IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.03.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.17678 of 2012

1.R.Mani (Deceased)

2.Vijaya

3.Nirmala

4.Sundarrajan

5.Ananthi

6.Anandhan

(P2 to P6 substituted as LRs of Deceased Sole Petitioner vide order dated 16.12.2022 made in WMP.29270/2022 in W.P.No.17678/2012 by MSQJ)

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Rep. by its Agriculture Production Commissioner
& Secretary to Government,
Fort St.George, Chennai – 9.

2.The Commissioner of Agriculture,
Chepauk, Chennai – 5. … Respondents

Writ Petition has been filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the first respondent herein in G.O.(3D) No.200 Agriculture (Ve.Ne.7) Department dated 09.12.2009 and the consequential order passed in the review petition by the first respondent herein in G.O.(3D) No.110 Agriculture (Ve.Ne.7) Department dated 08.06.2011 and quash the same and consequently direct the respondents herein to retire the petitioner from service with effect from 30.04.2002 and confer all the retirement benefits with due regards to petitioner seniority.

For Petitioner : Mr.S.R.S.Anandan

For Respondents : Mr.D.Gopal, Government Advocate

ORDER

The relief sought by the petitioner in this writ petition is to call for the records relating to the first respondent herein in G.O.(3D) No.200 Agriculture (Ve.Ne.7) Department dated 09.12.2009 and the consequential order passed in the review petition by the first respondent herein in G.O.(3D) No.110 Agriculture (Ve.Ne.7) Department dated 08.06.2011 and quash the same and consequently direct the respondents herein to retire the petitioner from service with effect from 30.04.2002 and confer all the retirement benefits with due regards to petitioner seniority.

2. The case of the petitioner is that the petitioner viz., R.Mani has joined the service as a Deputy Agricultural Officer in the year 1968 through Tamil Nadu Public Service Commission (TNPSC). Latter, the post of Deputy Agricultural Officer has been re-designed as Agricultural Officer. Then, he was promoted to the post of Assistant Director of Agriculture in the year 1996. Thereafter, he was placed under suspension by the first respondent herein as per his order in G.O (3D) No.48 Agricultural (AGR.2) Department dated 29.04.2002. Then on the same day another order in G.O.(3D) No.49 Agricultural (AA-2) Department dated 29.04.2002 has been passed by the first respondent herein by not permitting the petitioner to retire from service on reaching the age of superannuation on 30.04.2002. Then, he was also served with a charge memo dated 29.04.2002 by the second respondent herein. The charge being that he was responsible for the loss caused to the Government to an extent of Rs.12,34,766.50/- as per the audit report of Accounts officer, Chennai region for the period from 1996-1997 to 1998-1999. The second count of the charge being that he has failed to set right the audit objection or failed to recover the amount to an extent of Rs.8,96,841/-

from the person, who are all responsible for the same as per the audit report for the year 1996-97 to 1998-99. He has refuted the charges and requested to furnish the material records and also requested to examine Deputy Director of Agriculture to prove his innocence. But the same was not at all considered. No material documents were furnished to the petitioner and the Deputy Director of Agriculture was also not examined in his presence. Though an enquiry was conducted, no one was examined to prove the guilt of the charge against the petitioner. Inspite of his request to examine the Deputy Director of Agriculture, Farm Managers and also to furnish the material documents to prove his innocence, the same was not considered by the enquiry officer. The audit report and objections were not furnished to the petitioner, though the enquiry officer relied the same.

2.1. The enquiry officer without any material evidence and only based on the audit objection, held the charges as proved and sent a report to that effect. Therefore, he has submitted his further representation on the enquiry report, alleging the non-examination of the Deputy Director of Agriculture and other officials in the enquiry and also the non-furnishing of the documents relied in the charge memo and by the enquiry officer which are sought by the petitioner, but without considering the same and without any material evidence or documents, the first respondent herein passed a final order by awarding the punishment of removal from service as per his order in G.O (3D) No.200, Agricultural (Ve.Ne.&) Department, dated 09.12.2009.

3. Subsequently, the petitioner has preferred a review petition before the first respondent herein on 04.01.2009 through proper channel. The first respondent herein after referring the matter to the Tamil Nadu Public Service Commission (TNPSC) for its opinion and advice, rejected the review petition as per the order in G.O (3D) No.110 Agriculture (Ve.Ne.7) Department dated 08.06.2011. Aggrieved over the same, the petitioner has come forward with the present writ petition.

