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W.P.No.20689 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.20689 of 2010

and

M.P.No.1 of 2010

P.Selvarajan

... Petitioner

Vs.

State of Tamil Nadu,
Rep. by Principal Secretary to the Government,
RP & PR Department,
Fort St. George, Chennai – 600 009.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order of first respondent in G.O (D) No.170, Rural Development and Panchayat Raj (E1(2)) Department, dated 09.04.2010, quash the same.

For Petitioner : Ms.T.Srivadivu
for Mr.R.Parthiban

For Respondent : Mr.S.Arumugam,
Government Advocate



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ORDER

This writ petition has been filed challenging the orders issued by the Government in G.O (D) No.170, Rural Development and Panchayat Department, dated 09.04.2010, whereby the punishment of “*stoppage of increment for a period of five years without cumulative effect*” was imposed on the petitioner.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. While the petitioner was working as a 'Project Officer', District Rural Development Agency, Villupuram District, he was subjected to disciplinary proceedings by issuing a charge-memo in RC.No.59675/08/DPC II-3, dated 19.08.2008 containing seven charges. The five charges that are levelled against the petitioner are as under:-

“Charge No. 1

That Thiru. P.Selvarajan had failed to communicate the G.O (Ms) No.153 (RD&PR) CGS-I Dept. dated 20.10.2006 sanctioning Technical Assistant and Computer Assistant posts to the Block Development Offices for necessary action. Without proper instructions from the Project Officer, District Rural Development Agency, the Block Development Officers have recruited Technical Assistants without confirming to the



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procedures spelt out the G.O. This has resulted in the selection of ineligible persons and irregular payments to the Technical Assistants.

Charge No. 2

That Thiru. P.Selvarajan was responsible for the appointment of six ineligible persons as Technical Assistants with qualifications such as B.Sc... B.Sc (incomplete), B.E. (incomplete), DCE (failed), DME as detailed below as against the prescribed qualification of Diploma/ Degree in Civil Engineering for the post of Technical Assistants.

Sl.No	Name of Technical Asst. appointed	Qualification	Block where appointed
1.	D.Sekar	B.Sc., (Incomplete)	Melmalayanur
2.	C.Venkatesan	DME	Melmalayanur
3.	E.Balasundaram	Qualification not indicated in file	Olakkur
4.	V.Ramachandran	DCE (Failed)	Kallakurichi
5.	C.Venkatesan	B.Sc.,	Mugaiyur
6.	N.Selvaganesh	B.E. (Complete)	Sankarapuram

Charge No. 3

That Thiru.P. Selvarajan failed to monitor the against the pronsolidated pay of Techini That Thiru. P. Selvarajan fsourcing firmshe outsourcing prescribed norms of Technical Assistants to the aud pay only to the case of 18 Bloms for the Technical making payment of consolidate the payments 2008. In case locks have been done Assistants sponsored by Assistants except May 20g firms for certemaining 4 Blocks, directly to the Technical Asade tds the outsourcing firms for certain months alche Details are furnished in Annexure.II.

Charge No. 4



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That Thiru. P. Selvarajan has exceeded his brief by ratifying the irregular appointments made by the Block Development Officers and wrongly issued the proceedings No. A8/4988/2006, dt. 18.4.07 in the name of the Collector & Chairman District Rural Development Agency, Villupuram without getting the Collector's approval. He has also failed to obtain in writing the name and qualification of the appointed Technical Assistants from the Blocks and did not verify their educational qualifications before passing his improper ratification orders.

Charge No. 5

That Thiru. P. Selvarajan has exceeded his brief by issuing appointment orders to 80 Technical Assistants and 7 Computer Assistants whose names were sponsored by Employment Exchange without getting the Collector's approval as detailed in Annexure.II.

Charge No. 6

Thiru P. Selvarajan has appointed 5 Technical Assistants in Tsunami Project - Implementation Unit, Villupuram in the name of the District Collector without getting the Collector's approval vide Proceedings No. PIU-1/3814/06, dt. 14.6.07

Charge No. 7

That Thiru. P. Selvarajan has not been sincere in his duties, has failed to act within his authority and has usurped the powers of the District Collector, as laid in charges 1 to 6 thus he has failed to maintain absolute integrity, required of an officer and has violated rule 20(1) Tamil Nadu-Government Servants' Conduct Rules 1973. which is of an officer holding the post of Project Officer, District Rural Development Agency.”

