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W.P.Nos.5350 & 12459 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.5350 & 12459 of 2021
and W.M.P.Nos.5952, 5971, 13245 & 15105 of 2021

W.P.No.5350/2021

M.Poyyamozhi

...

Petitioner

/vs/

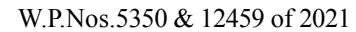
1. The Additional Chief Secretary to Government,
Home Department,
Secretariat, Chennai – 9.

2. The Joint Secretary to Government,
Home (OP.II) Department,
Secretariat, Chennai – 9.

3. The Secretary Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai – 600 009.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the impugned order of the second respondent issued in Letter No.44185/OP.II/2020-3, Home (OP.II) Department dated 31.12.2020 and



c) to sanction the Encashment of Earned Leave / Private Affairs at my credit as on 31.05.2015, along with interest, from 01.06.2015 to the date of settlement.

... Respondents



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Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the impugned order of the second respondent vide G.O.(3D) No.2 P&AR (H2) department dated 30.01.2020 and in G.O.(3D) No.9 P & AR (H2) Department dated 19.09.2020 and quash the same and consequently to direct the first and second respondents to sanction the terminal benefits of Pension, Commutation of Pension and DCRG Amount due to the petitioner, along with interest, within a reasonable time.

For Petitioner	...	Mr.S.N.Ravichandran
(in both W.P's.)		
For Respondents	...	Mr.R.Ramanlal
(in both W.P's.)		Additional Advocate General
		assisted by
		Mr.D.Gopal
		Government Advocate for R1 to R3

COMMON ORDER

Heard Mr.S.N.Ravichandran, the learned counsel for the petitioner and Mr.R.Ramanlal, the learned Additional Advocate General, for R1 to R3.

2. The petitioner worked as Personal Assistant in Adi Dravidar and Tribal Welfare Department in the year 2012. The petitioner has been given with a charge memo stating that he with the connivance of the former



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President of Co-operative Housing Society, Madambakkam, Chennai one S.Sundar misappropriated the society funds by allotting plots to the outsiders in violation of the conditions of the by-laws under Rule 46 (1), 47 (2) and 45 Clause (7) of the society and signed in the minute book and other records of the society and thereby acted in a manner unbecoming of a public servant and failed to maintain absolute integrity and thereby violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

3. Mr.S.N.Ravichandran, the learned counsel for the petitioner, submitted that the charge memo ought to have been issued by the Deputy Secretary or Joint Secretary who is the competent authority; on the very same set of facts, the President has been prosecuted in a criminal case and in which the petitioner stood as a witness and the President got convicted in the criminal case; despite totally 10 persons were enquired on the same set of facts in the disciplinary proceedings, the petitioner alone was imposed with a punishment of dismissal of service and he was removed from service; in fact the said Sundar who got convicted in the criminal case has not even been issued with a charge memo; even the Vice President of the



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Society was not given with a charge memo; the said Sundar got removed from service for unauthorized absence in some other case and the Vice President got retired; for the occurrence which is said to have occurred during the year 1997 to 2001, the charge memo has been issued in the year 2012 with an inordinate delay; since the petitioner has not been served with the documents with regard to his misconduct with the affairs of the society, he lost the opportunity of appeal remedy; no Presenting Officer was present during the enquiry proceedings; instead, the Enquiry Officer himself acted as the Presenting Officer.

3.1 He further submitted that the petitioner was not informed about his eligibility to use the assistance of the co-employee during the enquiry proceedings; many other witnesses have been examined behind the petitioner; the President and the Vice President who could be the main culprit were not given with any charge memo and in fact the President has been dismissed from service due to some other charges and the Vice President was allowed to retire in the year 2006; there is discrimination in parity of punishment; since the appellate authority issued charge memo, the petitioner lost the opportunity of appeal; the petitioner needed to file review



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before the same authority and the review authority did not consider the infirmities in the enquiry; the petitioner being the Personal Assistant of a Government Department, his services are not covered under by-laws of the Society; hence the charges are outside the purview of the employment.