4. Learned counsel for the petitioner would submit that the charge memo framed and issued by the second respondent herein one day prior to the retirement of the petitioner from service. The alleged occurrence have

taken place from 1996-97 to 1998-99. The charge memo was framed based on the audit report. Though the audit objections were raised for the following years.

i) For the year 1996-97, it was submitted on 21.05.1997

ii) For the year 1997-98, it was submitted on 15.05.1998

iii) For the year 1998-99, it was submitted on 25.05.1999

there was absolutely no reasons for not taking any action against the petitioner till last day of retirement from service. Further, the officers against whom the audit objections are raised are not proceeded with and no steps have been taken to recover the alleged loss to the Government. Having failed to take action against the officials, who are actually responsible for the accounts, the petitioner cannot be proceeded with by fixing overall responsibilities. Only, if the loss caused to the Government is proved by proceeding against the officers who caused the actual loss, the failure of the petitioner about the overall control and supervision of his subordinates can be established and the punishment is too harsh and disproportionate.

5. Learned counsel for the petitioner would further submit that the

respondents ought to have seen that the audit objections are raised for the following years.

i) For the year 1996-97, it was submitted on 21.05.1997

ii) For the year 1997-98, it was submitted on 15.05.1998

iii) For the year 1998-99, it was submitted on 25.05.1999.

On the receipt of the audit objections, the petitioner instructed his subordinates and the respective officials pointed out in the audit objections by directing them to clear the audit objection by issuing suitable instructions. Though the petitioner sought for the records to prove the same in the enquiry and also requested for examining of the Farm Managers and the Deputy Director of Agriculture to prove his innocence the same was not considered. Thereby the petitioner was denied reasonable opportunity to defend the charges effectively and denied with the material documents in the enquiry. The charges were framed in the year 2002 on the last but one day prior to the retirement of the petitioner viz., 29.04.2002. In the charge memo, the audit objection report was relied in Annexure 2 & 3 but the same was not furnished to the petitioner. Further, though the audit objection was brought to the notice of the petitioner while he was acting as the Assistant Director of

Agriculture, the same was not furnished to the petitioner when the same was relied in the charge memo after framing and issuing of the charge memo. Even at the request of the petitioner, the same was not furnished merely because the audit objection was received by the petitioner while he was functioning as an Assistant Director of Agriculture, the respondents cannot rely the same. When the petitioner was out of the post, he is not supposed to take away the records of the office. He cannot be expected to remember the contents of the report. In the absence of furnishing of the material records relied in the charge memo, the same would amounts to denial of reasonable opportunity to defend the charges effectively. Consequently, the entire proceedings and resultant punishment order are liable to be set-aside.

6. Learned counsel for the petitioner would further submit that the enquiry officer in his report has stated that the petitioner/delinquent received the audit objections by putting signatures on 21.05.1997, 15.05.1998 & 25.05.1999 respectively. In fact the petitioner while acting as an Assistant Director of Agriculture was informed of the audit objection paragraph and

received the audit objections for clearing the objections raised in the audit. But after serving the charge memo when the petitioner was not in the post as a delinquent was not served with the audit objections inspite of his request. Further by accepting the petitioner's explanation during enquiry, the enquiry officer informed that the charges are liable to be dropped by saying honey quoted words and obtained signatures from the petitioner as if all the required procedures are followed in the enquiry by giving all opportunity to defend the charges merely because the petitioner signed it cannot be contended that all the material documents are served on the petitioner before enquiry to defend the charges effectively. Though the petitioner brought to the knowledge of the punishing authority about the non-furnishing of the audit reports the same was not at all considered properly by relying the enquiry officer's findings. Hence, the impugned punishment order and the consequential rejection of the review petition are liable to be set-aside.

7. Learned counsel for the petitioner would further submit that the respondents ought to have seen that in the enquiry no one was examined

except the petitioner. Further in the audit objections the non furnishing of the accounts and the persons responsible are alone has been stated. The petitioner is only a controlling and supervisory officer and was not directly responsible for the accounts. The audit reporting officials are not examined in the enquiry to prove the involvement of the petitioner. In the absence of any material records and material evidence to prove that the petitioner is responsible for the loss, the findings of the enquiry officer is perverse. The enquiry officer in his findings only stated that after the audit objections, the petitioner/delinquent has not taken any action against his subordinate officials for getting proper information from them to rectify the audit objections and has not fixed the responsibilities among his subordinate officials to rectify the audit objections. Therefore, as a controlling officer he has failed to set right the loss and thereby he is responsible for the loss. It is not established in the enquiry that the petitioner failed to instruct his subordinates properly for setting right the audit objections and the petitioner directly responsible for the loss. There is no evidence to prove that the petitioner failed to initiate any action against his subordinate for rectifying the audit objections. There is no independent finding by the punishing authority to hold the charges are proved.

