



W.P(MD)No.11420 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.03.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11420 of 2020

and

W.M.P(MD)Nos.9995 & 9997 of 2020

V.Sakthivel

... Petitioner

Vs

1.The Agricultural Production Commissioner/
Secretary to Government,
Agricultural Department,
St.George Fort,
Chennai – 9.

2.The Chief Engineer (C.E),
Agricultural Engineering Department,
Nandanam,
Chennai – 35.

3.The Executive Engineer (E.E),
Fact finding authority,
Agricultural Engineering Department,
Viruthunagar.

4.The Superintendent Engineer (S.E),
Inquiry Officer,
Agricultural Engineering Department,
Tirunelveli.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the order passed by the first respondent in G.O.(2D) No.112 dated 18.07.2020 and quash the same as illegal, incompetent without jurisdiction.

For Petitioner : Mr.D.Selvanayagam
For Respondents : Mr.K.Balasubramani
Special Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents.

2.The petitioner joined Agricultural Engineering Department in the year 1985. He became Assistant Executive Engineer in the year 2004. Charge memo dated 24.03.2012 was issued calling upon the petitioner to offer his explanation in response to eleven (11) articles of charge. The petitioner offered his explanation. He reached the age of superannuation on 31.08.2012. He was suspended from service and not allowed to retire. Not satisfied with the explanation offered by the petitioner, enquiry officer was appointed. The enquiry report dated 02.02.2015 was submitted holding that except first charge, the remaining 10 charges stood proved. Copy of the enquiry report was served



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on the petitioner. The petitioner offered his explanation dated 25.02.2015. The Government examined the records and concurred with the findings of the enquiry officer. It was proposed to impose the punishment of dismissal from service on the petitioner. Opinion of Tamil Nadu Public Service Commission (TNPSC) was sought. TNPSC offered its opinion on 17.03.2020 endorsing the proposal of the Government. Thereupon, the impugned order in G.O(2D)No. 112 Agriculture Department dated 18.07.2020 was issued dismissing the petitioner from service. Challenging the same, the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned Government Order and grant relief as prayed for.

4.The respondents have filed a detailed counter affidavit and the learned Special Government Pleader took me through its contents. The relevant files were also made available for my perusal. The learned Special Government Pleader was assisted by a team of officials from Department. He submitted that there is no merit in this writ petition and that it deserves to be dismissed.



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5.I carefully considered the rival contentions and went through the materials on record. The charge memo served on the writ petitioner contained as many as 11 articles of charge. Since the petitioner had been exonerated as regards the first charge, it need not be gone into.

6.NABARD had sanctioned a substantial sum of money to strengthen the water harvesting structures for ground water recharge. The petitioner was working as Assistant Executive Engineer in Virudhunagar District. One G.Mohan, Assistant Engineer in the Department was in-charge of the works. The petitioner was the check measuring authority. The building works pertained to construction of percolation ponds, medium check dams, farm ponds and rejuvenation of wells. The various articles of charge can be brought under one or the other category. The allegation is that even without constructing the rain water harvesting structures, funds were disbursed to the contractor / beneficiary. The specific allegation made against the petitioner was that by not conducting field inspection and making actual check measurement, the petitioner had acted hand in glove with the said Mohan. Two questions arise for consideration of this Court:

A) Whether the disciplinary authority was justified in concurring with the finding of guilt arrived at by the enquiry



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officer ;

B) Whether the disciplinary authority was justified in imposing the punishment of dismissal from service.

As regards the first issue, the learned counsel appearing for the petitioner raised very many contentions. He pointed out that in none of the charges, the petitioner has not even been mentioned by name. The entire thrust and focus is on Thiru.G.Mohan, Assistant Engineer who was the officer actually in-charge of the works in question. The learned counsel appearing for the petitioner relied on the report prepared by the water Technology Center of Tamil Nadu Agricultural University, Coimbatore in support of his contention that the works sanctioned by NABARD were actually carried out and the assessment report would speak for itself. He strongly and vehemently denied the allegation that even without carrying out any checking the petitioner had cleared the measurement report submitted by Thiru.G.Mohan. He also would point out that works had taken place way back in the year 2007-2008 and that the complaint was received after a gap of three years. Before the technical team conducted full inspection in the year 2011, several intervening developments had taken place and therefore it was impossible for the petitioner to even defend himself. He submitted that whether percolation ponds or farm ponds were constructed in the year 2007-2008 cannot be verified in the year 2011, if in the meanwhile, the



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farmers themselves had destroyed the structures and leveled the ground for farming activities. He also would point out that there was no audit objection.