2.2. In response to the charge memo, the petitioner submitted his



preliminary explanation, dated 22.09.2008, denying the charges, while explaining the charges. Thereafter, an Enquiry Officer was appointed for conducting a detailed enquiry into the charges and during the process of enquiry, certain witnesses were examined on behalf of the Department and also on behalf of the petitioner. After conducting the enquiry, the Enquiry Officer submitted his report dated 28.05.2009 and thereafter, the said report was communicated to the petitioner, calling upon his remarks and on submission of his further representation dated 25.09.2009. The respondent State passed the final order dated 09.04.2010, imposing the punishment of “*stoppage of increment for a period of five years without cumulative effect*”. Though, originally, the disciplinary proceedings were initiated under Rule 17(b) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955, the ultimate punishment that was imposed on the petitioner is only a minor punishment of “*stoppage of increment for a period of five years without cumulative effect*”. It is aggrieved by the said order dated 09.04.2010, the petitioner approached this Court by filing the present writ petition.

3. Ms.T.Srivadivu appearing for Mr.R.Parthiban, learned counsel for the petitioner strenuously contended that the respondents, during the course of enquiry, have failed to furnish all the documents that are required by the



petitioner to support of his defence and also further contended that the District Collector is a crucial witness, who ought to have been examined by the Department in support of the charges and the petitioner should have been afforded an opportunity of cross-examining the District Collector, but the same was not provided to the petitioner. It is also further contended that the enquiry officer, who was appointed is of the equal rank of the petitioner and therefore, the entire proceedings have vitiated. It is her further contention that the Enquiry Officer should have been a superior officer to the petitioner in terms of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955.

4. She also further contended that the contents of the preliminary reply and the further representation submitted by the petitioner were not considered by the respondent State, while passing the impugned order in a proper perspective. She also further contended that, for want of furnishing the relevant documents, as required by the petitioner, the entire disciplinary proceedings were vitiated. Further, the signature of the petitioner is also not obtained in the statements recorded during the cross-examination of the witnesses during the course of enquiry.



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5. On the other hand, Mr.S.Arumugam, learned Government Advocate appearing for the respondents, while reiterating the contentions raised in the counter-affidavit, contended that the required procedure is strictly followed and it is duly after examining the relevant witnesses and the charges were held to have been proved by the Enquiry Officer and the same was accepted by the Respondent No.1, while passing the impugned order. He also further contended that the petitioner has exceeded his power in appointing the 'Technical Assistants and Computer Assistants', without prior approval of the District Collector, who is infact, the competent authority to appoint the Technical Assistants and Computer Assistants in terms of G.O (Ms) No.153, Rural Development and Panchayat Raj (CGS I) Department, dated 20.10.2006. Thus, according to him, the petitioner has exceeded his power and they have issued appointment orders to the 'Technical Assistants and Computer Assistants'. He also further contended that the petitioner has erroneously ratified the appointments that were made by the Block Development Officers, contrary to the mandate under G.O (Ms) No.153, dated 20.10.2006.

6. This court has carefully considered the submissions made on either side and also perused the entire material on record.



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7. The Charges 1 and 2 levelled against the petitioner are inter-linked. The Charge No.1 is about the failure of the petitioner to communicate G.O (Ms) No.153, dated 20.10.2006 to all the Block Development Officers, who were supposed to undertake the selection process for appointing the 'Technical Assistants and Computer Assistants' in terms of the said Government Order. The said Government Order prescribes the qualifications that are required to be followed and the method to be followed in the process of selection of 'Technical Assistants and Computer Assistants'. The second charge is a consequence of failure to communicate the said Government Order to the Block Development Officers, resulting in appointing unqualified persons as 'Technical Assistants and Computer Assistants'.

8. This court has carefully perused the entire reply and the further reply submitted by the petitioner as well as the report of the Enquiry Officer. The Enquiry Officer, as already noted above, has held both the charges as proved.

