IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.No.1492 of 2019

P. Perumal ...Appellant/Petitioner

Vs.

1. The Additional Commissioner
   (Revenue Administration)
   Chepauk, Chennai 600 005.

2. The District Collector,
   Dharmapuri.

3. The Revenue Divisional Officer,
   Dharmapuri.

4. Mrs.S.Manimegalai,
   Former Tahsildar, Palacode.

5. Mr.Kuppan
   Former Revenue Inspector,
   Palacode
   (Petition dismissed as withdrawn
   as against R5 vide order of Court dt. 31.1.2012)

...Respondent/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 21.02.2020 made in W.P.No. 661 of 2020.

For Appellant : Mr. C. Umashankar
for Mr.P.Settu

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader for RR1 to 3
R4 & R5 – No such person

JUDGMENT

(Judgment was made by **R.SUBRAMANIAN, J.)**

The appellant is on appeal aggrieved by the dismissal of his writ petition in W.P.No.12323 of 2009, in and by which, he had sought for a writ of certiorarified mandamus to quash the proceedings dated 05.03.2009 imposing a punishment of dismissal from service on him and consequently direct the 3rd respondent to declare that he had retired from service and to direct the 3rd respondent to release all the retirement benefits as he is entitled to.

2. The appellant who was working as a Village Administrative Officer was charged with irregularity in recommending persons for grant of free house site patta. An enquiry was conducted and the enquiry officer filed a report concluding that the charges were proved. The District Collector, Dharmapuri imposed a punishment of dismissal from service by his proceedings dated 12.07.2007. The appellant appealed against the same to the Commissioner (Revenue Administration) and the appeal came to be dismissed on 05.03.2009. Aggrieved the appellant preferred the writ petition.

3. The writ Court found that the proved delinquencies are very serious and therefore the punishment of dismissal from service is justified. The writ Court rejected the contention of the appellant that the higher officials viz., Revenue Inspector and Tahsildar who were guilty of issuance of patta to in-eligible persons were treated with soft gloves and lesser punishment was imposed on them. A contention was also raised regarding the order of dismissal have been passed by the District Collector, who is not a disciplinary Authority and that he is superior Authority to the appellate Authority. The writ Court however did not deal with the said submission. As a consequence of the finding recorded on the seriousness of the delinquency and proportionality of the punishment imposed, the writ Court dismissed the writ petition.

4. I have heard Mr.C.Umashankar, leaned counsel appearing for the appellant and Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader for the respondents.

5. Mr.C.Umashankar, learned counsel appearing for the appellant would vehemently contend that the District Collector has no power to pass an order of dismissal. According to him, as far as the appellant is concerned, the Revenue Divisional Officer is the disciplinary Authority. Rule 9-A can be invoked only when the enquiry is common.

6. The learned Additional Government Pleader would submit that since the Revenue Inspector and Tahsildar were also charge-sheeted along with the appellant for the same delinquency, the Collector who is the disciplinary Authority for those two officers passed common order imposing punishment on all the officials concerned. He seeks to justify the same by invoking Rule 9-A of the Tamil Nadu Civil Services (Disciplinary Appeal) Rules. When the officers holding several ranks are charged with delinquency, an option is available to the Government to conduct a joint enquiry and the highest Authority can impose punishment. Rule 9A which provides for such imposition of punishment reads as follows:-

> *"9A. In a case where more than one Government Servant of the same Department are involved, the authority competent to institute disciplinary proceedings and impose any of the penalties specified in rule 8 shall be the authority in the department in respect of the Government Servant who holds the highest post and the disciplinary proceedings against all of them shall be taken together."*

7. Rule 12(2) of the said Rules invests the power on the higher Authority to impose penalties on members of State Service . The Village Administrative Officer admittedly is not a Member of the State service. Therefore, Rule 12(2) cannot be invoked. Rule 9A can be invoked only when the enquiry is taken up together.

8. In the case on hand, the Revenue Divisional Officer is the disciplinary Authority. He issued the charge memo and the Special Tahsildar was appointed as an enquiry officer and final order imposing the major punishment of dismissal was passed by the Collector who is an official holding a higher rank above the appellate Authority viz., District Revenue Officer. This flawed procedure adopted by the respondents had led to the appellant loosing the right of appeal.

9. It is pointed out that the appellant had in fact filed an appeal before the Commissioner (Revenue Administration) the 1st respondent. The 1st respondent Commissioner (Revenue Administration) is the revisional Authority and by his entertaining the appeal and disposing it of, the appellant has lost the right of revision. This procedural irregularity, in our considered opinion, strikes at the root of the matter.

10. We are therefore constrained to interfere with the order of the writ Court. The writ appeal will stand **allowed**. The order of the writ Court will stand set aside. The writ petition will stand allowed. The order imposing punishment is set aside. The matter is remitted to the Disciplinary Authority viz., the Revenue Divisional Officer to pass appropriate orders on the basis of the enquiry already conducted.

11. The appellant is now 72 years old. The Revenue Divisional Officer will consider the said factor as well as the fact that the higher Authorities viz., the Revenue Inspector and Tahsildar were imposed lesser punishment while deciding on the quantum of punishment. The Revenue Divisional Officer shall give an opportunity of being heard to the appellant before passing the final orders. He shall pass final orders within a period of six (6) months from the date of receipt of a copy of the order. No costs.

(R.S.M., J.) **(K.G.T., J.)**
15.02.2023

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order

To

1. The Additional Commissioner
   (Revenue Administration)
   Chepauk, Chennai 600 005.

2. The District Collector,
   Dharmapuri.

3. The Revenue Divisional Officer,
   Dharmapuri.

R.SUBRAMANIAN, J.
and
K.GOVINDARAJAN THILAKAVADI, J.

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