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W.P.No.14374 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

W.P.No.14374 of 2012

P.Maheswari

...Petitioner

Vs.

1. The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.
2. The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.
3. The District Collector,
Villupuram District.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for the records relating to the 1st respondent vide G.O.(3D) No.26 Revenue Department (Service 4 (1) Department dated 14.11.05 and to quash the same and consequently quash the order of the 1st respondent dated 19.5.09 vide G.O. (2D)No.230 Revenue (Service 4 (1) Department.

For Petitioner : Mr.S.Vijayakumar, Sr.C
Assisted by Mr.J.Melwin Jabaz

For Respondents : Mr.M.Rajendiran, AGP, for R1 to R3



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ORDER

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The petitioner has come up with this Writ petition seeking quashment of the orders of the 1st respondent in G.O.(3D)No.26 Revenue Department (Service 4 (1) Department dated 14.11.05 and in G.O.(2D)No.230 Revenue (Service 4 (1) Department dated 19.5.09.

2. Learned counsel for the petitioner submitted that the petitioner joined as a Typist through Tamil Nadu Public Service Commission (in short 'TNPSC') and was posted as Typist in the Taluk Office, Tindivanam and after 10 years of service, she was promoted as Assistant and joined in the Taluk office. Thereafter, she was transferred to Siruvadi Firka and posted as Revenue Inspector and served in the said post till 31.03.1998, and on completion of 2 years as Revenue Inspector, she was re-transferred to Taluk office, Tindivanam and was serving as Assistant in the said office at the time of filing the Writ Petition. Whiles, the petitioner was served with a charge memo by the 1st respondent, vide Letter No.7278/Service 4-1/2000-5 dated 05.03.2003 under Rule 17(b) of T.N.C.S.(D & A)Rules, alleging misconduct on the part of the petitioner in assigning the lands to certain persons in



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Nadukuppam Village, Tindivanam and the main charge alleged in the Charge Memo is that she was responsible for assignment of Patta to ineligible persons, who already owned lands in the said area. Along with the petitioner, the Village Administrative Officer(in short 'VAO'), Zonal Deputy Tahsildar, Firka Surveyor, Headquarters Deputy Tahsildar, Junior Assistant and the concerned Assistant were also charge sheeted under Rule 17(b) of T.N.C.S.(D & A) Rules. The 1st respondent was appointed as an Enquiry Officer to hold a common enquiry and an Enquiry Report was submitted to the Government. The 1st respondent examined the final report and also objections to the second show cause notice and passed an order of punishment in the following manner.

<i>S.No</i>	<i>Name and Designation of the officials</i>	<i>Award of Punishment</i>
1.	K.Kannan, Head Quarters Deputy Tahsildar	One year stoppage of increment with cumulative effect.
2.	K.Shanmugasundaram, Zonal Deputy Tahsildar	6 months stoppage of increment without cumulative effect.
3.	P.Maheswari, Revenue Inspector	5 years of stoppage of increment with cumulative effect.
4.	N.K.Senthilkumar, Assistant	3 months stoppage of increment without cumulative effect.
5.	R.Elangovan, Taluk Surveyor	Warning
6.	Chandravadhanam, VAO	5 years of stoppage of increment with cumulative effect.



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2.1 Learned Senior Counsel further submitted that 1st respondent being a Disciplinary Authority, ought to have treated the delinquent Officials equally while awarding punishment, while so, in the present case, he has overlooked the serious lapses committed by the Higher Officials who are responsible for issuance of assignment of Patta and awarded different punishment to the individuals who have involved in the alleged misconduct of issuing patta to the ineligible persons, which is arbitrary, whimsical and without any basis and is contrary to the Law laid down by the Hon'ble Apex Court in the case of ***Mansingh Vs. State of Haryana & Others*** reported in ***2009 1 L.W. Page 20***, wherein the Apex Court held that there cannot be any discrimination in awarding punishment among the delinquent Officers, when the same set of charges are framed for taking Disciplinary Action. Aggrieved by the order of punishment, the petitioner filed a Review Petition before the 1st respondent seeking reduction of punishment on par with the higher officials. It is pertinent to note that the Enquiry Officer has not given any findings, attributing motive on the part of the Petitioner and that all of them are responsible for committing lapse in assigning the Patta to ineligible candidates and ultimately the Government has cancelled the assignment of



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Patta, resulting no loss to the Government. The 1st respondent chosen to refer the matter to TNPSC before passing the order in the Review Petition.

In response to the same, the TNPSC has examined the matter and observed that the charges against the petitioner and the VAO are not proved and there is no loss to the Government and they acted in accordance to their duties. The 1st respondent, has however ignored the observation of the TNPSC and modified the punishment to stoppage of increment without cumulative effect. On receipt of the same, the petitioner once again made a representation to the concerned respondent to reconsider the case by referring to the punishment awarded to her superiors in respect of the same set of charges.