8. Learned counsel for the petitioner would further submit that there is no reason to reject the further representation of the petitioner. Without examining the crucial witnesses and without furnishing the crucial documents, the enquiry was proceeded with. In the absence of material evidence to prove the guilt of the charge the entire proceedings are liable to be set-aside. The reviewing authority without considering the points raised in the review petition simply by relying the opinion or advise of the advisory authority viz., the Tamil Nadu Public Service Commission (TNPSC), rejected the review petition by stating that there is no fresh material to consider the review petition. The petitioner died on 08.08.2022 and the legal heirs of the deceased petitioner were brought on record by this Court on 16.12.2022.

9. Learned counsel for the petitioner has also relied on the judgment passed by the Hon'ble Supreme Court of India and the Division Bench of this Court and the same is reads as follows:

(i) W.A.No.1306 of 2013 dated 18.03.2014 in the case of S.Paulraj Vs.

The Registrar of Cooperative Societies, Chennai and Another.

(ii) Civil Appeal No.7431 of 2008 dated 19.12.2008 in the case of Roop Singh Negi Vs. Punjab National Bank and Others.

10. The counter affidavit is filed by the second respondent on 20.02.2013, wherein, it is stated that as per the documentary evidence, the petitioner himself received the rough audit reports and tendered acknowledgments with his signature. During his entire tenure of the post of Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, he was in possession of the audit reports and other material records. It is evident from his own certificate that reasonable opportunities were provided to put up his defence in the oral enquiry and personal hearing and all records pertaining to the charges were furnished to him. This certificate is unshakable evidence for non denial of natural justice to the petitioner. The petitioner insisted cross examinations of the expired officers Thiru.N.Ramalingam and Thiru.T.Tholkappian, the then Deputy Directors of Agriculture (Seeds), O/o.Joint Director of Agriculture, Tiruvannamalai, who

were in no way connected to the present case and were no more alive when the enquiry took place and that to after conclusion of the enquiry process with the intention to delay and to distract disciplinary case. The petitioner had himself confessed the fact before the enquiry officer that reasonable opportunity was given to him to prove his defence and certified to that effect.

11. The second respondent has also filed another counter affidavit on 22.01.2024. Learned Government Advocate appearing for the respondents would submit that the petitioner being the Head of Office, received the audit notes directly from the Regional Accounts Officer (Audit), O/o. Director of Agriculture, Chennai-5 for the years 1996-97, 1997-98 and 1998-99 on 21.05.1997, 15.05.1998 and 20.05.1999 respectively by duly tendering acknowledgments with his dated signatures. This was evident from the charge memo and the enquiry report of the enquiry officer. The audit files related to the above period were under the custody of the petitioner up to 24.12.2001 and the petitioner remained absent from duty thereafter. As the petitioner did not hand over the files, bills, vouchers, registers and records to his successor. The steel almirah and the wooden cub-board in which all the

registers and records kept were broken in the presence of revenue officials on 12.03.2002. Since, there were lot of records including contingent bill and vouchers found missing, separate charges were framed against the petitioner vide Charge Memo No.DCS(OS)/80425/2002, dated 29.04.2002 of the Commissioner of Agriculture, Chennai-5. Therefore, it is evident that the petitioner was in possession the audit notes till 24.12.2001 and failed to hand over them to his successor for his pecuniary personal benefits. The petitioner submitted his written statement of defence on 20.05.2002 by refuting the charges as detailed below which was suffice to prove that the petitioner was furnished with the audit objections. The deposition of the petitioner before the enquiry officer on 10.02.2007 is also the concrete proof that the petitioner was allowed to scrutinize the audit reports without which he could not made his submissions before the enquiry officer. Hence, by his own version, the petitioner admits his access to the audit report and audit paras after serving of the charge memo.

