**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 27.01.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

**W.P.(MD)No.7976 of 2020**

A.Jeyakumar ... Petitioner

Vs.

1. The State of Tamil Nadu,
   Represented by its Secretary to Government,
   Revenue and Disaster Management Department
   Government of Tamil Nadu,
   Secretariat,
   Fort St.George,
   Chennai - 600 009.

2. The Commissioner of Revenue Administration,
   Disaster Management and Mitigation Department,
   Ezhilagam,
   Chepauk,
   Chennai - 600 005.

3. The District Collector,
   Ramanathapuram District,
   Ramanathapuram - 623 503. ... Respondents

**PRAYER :** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to order dated 31.10.2018 made in G.O.(2D)No.337 on the file of the Secretary to Government, Revenue and Disaster Management Department, Government of Tamil Nadu, Fort St.George, Chennai -9, the first respondent herein confirming the order dated 19.07.2017 made in proceedings No.Ser.3(4)/13120/2016 on the file of the Commissioner of Revenue Administration, Disaster and Mitigation Management Department, Chennai -5, the second respondent herein confirming the order dated 15.02.2016 made in Proceedings No.A5/50521/2015 on the file of the District Collector, Ramanathapuram, the third respondent herein and quash the same and consequently direct the respondents to grant all service and attendant monetary benefits to the petitioner.

| | | |
|---|---|---|
| For Petitioner | : | Mr.A.V.Arun |
| For Respondents | : | Mr.S.P.Maharajan<br>Special Government Pleader |

**O R D E R**

The petitioner has come up with this Writ Petition seeking to quash the impugned order passed by the Original Authority, as confirmed by the Appellate and the Revisional Authorities and direct the respondents to grant all service and attendant monetary benefits to the petitioner.

2. The case of the petitioner is that the petitioner was appointed as a Junior Assistant in the Revenue Department on 10.03.1986 and thereafter he was promoted as Tahsildar on 31.12.2010 at Paramakudi Taluk and he was transferred to Uppur Thermal Power Project Unit-III, Ramanathapuram District. While he was working at Uppur Thermal Power Project, he was received a charge memo dated 26.09.2015 issued by the third respondent for the alleged lapses said to have been committed by him.

3. The sum and substance of the charge memo is as follows:

> (i) While the petitioner was working as Tahsildar, Kamuthi Taluk, he had issued Land Ownership Certificates to six persons without following the procedure as contemplated to make an entry in the Citizen Charter in the Register and not assigned any number or computer assigned number with the Tower Seal while granting the certificates;
>
> (ii) The petitioner had issued Legal Heirship Certificate by making initials on the certificates prepared by Village Administrative Officer without following the Rules even after being aware that the authority to issue Legal Heirship Certificate is only with the Tahsildar and thereby not followed the office procedure which facilitated wrong

registration of documents;

(iii) The petitioner had issued pattas mentioning the shares without subdividing the extent of land held by the joint pattadars based on proper documents;

(iv) The petitioner had issued Land Ownership Certificate in favour of legal heirs of the pattadars for the entire extent of lands without transferring the patta based on valid Legal Heirship Certificates; and

(v) The petitioner had violated Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973 by not maintaining devotion to duty.

4. The petitioner has submitted his explanation on 26.10.2015 to the charges framed against him and stated that the post of Tahsildar is empowered to issue birth, death, legal heirship certificates and patta within the powers granted to him and if the Tahsildar has any doubt with regard to the same, he would obtain report from the Village Administrative Officer or Revenue Inspector. However, it is not mandatory that the certificates should be issued only based on their recommendation and the certificates could be issued by the Tahsildar by ascertaining the facts in the enquiry conducted by himself. He further stated that as a Tahsildar, he had issued certificates after

ascertaining the documents in support of the pattadars on oral enquiry and further there is no appeal by anyone for the issuance of patta as such there is no charges arisen in this regard and hence it should be dropped. However, the third respondent without being satisfied with the explanation, by an order dated 03.12.2015 appointed the Personal Assistant (Lands) to the District Collector as the Enquriy Officer.

5. The Enquriy Officer had submitted his report on 07.01.2016 that the charges framed against the petitioner are proved and the petitioner had submitted his further explanation on 19.01.2016 to the Enquriy Officer's report and further submitted his representation in person to the third respondent on 01.02.2016. The petitioner was served with the charge memo and the enquiry was contemplated at the fag end of his service in the Department as the petitioner was due for retirement on 29.02.2016. Without affording sufficient and reasonable opportunity to the petitioner and without supplying the documents pertaining to all the charges, the Enquriy Officer submitted a report stating that all the charges are proved. Based on such report, the third respondent by his proceedings dated 15.02.2016 imposed

the major penalty of removal from service. Aggrieved over the same, the petitioner has filed an Appeal before the second respondent. But the second respondent vide order dated 19.07.2017 without considering the merits of his Appeal, simply rejected the same, as against which, he preferred a Revision Petition before the first respondent. But the first respondent has also passed an order of rejection dated 31.10.2018 that there is no merit in the Revision Petition preferred by him. Hence, the present Writ Petition has been filed.