2.2 Learned Senior Counsel further submitted that though the 1st respondent issued a charge memo alleging misconduct in respect of six employees and that a common enquiry was held as contemplated under Rule 9(a) of Rule 17(b) of T.N.C.S.(D & A)Rules, consequent upon which, the Enquiry Officer submitted his Report to the 1st respondent, in which he opined that the charges are proved in respect of all the Employees, it is expected from the 1st respondent that the award of punishment should be



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done in accordance with Law. While so, the 1st respondent has acted in a discriminate manner and awarded different punishments, despite the fact that the same set of charges are framed against all the employees, which is not sustainable, since, it is a settled principles of Law laid down by the Hon'ble Apex Court as well as this court in a catena of Judgements that, the Disciplinary Authority is required to act fairly and apply his mind in awarding the punishment, when the same set of charges framed against various persons. However, in the case of the petitioner, the 1st respondent has overlooked the various aspects and awarded punishment of five years of stoppage of increment without cumulative effect, modified subsequently in its order dated. 27.11.2007 and on coming to know the award of different punishment, the petitioner once again submitted a representation dated 26.11.2010 followed by a reminder dated 25.04.2012 to the respective respondents. Though, the said representation was forwarded to the 1st respondent, no action was taken till date. Aggrieved by the inaction on the part of the 1st respondent, the petitioner once again sent a representation dated 25.04.2012, seeking to reconsider the decision by modifying the punishment awarded to her. In the meanwhile, the petitioner's name was



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omitted in the drawal of Panel for Promotion to the post of Deputy Tahsildar for the year 2011. Despite the fact that, the award of punishment was given effect by the 3rd respondent in the year 2006, which ultimately ended in 2010, the petitioner's name was omitted both for the year 2010 and 2011 for the post of Deputy Tahsildar, which is arbitrary.

2.3 The modus-operandi of assignment of land is that, applications would be received by the VAO from the general public and the same would be verified and would be forwarded to the Zonal Deputy Tahsildar through the petitioner for further process and the said authority, on receipt of the application would visit the concerned Village to verify the genuineness of the applications and satisfied himself for the requirements, he recommended the case to the Tahsildar, who in turn would examine the application and pass appropriate orders for assignment of Land. Further, the assignment of land has been done in the year 1996-97, however the charge memo was issued in the year 2005, upon receipt of an anonymous compliant and the matter was examined by the Government and the assignment of Land was cancelled. Following the same, the Disciplinary proceedings were initiated against all



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the employees who were serving in the said Firka at the relevant period.

While so, it is blatantly false to allege that the petitioner alone is responsible for the assignment of lands. Therefore, the award of punishment of stoppage of increment by the 1st respondent is disproportionate to the charges framed against her and the award of punishment is not only meagre but also not supported by valid materials. Hence, challenging the order of punishment by the 1st respondent, the petitioner filed a Review Petition against the order of 1st respondent and the same was examined by the Disciplinary Authority and despite the fact that different punishments were awarded against the employees for the same set of charges, the 1st respondent mechanically rejected the petition, which is a clear violation of principles of natural justice and in the case of the petitioner, no reasons were adduced in rejecting her petition. Learned Senior Council further relied upon the Judgement of the Apex Court in *Civil Appeal No. 1334 of 2013* in the case of ***Rajendra Yadav Vs. State of Madhya Pradesh & Others***. Accordingly, he prayed for appropriate orders.

3. Learned Additional Government Pleader appearing for the



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respondents 1 to 3 submitted that, the petitioner issued assignment of patta to ineligible persons, who already owned lands in the said area without following the office procedures and thereby she has violated the rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973, by not maintaining devotion to duty. Further, the petitioner has created bogus documents in favour of the individuals by misusing her official capacity and has miserably failed in her regular official duties and acted in a unique way of issuing assignment of patta to the ineligible persons and the said misconduct committed by the petitioner is grave in nature, since she acted contrary to the set of due procedures to be followed by the authorities. The punishment of stoppage of increment imposed by the competent authority, vide order dated 14.11.2005 is commensurate to the offences committed by the petitioner. Hence, the penalty is not excessive or arbitrary as alleged by the petitioner and the impugned order was passed by the competent authority after examining the charges, the report of the enquiry officer, the revenue records and other relevant documentary evidences and also by providing opportunity to the delinquent official, is perfectly in order and accordingly, he prayed for dismissal of this Writ petition.



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WEB COPY 4. Heard learned counsel on either side and perused the material documents placed on record.