12. Learned Government Advocate appearing for the respondents would further submit that the petitioner did not submit filled up questionnaire

form with his defense statement to the charges despite continuous reminders. It is also evident from the enquiry report that the petitioner did not insist for the cross examination of any officials during the course of enquiry. As per Rule 14(a)(1)(iv)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the petitioner, being the immediate superior officer may pass orders of recovery for the whole or part of any pecuniary loss caused to the State Government by negligence or breach orders. It is also evident that as per Para No.113 of the Agriculture Department Manual, it is the primary duty of all heads of offices to see that the objections raised in audit are settled with utmost expedition. The petitioner should have communicated the audit objections to the persons responsible for the loss and should have exercised his powers inherited in the above rule. Even though, the petitioner did not have powers to initiate action on his subordinates, he should have proposed disciplinary action by duly submitting the draft charge memo under Rule 17(b) or draft show cause notice under rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules the to the next higher authority, i.e., the Joint Director of Agriculture, Tiruvannamalai in this case, for setting aside the audit paras. The petitioner did not take any action against his subordinate officers and remained idle during his tenure as Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, Tiruvannamalai District till 24.12.2001.

13. Learned Government Advocate appearing for the respondents would further submit that as per rule 34 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, the review authority, at any time review any orders passed by them, when a new material or evidence which could not be produced or was not available at the time of passing order under review. In the present case, the petitioner could not produce any new material or evidence to the review authority with his review petition and hence, the review authority, the State Government, rejected his review petition.

14. Learned Government Advocate appearing for the respondents would further submit that as per the proceedings No.A2/19641/2001, dated 24.12.2001 of Joint Director of Agriculture, Tiruvannamalai, Thiru.P.Venkatesan, Assistant Director of Agriculture, Polur was placed in full additional charge to the Post of Assistant Director of Agriculture, Seed

Processing Unit, Athiyandal, Tiruvannamalai District. The copy of the order could not be traceable due to longevity of time and destruction of records. However, it is evident from the Letter No.738/2001, dated 08.01.2002 of the above officer that he had assumed charges full additional charges to the above post with effect from 24.12.2001 consequent of the orders dated 24.12.2001 issued by the Joint Director of Agriculture, Tiruvannamalai. As per the charge memo No.DCS(OS)3/80425/2002, dated 26.04.2002 of the Commissioner of Agriculture, Chennai-5, charges were framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner, Thiru.R.Mani, the then Assistant Director of Agriculture for his failure to hand over the records, bills and other related documents and burking of the records with himself.

15. Learned Government Advocate appearing for the respondents would further submit that the audit files related to the above period were under the custody of the petitioner upto 24.12.2001. The petitioner remained absent from duty thereafter. As the petitioner did not turned up for duty, a successor was placed in full additional charges to the post of Assistant

Director of Agriculture, Seed Processing Unit, Athiyandal, Tiruvannamalai District for running of the Government Office without any disruption. The office was functioning with the basic records and registers available with the office staff and by obtaining fresh T.N.T.C.70 (Non-Salary) Register from the District Treasury. The locked cup-boards were not opened up immediately with the hope that the petitioner would turn up sooner or later and formally hand over the records and documents to his successor. As such the petitioner did not turned up for duty and a special audit team had arrived from the O/o.Director of Agriculture, Chennai-5 to take up audit for the years 1998-99, 1999-2000 and 2000-01 on 11.03.2002, it was decided to open the steel almirah and the wooden cup-board in the presence of revenue officials on 12.03.2002.

16. Learned Government Advocate appearing for the respondents would further submit that there were 10 disciplinary cases under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules including a disciplinary proceedings contemplated by the Tribunal for Disciplinary Proceedings (TDP), Chennai, pending against the petitioner and they were at

different stages of enquiry at the time of his superannuation on 30.04.2002. Since none of the disciplinary case reached finality on 30.04.2002, the petitioner was placed under suspension and not allowed to retire on reaching the date of superannuation on 30.04.2002 A.N.

17. Heard the learned counsel on either side and perused the materials available on record.

18. The petitioner was working as Additional Director of Agriculture at Seed Processing Unit, Athiyandal, Tiruvannamalai and was placed under suspension by G.O.(3D)No.48, Agricultural (AGR.2) Department dated 29.04.2002 and on the same day, another order in G.O.(3D) No.49, Agricultural (AA-2) Department, dated 29.04.2002 has been passed by the first respondent by not permitting the petitioner to retire from service on attaining the age of superannuation on 30.04.2002. The petitioner was served with a charge memo dated 29.04.2002, one day prior to his date of superannuation that he is responsible for loss caused to the Government to an extent of Rs.12,34,766.50/-, as per the audit report of the Accounts Officer,

Chennai region for the period from 1996-97 to 1998-99. The second count of the charge being that he has failed to set right the audit objection or failed to recover the amount to an extent of Rs.8,96,841/- from the person, who are all responsible for the same as per the audit report for the year 1996-97 to 1998-99.

