. All these three orders are put under challenge in the present writ petition.

2. The learned counsel for the petitioner submitted that no witnesses were examined during the course of inquiry and therefore, the petitioner was deprived of an opportunity in the inquiry. He also submitted that the disciplinary authority ought not to have placed reliance on the report of the Joint Director of Government Examination dated 06.06.2019, which is after the Inquiry Officer had submitted his report.

3. Per contra, the learned Additional Government Pleader submitted that the petitioner herein had not produced any witness during the course of inquiry. According to him, the disciplinary authority had properly placed reliance on the report of the Forensic Science Department which is the appropriate authority to test the genuineness of the school certificate and since the serious charges against the petitioner have been held to be proved, a proportionate punishment has been imposed.



W.P.No.34481 of 2022

WEB COPY

4. I have given careful consideration to the submissions made by the respective counsel.

5. The entire disciplinary proceedings conducted under Rule 17 (b) is in total contravention of the contemplated procedure. Two major flaws are noticed from the initiation to the conclusion of the disciplinary proceedings. Before dealing with these infirmities, it may be appropriate to set out the procedure contemplated for initiation of disciplinary proceedings and the scope of the disciplinary authority while imposing a major penalty.

6. Rule 17(b)(i) provides that when it is proposed to impose a major penalty on a Government servant under Rule 8, the grounds on which it is proposed to take action should be reduced in the form of a definite charge or charges, to which the delinquent may have the right to give his explanation. Thereafter, an inquiry by letting in oral evidence is required to be held. During the inquiry, the delinquent would be entitled to cross examine the witnesses therein. Rule 17(b)(ii) provides that after the enquiry, when the disciplinary authority, on the basis of the evidence



W.P.No.34481 of 2022

WEB COPY

adduced in the inquiry, is of the opinion that a major penalty should be imposed, it should furnish a copy of the inquiry report and call for further explanation. Such a further representation shall be based on the evidence adduced therein in the inquiry only. The proviso to this Rule also enables the disciplinary authority to consult the Tamil Nadu Public Service Commission for its advice and when consulted, such advice shall be taken into consideration before making an order imposing a penalty.

7. As per the guidelines to Rule 17(b), the charge memo requires to be accompanied by four annexures. The Annexure – 1, will lay out the levelled charges, Annexure – 2 relates to the statement of allegations supporting such charges; Annexure – 3 would disclose the list of documents, which is sought to be relied upon against the delinquent and Annexure – 4 is the list of witnesses who will be letting in evidence against the delinquent.

8. In the charge memo dated 19.02.2018, though the disciplinary authority had given a list of four documents which they intended to rely upon during the course of inquiry, the list of witnesses in



W.P.No.34481 of 2022

Annexure - 4 was shown as “Nil”. On conclusion of the inquiry, the Enquiry Officer had submitted his report dated 03.12.2018 which discloses four exhibits produced during the course of inquiry in proof of the levelled charges. However, the list of witnesses by the department, as well as the defence, is shown as “Nil”. In other words, no witnesses were examined during the course of inquiry.

9. A perusal of the enquiry report reveals that the charge No.1 was proved on the basis of letter of the Secretary to the State School Examination committee, dated 10.07.2017. Likewise, the letter of the District Collector dated 01.08.2017, was relied upon for holding the second charge proved. 5th charge against the petitioner was proved in view of charges 1 and 2 having been proved.

10. The Hon'ble Supreme Court, in the case of ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in ***2009 (2) SCC 570***, has held that the contents of the documents produced before an Inquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the inquiry proceedings itself will stand vitiated.



W.P.No.34481 of 2022

The relevant portion of the judgment reads as follows:-

WEB COPY

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

11. Thus, when no witnesses were examined during the course of inquiry, but reliance has been placed on the aforesaid two documents dated 10.07.2017 and 01.08.2017, the contents there of requires to be held as not proved in the absence of witnesses as held by the Hon'ble Supreme Court in the aforesaid decision. In consequence, the entire enquiry would stand vitiated.



W.P.No.34481 of 2022

WEB COPY

12. The second major flaw in the procedure adopted by the disciplinary authority is that he had placed reliance on certain proceedings of the Joint Director Personnel of the Directorate of Government Examination dated 06.06.2019, which in turn has relied upon the report of the Forensic Science Department. Admittedly, the report of the Forensic Science Department was obtained after the disciplinary authority had sought for additional particulars from the Directorate through their letter dated 04.01.2019. The Joint Director in turn had forwarded the requisition to the Forensic Science Department, since they did not have any other materials to verify the genuineness of the petitioner's testimonials. All these further developments are after the Inquiry Officer had submitted his report on 03.12.2018.