6. The learned counsel appearing for the petitioner would submit that though the petitioner has not vested with the power to issue such certificate, however, he is the authority to issue Legal Heirship Certificate and also other certificates as authorised by the Revenue Standing Orders. However in the present case, the very same charges have been initiated against two Village Administrative Officers, viz., Ramkumar and Jeyalakshmi who were working in Kamuthi and Pudukkottai imposed a punishment of stoppage of increment for one year without cumulative effect, whereas the petitioner was imposed a major punishment of removal

from service, which is disproportionate and the same is liable to be set aside. It is also an admitted fact that the Land Ownership Certificates were issued by the petitioner to the real owners and not the fake persons and no complaint whatsoever was made by others as against the petitioner as well as the Land Owner Certificate obtained by them and all the certificates issued by the petitioner only to the land owned by the legal heirs of the land owners whose names are entered in the 'A' Register. The petitioner has also rendered 30 years of service in the Revenue Department and except this punishment, no other punishment was imposed against the petitioner. Without appreciating the past conduct of the petitioner, the Original Authority imposed the major punishment of removal from service which was confirmed by the Appellate Authority and the Revisional Authority is highly disproportionate. Hence, he prayed for appropriate orders on par with the other two Village Administrative Officers insofar as the very same lapses committed by him.

7. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in

the case of ***Union of India and others vs. P.Balasubrahmanayam*** reported in ***(2021) 5 SCC 662.*** It is only procedural lapse in granting possession certificate in favour of the land owners who are the legal heirs of the land owners whose names are entered in 'A' Register and urging the same, he prayed for modification of the punishment imposed by the Original Authority, however the punishment imposed by the original authority was confirmed by the Appellate Authority and the Revisional Authority.

8. The learned Special Government Pleader appearing for the respondents would submit that while he was working as Tahsildar, Kamuthi Taluk during the period from 06.06.2015 to 03.09.2015, had committed grave irregularities of issuing Land Ownership Certificates according to his whims and fancies and without following the regular office procedures laid down in the Tamil Nadu Government Office Manual. No distribution numbers or computer assigned numbers were allotted to the certificates and no office copy or files have been maintained for the issuance of Land Ownership Certificate. The said certificates were affixed with office Tower Seal with his signature, which is a gross misuse of official power is contrary

to the rules and guidelines. For the above said violations of rules and the said office procedure, the regular charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were framed and after observing all the formalities, the punishment of removal from service was imposed on the petitioner, which is just and bonafide and the same is well within the procedure established under the Statute. After careful perusal and consideration of the petitioner's appeal, the second respondent has categorically stated that it is the responsibility of the delinquent official to act only within rule provision and follow prescribed procedures, but the petitioner has acted by assuming the power which are not entrusted to the post of Tahsildar. As there is no merit in the claim of the delinquent official, the appeal was dismissed by the second respondent, which is legally sustainable. Further, the Revision preferred by the petitioner was dismissed by the first respondent after consulting the Tamil Nadu Public Service Commission. The third respondent's removal order, dated 15.02.2016 and the confirmation orders of the appellate and the revisional authorities dated 19.07.2017 and 31.10.2018 respectively are in accordance with law. Hence, it is liable to be sustained.

9. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

10. The facts in the present case are not in dispute. Admittedly, the petitioner was issued with a charge memo imposing upon him certain charges relating to his exercise of power in issuing certificates without following the Rules even after being aware that the authority to issue such Certificates is vested only with the Tahsildar and thereby not followed the office procedure which facilitated wrong registration of documents. The petitioner had also issued pattas mentioning the shares without subdividing the extent of land held by the joint pattadars based on proper documents. In performing such exercise, he had violated Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973 by not maintaining devotion to duty.

11. However, in the present case, the learned counsel for the petitioner has fairly submitted that though the petitioner has no power to issue Land Owner Certificate, the other charges leveled against the

petitioner were admitted by him. The ground of challenge to the impugned order is that for the above charges whether the punishment imposed by the Original Authority, which was confirmed by the Appellate Authority and Revisional Authority is disproportionate or not. It is also an admitted fact that the other revenue officials who were involved in similar lapses on par with the petitioner were imposed with the lesser punishment such as stoppage of one year without cumulative effect, whereas the petitioner was imposed with a major punishment of removal from service and the same is disproportionate to the charges levelled against the petitioner.