19. The case of the petitioner is that the audit reports are pertaining to the year 1996-97, 1998-99 and the charge memo was served to the petitioner only on 29.04.2002. In the enquiry no material documents were furnished to the petitioner and the Deputy Director of Agriculture was not examined in his presence. Though the enquiry was conducted, no one was examined to prove the guilt of charges against the petitioner and the audit report and objections were not furnished to the petitioner, though the enquiry officer relied the same. The enquiry officer without any material evidence based on the audit objection held the charges as proved.

20. It is pertinent to note that the petitioner has submitted his written submission on 20.05.2002 by refuting the charges, which was suffice to prove that the petitioner was furnished with the audit objections.. The Joint Director whom the petitioner wanted to examine viz., Thiru N.Ramalingam and Thiru.Tholkapiyan, then Deputy Director of Agriculture (Seeds) O/o Joint Director of Agriculture, Tiruvannamalai have expired on 04.03.2001 and July 2006 respectively and the enquiry was conducted on 29.01.2007 and 10.02.2007. Hence, it is evident that both the officers have expired before the enquiry was being conducted by the respondents.

21. The petitioner died on 08.08.2022 and the legal heirs were brought on record by this Court. The main contention of the petitioner is that the audit notes were not served to the petitioner at the time of enquiry though the enquiry officer has relied on the same. But, it is an admitted fact that the petitioner has received the same earlier though not at the time of the issuance of charge memo on 29.04.2002 and he has submitted his written submission of defence on 20.05.2002 by refuting the charges. The audit files related to the above period i.e., from 1996-97, 1997-98, 1998-99 dated 24.05.1997,

15.05.1998 and 20.05.1999 respectively were under the custody of the petitioner upto 24.12.2001. As per Rule 14(a)(1)(iv)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the petitioner, being the immediate superior officer may pass orders of recovery for the whole or part of any pecuniary loss caused to the State Government by negligence or breach orders. It is also evident that as per Para No.113 of the Agriculture Department Manual, it is the primary duty of all the heads of offices to see that the objections raised in audit are settled with utmost expedition.

22. In this case, after receiving the audit objection, the petitioner should have brought to the notice of the next higher authority, however the petitioner did not take any action against his subordinate officers and remained idle during his tenure as Additional Director of Agriculture, Seeds Processing Unit, Athiyandal, Tiruvannamalai till 24.12.2001. The enquiry officer submitted his report and based on the report, the first respondent has passed final order of awarding the punishment of removal of service in G.O.(3D) No.200, Agricultural (Ve.Ne) Department, dated 09.12.2009, challenging the same, the petitioner has preferred a review petition before the

first respondent on 04.01.2009 and the first respondent after referring the matter to the Tamil Nadu Public Service Commission for its opinion and advice and rejected the same vide order in G.O (3D) No.110, Agriculture (Ve.Ne.7) Department dated 08.06.2011.

23. It is pertinent to note that there were 10 disciplinary cases under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules including a disciplinary proceedings contemplated by the Tribunal for Disciplinary Proceedings (TDP), Chennai, pending against the petitioner and they were at different stages of enquiry at the time of his superannuation on 30.04.2002. Since none of the disciplinary case reached finality on 30.04.2002, the petitioner was placed under suspension and not allowed to retire on reaching the date of superannuation on 30.04.2002 A.N and subsequently, he was removed from service by the order of the first respondent dated 09.12.2009, which was confirmed by the first respondent/reviewing authority order dated 08.06.2011. The 10 disciplinary cases pending against the petitioner were related to the O/o. Additional Director of Agriculture (Seed) Processing Unit, Athiyandal, Tiruvannamalai

in which, the petitioner has worked as Assistant Director of Agriculture from 05.07.1996 to 24.12.2001 and as per the Tamil Nadu Public Service Commission opinion, it is proved by the audit report that the petitioner has caused a loss of Rs.12,34,767/- and caused an indirect loss of Rs.8,971.80/- by not recovering the loss from the subordinates worked under his control. Hence, the petitioner is responsible for total loss of Rs.21,31,608/-. It is pertinent to note that the petitioner was awarded punishment for previous 10 misconducts and the details are extracted hereunder:

S.No.	Order No and Date	Punishment awarded
1	District Agricultural Officer, Cuddalore, Proceedings No.A2/13200/1970, dated 22.06.1970	Censure
2	District Agricultural Officer, Cuddalore, Prceedings No.A1/7449/1970, dated 29.07.1970	Censure
3	District Agricultural Officer, Cuddalore, Proceedings No.A1/6897/1970, dated 27.07.1970	Censure
4	District Agricultural Officer, Cuddalore, Proceedings No.A1/8348/1970, dated 30.08.1970	Censure
5	District Agricultural Officer, Cuddalore, Proceedings No.A1/2545/1970, dated 21.12.1970	Stoppage of increment for 6 months without cumulative effect

6	District Agricultural Officer, Nagapattinam, Proceedings No.A1/7613/1973, dated 19.07.1978	Stoppage of increment for 6 months without cumulative effect
7	District Agricultural Officer, Kallakurichi, Proceedings No.K/9923/1980 dated 12.09.1980	Stoppage of increment for 2 years without cumulative effect
8	Assistant Director of Agriculture, Kallakurichi, Proceedings No.A/2266/1982, dated 29.06.1982	Stoppage of increment for 3 years without cumulative effect
9	Director of Agriculture, Chennai-5 Proceedings No.DCS.1/21992/1991, dated 10.04.1994	Stoppage of increment for 2 years without cumulative effect
10	Assistant Director of Agriculture, Chidambaram, Proceedings No.C/10004/1993, dated 27.06.1995	Stoppage of increment for 6 years without cumulative effect

Hence from the above, it is crystal clear and evident that the petitioner was not only negligent in discharging his duties in regard to the present charge memo dated 26.04.2002, where the Government has suffered a loss to the tune of Rs.21,31,608/- and the conduct of the petitioner is also cannot be appreciated. The details of the charges in regard to the charge memo dated 26.04.2002 is detailed as below:

S.No.	**Gist of the Charge**	**Charge Memo No. and Date**	**Government Loss (In Rupees)**
1	During 1999-2000 and 2001-	Commissioner of	–

	02, while working as Assistant Director of Agriculture, Seed Processing Unit, Athiyanthal, he has not carried out works in the State Seed Farms as per guidelines and failed to control Farm Managers	Agriculture, Chennai-5, Charge Memo No.DCS.2/5/69221/2000-1, Dated 24.11.2000 (C.N.7411/AA7/2008)	
2	Responsible for lapses pointed out in the Regional Accounts Officer (Audit) report for the year 1996-97, 1997-98 and 1998-99 related to State Seed Farm,Athiyandal, Valavachanur and Seed Proceeding Unit, Athiyandal and there by causing loss to Government	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.(OS)/3/81560/2002 dated 29.04.2002 (C.No.15756/AA7/2007)	21,31,608/-
3	During 1998-99 to 2000-01, while working as Assistant Director of Agriculture, Seed Proceesing Unit, Athiyandal, he had failed to produce the vouchers of the expenditure made before the audit and made excess expenditure over the allocation in the State Seed Farms and there by causing heavy loss to the Government	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.(OS)/3/80425/2002 dated 29.04.2002 (C.No.25304/AA7/2008)	1,64,26,124/- and 14,71,700/-
4	During 1997-98 and 1998-99, while working as Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, he had failed to produce records and documents to the	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.(OS)/3/21101/1999 dated	–

	Vigilance and Anti Corruption Department	14.08.2001	
5	During 1997-98 and 1998-99, while working as Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, he had failed to take criminal action against Thiru R.Bojarajan, Agricultural Officer who had caused a loss of Rs.9,28,987/- to the Government	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.(OS)/3/21101/1999 dated 19.07.2001	–
6	During 2001, the petitioner colluded with the farm managers in cutting of trees in the State Seed Farm, Valavachanur illegally and thereby causing loss to the Government	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.2/5/32/2002, dated 31.07.2006 (C.No.11811/AA7/10)	3,72,940/-
7	During 1992-93, while working as Agricultural Development Officer, Bhuvanagiri of Cuddalore District, he had committed irregularities in the procurement of Groundnut Seeds	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.5/81558/2003, dated 27.04.2002	91,600/-
8	During 1998-99, while working as Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, he had failed to certify the seeds procured from the farmers in time and thereby	Commissioner of Agriculture, Chennai-5, Charge Memo No.DCS.2/5/213655/2001, dated 11.03.2003	45,496/-