13. Rule 17(b) does not empower or authorise the disciplinary authority to place reliance on any material, other than the materials / evidences before the Enquiry officer that forms part of the Inquiry report. The only exception to this is for the authority to seek for the advice of the Tamil Nadu Public Service Commission. Rule 17(b)(ii) categorically states that the decision to impose the major penalty should



W.P.No.34481 of 2022

only be on the basis of the evidence adduced during the enquiry. The purpose behind such a provision is that the concerned delinquent, would have already been afforded due opportunity to cross examine the witnesses, through whom the documents relied upon by the Enquiry Officer would have been marked. Consequently, the disciplinary authority would be justified in taking a final call on the basis of such evidence adduced during the enquiry. Any deviation of this procedure by the disciplinary authority of relying upon such materials, which did not form part of the inquiry proceedings, would amount to bringing in new evidences, without giving the concerned delinquent an opportunity to defend himself on the same. Thus, the procedure adopted by the disciplinary authority in relying upon the documents that were obtained after the final report of the Enquiry Officer, would amount to putting the cart before the horse. This exercise by the disciplinary authority, ought to have been done much prior to the issuance of the initial show cause notice issued in contemplation of the departmental proceedings. In the absence of any powers for the authority to rely on new materials or evidences, that did not form part of the inquiry, the consequential punishment would be illegal.



W.P.No.34481 of 2022

WEB COPY

14. Thus, the failure on the part of the disciplinary authority to supply list of witnesses at the time of framing of charges would have deprived the petitioners to give an effective explanation to the show cause notice and therefore, the consequential enquiry would stand vitiated. Similarly, the procedure adopted by disciplinary authority in having placed reliance on two documents to hold three of the charges as 'proved', but without proving the contents of those documents through examination of witnesses, would vitiate the entire disciplinary proceedings. Likewise, the reliance placed by the disciplinary authority on the proceedings of the Joint Director of Government examinations and the report of Forensic Science Department, which proceedings are after the inquiry report and more particularly without any further reference to the enquiry officers findings, would render the consequential punishment illegal.

15. The challenge to the order of punishment was also rejected by the second respondent through the order passed in the appeal dated 26.8.2019. I have perused the order of the appellate authority. Though the order runs to about 10 pages, the findings is in a single



W.P.No.34481 of 2022

WEB COPY

sentence in the penultimate paragraph of the order. The only finding therein is that since the proceedings of the Joint Director of Government Examinations and the report of the Forensic Science Department establishes the petitioner's documents as bogus, the punishment of the disciplinary authority was confirmed.

16. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 provides for the procedure to be adopted by the appellate authority to deal with an appeal petition. As per the said Rule, “In the case of an appeal against an order imposing any penalty specified in Rule 8 or 9, the appellate authority shall consider whether the facts on which the order was based has been established; whether the facts established afford sufficient ground for taking action and whether the penalty is excessive, adequate or inadequate.” Thus, the duty cast upon the appellate authority while dealing with the appeal is that he should come to an subjective satisfaction that the punishment was based on the established facts before the disciplinary authority. In other words, the appellate authority ought to have dealt with the findings of the enquiry officer in detail as well as answer the grounds raised by the petitioner and



W.P.No.34481 of 2022

WEB COPY

so also the order of punishment by the disciplinary authority before passing final orders in the appeal.

17. In the instant case, the second respondent herein, had not complied with any of these requirements of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 while dismissing the petitioner's appeal. As such, the order itself could be said to be a non-speaking order, which cannot be sustained in law.

18. In the light of the above, the order of appellate authority is also illegal for the reasons stated in the foregoing paragraphs as well as for being a non-speaking order.

19. Since both the orders of the principal authority as well as the appellate authority cannot be legally sustainable, the consequential order of the first respondent herein dated 29.07.2022 also requires to be quashed.



W.P.No.34481 of 2022

WEB COPY

20. In the result, the impugned orders dated 06.08.2019, 21.11.2020 and 29.07.2022 on the file of the third respondent, second respondent and first respondent respectively are quashed. Consequently, the respondents herein shall pass appropriate orders to the effect that the petitioner has been notionally reinstated back into services from the date of dismissal from service i.e., on 06.08.2019 and permitting him to retire on the date of his age of superannuation. The petitioner would be entitled for continuity of service from the date of dismissal, till his age of superannuation, together with all service and other monetary benefits, including the pensionary benefits. Such orders shall be passed as expeditiously as possible, within a period of four (4) weeks from the date of receipt of a copy of this order.

21. The Writ Petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

12.07.2023

Index:Yes

Neutral Citation:Yes

Order : Speaking

vsm



W.P.No.34481 of 2022

WEB COPY To

- 1.The Secretary to Government,
Rural Development and
Panchayatraj Department,
Fort St. George, Chennai – 600 009.
- 2.The Director of Rural Development,
Panagal Building, Saidapet,
Chennai – 600 015.
- 3.The District Collector,
Ariyalur District,
Ariyalur.
- 4.The Director,
Directorate of Government Examinations,
DPI Campus, College Road,
Chennai – 600 006.
- 5.The Secretary,
Directorate of Government Examinations.
DPI Campus, College Road,
Chennai – 600 006.
- 6.The Director and Chemical Examiner to Government,
Forensic Sciences Department, (Forensic House),
Kamarajar Salai,
Chennai – 600 004.



WEB COPY



W.P.No.34481 of 2022

M.S.RAMESH,J.

Vsm/DP

**Order made in
W.P.No.34481 of 2022
and W.M.P.Nos.33927 & 33928 of 2022**

12.07.2023