The supervising official had cleared the petitioner's file. He also would point out that there was no complaint from any farmer also. Some anonymous complaints were received by V&AC and based on the same, the entire action has been triggered. He also would point out that the entire case of the Department rests on the testimony of official witnesses. He also would submit that the authorities have not really complied with the principles of natural justice while conducting enquiry. The technical report was not marked through the author of the document.

7.I am not swayed by any of the aforesaid contentions. It is true that in all the charges, the name of Thiru.G.Mohan alone is mentioned. But then the specific charge against the petitioner is that he had not counter checked or cross-checked the measurements set out in the M-Book as entered by Thiru.G.Mohan. As a result, loss running to the tune of several lakhs was caused to the Government. The nature of the charge will have to be first taken note of. Each of the charge is to the effect that the works certified to have been carried out were not actually carried out. If according to the petitioner, the works were actually carried out, the burden lay only on the petitioner. This is



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one case in which the initial burden did not lie on the disciplinary authority.

For instance, one of the charges is that rejuvenation works in respect of as many as 121 wells was not carried out. Let me ignore 121 out of 124 items in respect of the said charge. In the charge memo itself, all the relevant details had been set out. For instance, item no.45 in respect of Survey No.82/1 in Karisalkulam Village, it has been mentioned that there is no well in the survey number. There are two other items on the same lines. The petitioner may be justified in his contention that if rejuvenation works had actually been done, it is impossible for him to disprove the allegation that no rejuvenation works were carried out if it was made after a gap of three years. But where the charge is that there was no well in existence at all, then certainly it is for the petitioner to show that a well does exist in the said survey number or at least it did exist in the survey number. This is something which the petitioner will have to necessarily prove. The petitioner did not even bother to examine himself. He did not examine the contractor or beneficiary in his defense. In fact, the approach of the petitioner had been similar in respect of all the charges. Though anonymous complaints are normally not taken note of, in this case, the Vigilance Department chose to take it seriously and called upon the Head of the Department to conduct field inspection and submit a detailed report. Thereupon, field inspection was ordered. It is relevant to note here that the inspection team comprised as many



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as 11 officials. The team cross-checked each and every item of work in various villages in Viruthunagar District which were covered by the NABARD RIDF Scheme. It is relevant to note here that before conducting inspection, Thiru.G.Mohan, AE was specifically intimated to come and be present at the time of spot inspection. Thiru.G.Mohan avoided appearing before the technical committee at the time of inspection. I went through the report of the technical committee. The inspection report deals with various works itemwise. It has been mentioned that a number of works have been carried out. In respect of some of the works, it has been mentioned that they have been partly carried out. Only in respect of the charged works, it has been mentioned that works were not at all carried out. When the charge is that works were not carried out certainly, the petitioner ought to have adopted a more pro-active approach. It is not a criminal case where the accused can simply rest content by a wholesale denial. The petitioner forgot that he is facing departmental proceedings. In departmental proceedings, the standard of proof is not 'proof beyond reasonable doubt'. It is not even "balance of probabilities". It is "proof based on some evidence". In this case, there is good amount of evidence. The technical committee's report is a solid piece. Out of 11 officials who were associated with the technical inspection, 9 were examined. Thiru.Arumuga Nainar who headed the committee was examined as P.W.1. The petitioner



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was given the fullest opportunity to defend himself. The enquiry officer came to the conclusion that charges 2 to 11 stood proved. The Government also accepted the same. I am therefore clearly of the opinion that no interference is warranted as regards the finding of guilt. The first issue is answered against the writ petitioner.

8.Now comes Issue No.2. I have no hesitation in accepting the contention of the learned counsel appearing for the petitioner that imposing the punishment of dismissal from service without furnishing a copy of the TNPSC's opinion runs counter to the decision of the Hon'ble Division Bench reported in (2011) 4 SCC 591 (S.N.Narula v. Union of India and ors). The impugned G.O is interfered with to this extent. Finding of guilt set out in the impugned G.O is confirmed. The punishment of dismissal alone is set aside. Now that the petitioner is having a copy of the TNPSC opinion, he is directed to make his representation to the Government within a period of three weeks from the date of receipt of a copy of this order. On receiving the petitioner's representation, it is for the Government to decide the quantum of punishment to be imposed on the petitioner.



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9.This writ petition is partly allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

14.03.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

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