	causing loss to the Government	(C.No.17403/AA7/07)	
9	During 1999-2000, while working as Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, Paddy and Ragi seeds produced in the State Seed Farms in Vazhavachanur and Athiyanthal failed to qualify in certification standards and thereby causing loss to the Government	Government Charge Memo No.31291/AA.7/2007-01, Agriculture (AA.7) Department, dated 25.06.2008	2,37,617/-
10	During 1999-2001, while working as Assistant Director of Agriculture, Seed Processing Unit, Athiyandal, he had committed irregularities in ploughing operation in State Seed Farm, Athiyandal and created false bills in Coconut Crossing Centre, Vachavachanur	Commissioner for Disciplinary Proceedings, Vellore, T.D.P. Case No.1/2006, dated 26.07.2006 (Vigilance Case) (C.No.8639/AA.2/01)	13,33,710/- and 11,92,370/-
	Total		**2,33,03,165/-**

24. The contention of the respondent is that though the petitioner was relieved from the post on 24.12.2001, he did not hand over the records pertaining to the audit objections in almihra to his successors viz., P.Vengadesan, Additional Director of Agriculture, Polur, who has assumed

additional charge with effect from 24.12.2001 and the petitioner remained absent from duty thereafter and the locked the cup-boards, which were not opened up immediately that the hope that the petitioner would turn up sooner or later and formally hand over the records and documents to his successors since he did not turn up for duty, it was decided to open the steel almirah and the wooden cup-boards in the presence of revenue officials and this contention/averments were not raised in the counter affidavit filed by the respondents 1 & 2 and it is only in the written instructions dated 22.01.2024 .

25. The learned counsel has also relied on the judgment of Division Bench of this Court in ***W.A.No.1306 of 2013 dated 18.03.2014 in the case of S.Paulraj Vs. The Registrar of Cooperative Societies, Chennai and Another.*** For better appreciation, the relevant paragraphs are extracted hereunder:

> *"2. The departmental proceedings, thereafter, culminated into the order of removal from service by the second respondent in G.O.3(D) No.10, Cooperative, Food and Consumer Protection (CE2) Department dated 06.08.2012 and the same was challenged by filing a writ petition before this Court in W.P.No.24227 of 2012. Before the learned Single Judge, it was contended that in Annexure-IV of the charge*

memo, no witness has been cited to substantiate the charges. But, the said aspect was not taken into consideration by the learned Single Judge and having taken into consideration the fact that the appellant has attained the age of superannuation on 30.06.2005, the learned Single Judge set aside the impugned order of the second respondent passed in G.O.3(D) No.10, Cooperative, Food and Consumer Protection (CE2) Department dated 06.08.2012 and remitted the matter back to the respondents to conduct a fresh enquiry in accordance with law, by providing reasonable opportunity to the appellant. The learned Single Judge, while arriving at the said conclusion, has also noted that though it was contended on behalf of the respondents that documents were marked and witnesses were examined, no proof whatsoever has been produced before the Court and the learned Single Judge has also perused the enquiry report and found that absolutely, there is no indication to the effect that the documents were marked and the witnesses were examined. Aggrieved over the order of remand, the writ petitioner has filed the present writ petition.

6. The charge memo came to be issued on 25.1.2000 and as already stated above, in Annexure-IV of the charge memo, in the list of witnesses column, it has been stated as 'Nil'. The department placed reliance upon the documents for the period from 10.12.1995 to 10.3.1996 and in the considered opinion of this Court, because of the non-mentioning of any witness, who are going to speak about the documents, it may be extremely difficult for the department to sustain the charge. That apart, from the date of alleged incident, more than 18 years have *lapsed and it was also pointed out by the learned counsel appearing for the appellant that simultaneously, criminal prosecution was also launched against the appellant and the appellant has filed an application for discharging him from the criminal case and it was dismissed and challenging the same, the appellant filed a criminal revision before this Court in Crl.R.C.No.48 of 2007 and this Court allowed the said revision and the appellant was discharged from the criminal case. Further it is to be noted that in the surcharge proceedings, a finding came to be rendered against the appellant and challenging the same, the appellant filed a civil miscellaneous appeal in C.M.A (CS) No.48 of 2004 and the same is pending before the Special Tribunal for Cooperative cases at Salem.*

7. This Court, in the above facts and circumstances, is of the considered view that no purpose will be served by ordering de novo enquiry against the appellant, considering the fact that the appellant had already attained the age of superannuation on 30.6.2005 and he has been placed under suspension on the date of retirement and he was not permitted to retire from service. It is very pertinent to point out at this juncture, in the absence of any witnesses, who have to speak about the documents for the period from 10.12.1995 to 10.3.1996, conducting of de novo enquiry can be stated as "empty formality".