9. From the perusal of the findings of the Enquiry Officer in respect of



these two charges, it is noticed that the Block Development Officers, who were examined as prosecution witnesses are not clear, as to whether the said Government Order was communicated to them or not. But, they have admitted that the relevant instructions issued pursuant to the said Government Order were communicated to them. It is not the case of the said witnesses that the said Government Order was never communicated to them. But, it is also an admitted fact that the said Government Order was referred to by the Block Development Officers in various proceedings issued by them from time to time. But, the Enquiry Officer discarded the same on the ground that mere reference to the said Government Order in various communications does not mean that the said Government Order was communicated to the Block Development Officers and also on the ground that there should be some evidence to show that the said Government Order was communicated to the Block Development Officers.

10. On the other hand, it is the specific case of the petitioner that the said Government Order was handed over to all the Block Development Officers during the course of review meeting. Some of the Block Development Officers, who were examined as defence witnesses in their evidence, categorically stated that copies of the said Government Order were



handed over to them during the course of review meeting conducted by the petitioner herein. But, the said evidence was unjustly recorded by the Enquiry Officer on the ground that one of the defence witness stated that the said Government Order was communicated to him through post.

11. It is specific case of some of the Block Development Officers stating that the copy of the Government Order was furnished to them during the course of review meeting, it is totally unjust on the part of the Enquiry Officer to disclose the said allegation on the ground that one of the Block Development Officers stated that the said Government Order was communicated to him through post. It is nothing wrong in communicating the said Government Order through the post, even after furnishing the same in the course of review meeting. Thus, in the absence of any evidence that is brought on record to show that the said Government Order was not communicated to the Block Development Officers by the petitioner and in the context of evidence that is available on record that the Block Development Officers have infact referred to the said Government Order in various communications, the findings recorded by the Enquiry Officer holding that the Charge No.1 as proved is perverse. Consequently, the Charge No.2 also would fail. Thus, the findings of the Enquiry Officer holding that the Charges



1 and 2 as proved is totally perverse and the consequential impugned order passed by the Respondent No.1, basing upon such conclusions arrived at by the Enquiry Officer is also liable to be declared as illegal.

12. Then, coming to the Charge No.3 with regard to failure of the petitioner to monitor the payment of consolidated pay of Technical Assistants to outsource forms.

13. As seen from the material on record, it is the responsibility of the concerned Block Development Officers to make payments for 'Technical Assistants and Computer Assistants' through the outsourcing forms. Admittedly, as seen from the charge itself, some of the Block Development Officers have made payments directly to the outsourcing forms and some of the Block Development Officers have made payments directly to the Technical Assistants.

14. In terms of G.O (Ms) No.153, dated 20.10.2006, the payments are required to be paid directly to the outsourcing forms, but not to the Technical Assistants. If there is any violation of same, it is the violation on the part of the Block Development Officers and the petitioner herein cannot be held



responsible for such deviation of the orders issued in G.O (Ms) No.153, dated 20.10.2006. Even if there is any slackness or failure on the part of the petitioner to monitor the said payments, the same is only trivial in nature and no *malafide* can be attributed to the petitioner, especially in the absence of any charge of deliberate action on the part of the petitioner.

15. As far as Charges 4 to 6 are concerned, they are on the ground that the petitioner has exceeded his jurisdiction in appointing the Technical Assistants against the mandate of G.O (Ms) No.153, dated 20.10.2006. It is an admitted fact that, in terms of G.O (Ms) No.153, dated 20.10.2006, it is only the District Collector, who is competent to appoint the 'Technical Assistants and Computer Assistants'.

16. From the perusal of the preliminary reply and the further representation dated 25.09.2009 submitted by the petitioner, the petitioner has indirectly admitted about issuing the appointment orders to the Technical Assistants without prior approval of the District Collector. However, it is contended that the District Collector concerned has orally permitted the petitioner to issue such appointment orders. Admittedly, the said appointment orders were issued in the name of the District Collector, but not in the name



of the petitioner. Once the orders are issued in the name of the Collector, it is necessary requirement that the petitioner to obtain a prior approval of the District Collector. Admittedly, there is no such prior approval obtained from the District Collector before issuing the appointment orders in question.