12. In this regard, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***Union of India and others vs. P.Balasubrahmanayam*** reported in ***(2021) 5 SCC 662,*** which reads as under:

> *"20. We are, thus, of the view that the course adopted by the Tribunal was the appropriate course of action, i.e., the procedural lapses having been found and the bribery allegation having been rejected the appropriate course would have been to examine only the issue of disproportionality of punishment.*

*21. It is correct to say that judicial forums do not sit as an appellate authority to substitute their mind with the mind of the disciplinary authority insofar as the finding is concerned. However, disproportionality of punishment is a concept certainly not unknown to service jurisprudence and has received consideration inter alia of this Court. This is what the Tribunal proposed to do. We may examine the finding of the Tribunal on the issue of disproportionality of punishment and are in complete agreement with the view that the punishment of compulsory retirement was completely disproportionate and harsh, keeping in mind the finding arrived at by the disciplinary authority. It, thus, seems to appear that the charges originally levelled may have persuaded the concerned authority to impose punishment; losing site of the fact that the allegations qua bribery had not been found against the respondent.*

*22. The question is whether the Tribunal proceeded correctly in passing the final direction to impose appropriate minor penalty. The Tribunal itself did not impose the punishment but left it to the authority concerned (for appropriate course of action). It was of the view that considering the findings of procedural lapses against the respondent, the appropriate punishment could only be a minor penalty and not a major penalty. With this* *again, we are in agreement with the course of action adopted. The nature of charges found against the respondent can hardly be one to call for a major penalty, keeping in mind that there was no bribery charge. Anyone can make mistakes. The consequences of mistakes should not be unduly harsh. We are, thus, of the view that the direction of the Tribunal is what is liable to be sustained."*

13. Following the aforesaid judgment, this Court has a power to consider whether the punishment imposed by the Original Authority which was confirmed by the Appellate Authority and the Revisional Authority is disproportionate or not. However, in the present case the similarly situated persons like that of the petitioner who worked in the same Department were imposed with a punishment of stoppage of increment for one year without cumulative effect, whereas the petitioner was imposed a major punishment of removal from service. Admittedly, the petitioner has rendered 30 years of service in the very same Department and the counter affidavit did not reveal whether the petitioner had earlier suffered with the punishment for similar type of lapses. Taking into consideration that the counter affidavit does not reveal the past character of the petitioner, this Court presumes that the petitioner had not suffered with any punishment.

14. The fact remains that the petitioner has admitted the charges committed by him. However, the petitioner issued a Land Ownership Certificate and intentionally made an endorsement in the Legal Heirship Certificate issued by the Village Administrative Officer. The petitioner being the superior authority has the duty cast upon him to monitor the subordinate officers and he has to follow the Revenue Standing Orders as well as Government Orders.

15. Applying to the ratio laid down by the Hon'ble Supreme Court (supra), the punishment imposed by the Original Authority, which was confirmed by the Appellate Authority and the Revisional Authority has to be necessarily interfered with, in this case, this Court finds that the penalty imposed on the petitioner with dismissal from service is not only disproportionate, but also not commensurate with the gravity of the misconduct, and also discriminatory which cannot be countenanced both on law and on facts. By applying the legal principles as evolved on the factual matrix of this case, this Court has no hesitation in allowing the Writ

Petition. In order to give quietus to the issue, this Court is inclined to modify the dismissal order.

16. Accordingly, this Writ Petition is allowed and the impugned dismissal order passed by the Original Authority dated 15.02.2016 which was confirmed by the Appellate and Revisional Authorities dated 19.07.2017 and 31.10.2018 are set aside and the same is modified to the effect that the petitioner is imposed stoppage of increment for three years with cumulative effect. The respondents are directed to issue appropriate orders afresh in consonance with the order. No costs.

**27.01.2023**

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Secretary to Government,
   The State of Tamil Nadu,
   Revenue and Disaster Management Department
   Government of Tamil Nadu,
   Secretariat,
   Fort St.George,
   Chennai - 600 009.

2. The Commissioner of Revenue Administration,
   Disaster Management and Mitigation Department,
   Ezhilagam,
   Chepauk,
   Chennai - 600 005.

3. The District Collector,
   Ramanathapuram District,
   Ramanathapuram - 623 503.

**M.DHANDAPANI,J.**

vji

**W.P.(MD)No.7976 of 2020**

**27.01.2023**