5. In the case on hand, the petitioner along with five other persons have been issued charge memo dated 05.03.2003 by the 1st respondent under Rule 17(b) of TNCS (D & A) Rules, alleging misconduct in assigning lands to certain persons in Nadukuppam Village, Tindivanam. The punishment of stoppage of increment for a period of 5 years with cumulative effect was imposed on the petitioner, vide letter dated 14.11.2005 by the 1st respondent, which was subsequently modified to stoppage of increment for a period of 5 years without cumulative effect, by order dated 27.11.2007. Thereafter, the petitioner preferred a review before the 1st respondent, which was also rejected by the 1st respondent vide order dated 19.05.2009, confirming the order of punishment passed on 27.11.2007.

6. It is pertinent to note that, different punishments were awarded to the persons involved in the alleged misconduct of assigning the lands to



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certain persons in Nadukuppam village, Tindivanam. For better appreciation, the details of the punishment imposed on the officials are as follows:

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1.	K.Kannan, Head Quarters Deputy Tahsildar	One year stoppage of increment with cumulative effect.
2.	K.Shanmugasundaram, Zonal Deputy Tahsildar	6 months stoppage of increment without cumulative effect.
3.	P.Maheswari, Revenue Inspector	5 years of stoppage of increment with cumulative effect.
4.	N.K.Senthilkumar, Assistant	3 months stoppage of increment without cumulative effect.
5.	R.Elangovan, Taluk Surveyor	Warning
6.	Chandravadhanam, VAO	5 years of stoppage of increment with cumulative effect.

7. When the same set of charges are framed for taking Disciplinary Action as against the delinquent officials, the 1st respondent ought to have treated the delinquent officials equally while awarding the punishment, however, a perusal of the above said punishment reveal



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that, the lapses committed by the higher officials who were responsible for assignment of patta has been overlooked by the 1st respondent and only a lesser punishments were given to the higher officials, whereas the petitioner was imposed with the higher punishment of stoppage of increment for a period of 5 years with cumulative effect, which was subsequently modified into stoppage of increment for a period of 5 years without cumulative effect, vide order dated 27.11.2007, based on the opinion of the Tamilnadu Service Commission, which was also confirmed in the review petition order dated 19.05.2009.

8. It is also unfortunate that the 1st respondent has imposed lesser punishment to the senior officials namely, Zonal Deputy Tahsildar, Firka Surveyor, Headquarters Deputy Tahsildar, who have also failed in their duties to verify the details furnished by the petitioner/Revenue Inspector, who is the subordinate officer. It is also pertinent to note that, even though the charges were levelled against the six employees, including the petitioner and common enquiry was conducted under Rule 9(a) of Rule 17(b) of T.N.C.S.(D & A)Rules, however, the punishment



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imposed on each delinquent officials is different, which clearly amounts to discrimination and the same is in violation of Article 14 of the Constitution of India.

9. For better appreciation, relevant portion of the Judgement of the Hon'ble Apex Court in ***Civil Appeal No. 1334 of 2013*** in the case of ***Rajendra Yadav Vs. State of Madhya Pradesh & Others*** relied upon by the learned Senior counsel for the petitioner is extracted hereunder:

“12. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co#delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences

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14. We are of the view the principle laid down in the above



mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

10. Further, the relevant portion of the Judgement of the Hon'ble Apex Court in the case of ***Mansingh Vs. State of Haryana & Others*** reported in ***2009 1 L.W. Page 20*** relied upon by the learned Senior counsel for the petitioner to hold that *there cannot be any discrimination in awarding punishment among the delinquent Officers, when the same set of charges are framed for taking Disciplinary Action*, is extracted hereunder:

"19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair



mind ed authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been



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rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service.”

11. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Apex Court, this Court is of the considered view that the impugned awards of the 1st respondent made in G.O.(3D)No.26 Revenue Department (Service 4 (1) Department dated 14.11.2005 and in G.O.(2D)No.230 Revenue (Service 4 (1) Department dated 19.05.2009 are liable to be quashed and the same are hereby quashed.

11. The punishment of stoppage of increment for a period of 5 years with cumulative effect, which was subsequently modified to punishment of stoppage of increment for a period of 5 years without cumulative effect is **now modified to punishment of stoppage of increment for a period of 1 year with cumulative effect by this Court and the respondents are directed to grant promotion to the petitioner as Deputy Tahsildar, after the currency of the modified punishment is over and settle all the**



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consequential benefits to which the petitioner is entitled to in view of the modified punishment, by this Court within a period of eight weeks from the date of receipt of a copy of this order.

12. In the result, the Writ petition stands allowed with the above direction. No costs.

29.02.2024

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

1. The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai – 9.
2. The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai – 5.
3. The District Collector,
Villupuram District.

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