17. Further, there is no material that is placed on record to show that the District Collector concerned has infact issued such oral approval nor orally permitted the petitioner to issue the appointment orders at the relevant point of time. Thus, indirectly, the petitioner has admitted that the allegation of exceeding his jurisdiction, though purportedly under the oral instructions of the District Collector, under those circumstances, in all fairness, the petitioner ought to have requested the Department to examine the District Collector as witness. But, the petitioner has not made any such request nor placed on record any material to show that the District Collector has infact granted any oral approval for issuing the appointment orders to the Technical Assistants.

18. Admittedly, the petitioner has issued the appointment orders to some of the Technical Assistants in the name of the District Collector, without there being any approval from the District Collector. But, one thing that is required to be considered is that, there is no *malafide* or ill-intention



that is attributed to the petitioner in the matter of issuing the appointment orders to the 'Technical Assistants and Computer Assistants' in the name of the District Collector, without there being any prior approval from the District Collector. It is also not the case of the petitioner that the appointments that were made are contrary to any of the Rules and Regulations nor they are not qualified to be appointed as such. It is an admitted fact that the appointments were made by strictly following the list candidates furnished by the Employment Exchange and there is no allegation of any deviation from the procedure. The petitioner herein, approached the Director, has undertaken appointments of Technical Assistants and Computer Assistants in a large scale and in such large scale appointments, such small procedural violation do occur.

19. The petitioner herein, being the officer belonging to Group-I services, is expected to follow the procedure that is required to be followed in terms of the Rules and Regulations, especially G.O (Ms) No.153, dated 20.10.2006. But, in the instant case, as admitted by the petitioner in his further representation to the charges 4 to 6 dated 25.09.2009, as well as the preliminary reply dated 22.09.2008, it cannot be said that the petitioner has strictly followed the procedure that is required to be followed in the matter of



appointing 'Technical Assistants and Computer Assistants' and he also failed to establish by reducing the appropriate evidence to show that the District Collector has orally permitted the petitioner to issue such appointment orders.

20. Charge No.7 is only a by-product of the charges that are framed at Charges 1 to 6 against the petitioner.

21. In the light of the above, the findings of the Enquiry Officer, as well as the Disciplinary Authority holding that the Charges 1 to 3 as proved, is declared as illegal and arbitrary. Insofar as the Charges 4 to 7 are concerned, in the light of the conclusions arrived at by this Court, these charges cannot be held to be proved that the findings of the Enquiry Officer as well as the Disciplinary Authority are based on non-evidence, especially in the context of the admission made by the petitioner in his preliminary reply as well as the further representation.

22. In the light of the above, this Court is of the considered view that the punishment of “*stoppage of increment for a period of five years without cumulative effect*” cannot be sustained, as the charges 1 to 3 are held to be not proved. Further, the charges that are levelled against the petitioner under



Charges 4 to 7 are also not of grave in nature, though initially the proceedings were initiated under Rule 17(b) of the Tamil Nadu Government Servants (Discipline and Appeal) Rules, 1955 and the respondent Disciplinary Authority itself has come to the conclusion that it is case of the charges under 17(a) and imposed minor penalty. This Court is of the considered view that, it would be sufficient if the “*stoppage of one increment without cumulative effect*” is substituted in the place of the punishment that was imposed in the impugned order.

23. Accordingly, the punishment of “*stoppage of increment for a period of five years without cumulative effect*” is set aside and the same shall stand substituted to the punishment of “*stoppage of one increment without cumulative effect*”.

24. Before parting with the case, this court intend to acknowledge and appreciate the sincere efforts made by Ms.T.Srivadivu, learned counsel for the petitioner.

25. Accordingly, the writ petition is disposed of. Consequently,



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connected miscellaneous petitions, if any, shall stand closed. No costs.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

The Principal Secretary to the Government of Tamil Nadu,
RP & PR Department, Fort St. George,
Chennai – 600 009.



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MUMMINENI SUDHEER KUMAR, J.

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