8. In the result, the order of the learned Single Judge in remanding the matter alone, is set aside and the writ appeal is allowed. Since the writ appeal came to be allowed and the impugned order in remanding the matter came to be set aside, the respondents are directed to pass appropriate and consequential orders, within a period of 12 weeks from the date *of receipt of a copy of this order. It is made clear that the order passed in this writ appeal can in no way prejudice the disposal of C.M.A (CS) No.48 of 2004 pending on the file of Special Tribunal for Cooperative Cases at Salem and the said case is to be disposed of on its own merits. No costs. Consequently, connected miscellaneous petitions are closed."*

(ii) Civil Appeal No.7431 of 2008 dated 19.12.2008 in the case of Roop Singh Negi Vs. Punjab National Bank and Others, it was held that:

"C. Service Law – Departmental enquiry – Docuemntary evidence – Manner in which required to be proved – Held, mere production of documents is not enough – Contents of Documentary evidence has to be proved by examining witnesses – Further held, FIR in itself is not an evidence without actual proof of facts stated therein – Criminal Procedure Code, 1973.

A departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled 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.

Service Law – Departmental enquiry – Duty to record reasons – Held, orders of disciplinary authority and appellate authority entails civil consequences – Hence, the orders must be based on recorded reasons".

26. Hence, the only contention of the petitioner, which is sustainable is that no witness were examined apart from the petitioner and no documents were produced and examined at the time of enquiry by the respondents and only based on the audit objections, the charges were held proved against the petitioner, which resulted in removal of the petitioner from service with effect from 09.12.2009 vide G.O.(3D)No.200, Agriculture Department, dated 09.12.2009 passed by the first respondent, which was subsequently confirmed by the first respondent/reviewing authority vide G.O.(3D)110, Agriculture Department, dated 08.06.2011. Though the petitioner has been involved in previous 10 misconducts for which charge memo has been issued under 17(b) of the Tamil Nadu Civil Supply (Disciplinary and Appeal Rules) including the disciplinary proceeding contemplated by the Tribunal for Disciplinary Proceedings (TDP), Chennai, initiated against the petitioner, in regard to the present charge memo dated 26.04.2002, the punishment of removal of service awarded to the petitioner is unsustainable in law.

27. Hence, the above order passed by the first respondent is liable to be set aside on the following grounds:

(i) No witnessess were examined except the petitioner.

(ii) The copy of the audit objections were not furnished to the petitioner at the time of issuance of the charge memo dated 29.04.2002 and at the time of enquiry.

(iii) No documents were examined through witness and no material evidence was produced during the time of enquiry except the audit objections.

(iv) The documents relied in the charge memo were not furnished

(v) The request of the petitioner to examine the Farm Managers were also denied by the respondents.

(vi) The audit objections is pertaining to the year 1996, 1997, 1998, 1999, the charge memo was belatedly served only on 29.04.2002 after three years, one day prior to the superannuation of the petitioner i.e., on 30.04.2002.

(vii) The petitioner was suspended one day prior to his date of superannuation on 30.04.2002.

(viii) The respondents have also admitted that the petitioner did not have power to initiate action on his subordinates, who are responsible for the pecuniary loss caused to the State Government.

28. In view of the above factual matrix of the case and the ratio laid down by the Hon'ble Supreme Court of India and the Division Bench of this Court, this Court is of the considered view that the order passed by the first respondent herein in G.O.(3D) No.200, Agriculture (Ve.Ne.7) Department, dated 09.12.2009 and the consequential order passed in the review petition by the first respondent herein in G.O.(3D) No.110 Agriculture (Ve.Ne.7), Department dated 08.06.2011 are liable to be quashed and the same is hereby quashed and consequently, this Court directs the respondents herein to retire the petitioner from service with effect from 30.04.2002 and confer all the retirement benefits with due regards to petitioner's seniority.

29. In the result, this writ petition is allowed. No costs.

07.03.2024

vm
Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

1.The Agriculture Production Commissioner
& Secretary to Government,
Fort St.George, Chennai – 9.

2.The Commissioner of Agriculture,
Chepauk, Chennai – 5.

J.SATHYA NARAYANA PRASAD,J.

vm

W.P.No.17678 of 2012

07.03.2024