4. Mr.R.Ramanlal, the learned Additional Advocate General for the respondents, submitted as per Rule 9(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, if more than one person in different rank are involved in misconduct, the person who is in the higher rank alone can be issued with charge memo; in the present case Rule 9(a) is complied and hence the petitioner cannot have any grievance on that; in fact the petitioner has already filed a review petition before the Government and that has been rejected; having opted to file a review petition, the petitioner cannot now file a writ petition under Article 226 which is impermissible in law.

4.1. Attention of the Court was drawn to Annexure III of the charge memo and claimed that all the documents which are supposed to form part



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of the enquiry has been furnished to the petitioner. It is further submitted that the petitioner, with his own handwriting had acknowledged the fact that he had perused the copies of audit report, sale deed, etc. that have been provided by Personnel and Administrative Reforms (H2) Department on 17.03.2014; despite an opportunity was given to the petitioner to cross-examine the witnesses, the petitioner had not cross examined any of the witnesses; having not utilized the opportunity granted for cross-examination, the petitioner cannot now turn around and claim that he was not given with any fair opportunity at the time of enquiry.

4.2 The learned Additional Advocate General further submitted that the petitioner cannot claim any disparity in the matter of punishment for the obvious reason that President has already been convicted in a criminal case on the same set of allegation and he was already removed from service in some other disciplinary proceedings; so far as the Vice President is concerned, he was retired in the year 2006; since the Vigilance enquiry was pending and there was an inordinate delay in getting the report, the retirement of the Vice President had taken place in the meanwhile; as



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against the other persons, either charges are not proved or partly proved and one of the persons by name Mahendran died and hence charges cannot be issued against him.

5. As per the submission of the learned Additional Advocate General, the statement of witnesses and other materials, it is seen that the petitioner had acted as a kingpin for the entire scam in which plots have been sold to persons who are non-members of the society but who has got similar names of the members of the society. The petitioner who had not even opted to cross-examine the witnesses cannot state that fair opportunity was not given to him. For the best reasons known to the petitioner, he waived the opportunity given to him to cross-examine the witnesses.

6. As submitted by the learned Additional Advocate General, the gravity of the punishment is seem to be depending upon the involvement of the each of the person in the scam. It might be true that the petitioner have stood as a witness in the criminal proceedings against the President. But in the disciplinary proceedings, the witnesses in the records produced before



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the Enquiry Officer has made the petitioner as an important person involved in the scam. The petitioner claims that he stood as a witness for few documents and he did not play any major role in any of the fraudulent activities. But the materials on record would prove otherwise.

7. Of course there is a delay in initiating the enquiry proceedings but considering the magnitude of the scam, the investigation can be done by Vigilance Department. The delay cannot be found as purposeful or went against the interest of the petitioner. It is trite law that in the matter of disciplinary proceedings, this Court cannot assume the role of an appellate authority. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in the case of ***Union of India v. P. Gunasekaran*** reported in ***(2015) 2 SCC 610***, which reads as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative



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Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second Court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*



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13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- i. re-appreciate the evidence;*
- ii. interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- iii. go into the adequacy of the evidence;*
- iv. go into the reliability of the evidence;*
- v. interfere, if there be some legal evidence on which findings can be based,*
- vi. correct the error of fact however grave it may appear to be;*
- vii. go into the proportionality of punishment unless it shocks its conscience.”*

8. In the case on hand, the petitioner had not even challenged the evidence of department witnesses. The petitioner was fully alive of all the proceedings that is being conducted against him and the materials produced against him. At every stage of proceedings he was given with the fair opportunity and he was not put under any coercive circumstances. The impugned orders have been passed after appreciating the materials. Even if there are certain delays, the fact remains that the allegations against the



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petitioners and others are mainly on documentary proof and all the documents are kept intact. Hence, the petitioner cannot have any say that he was aggrieved due to any of the short comings in the disciplinary proceedings.

9. The learned counsel for the petitioner submitted that the charges issued to the petitioner is outside the purview of his employment. No doubt the petitioner is appointed as Personal Assistant to Home Department. However, he has been elected as one of the Directors of the Society. But the allegations in the charge memo contains the allegations which relate to the activities of the petitioner while he was performing his function as Director of the Society. Though he was not the employee of the society, the petitioner had acted on behalf of the society in his capacity as a Director of the Society.

10. In support of his above contention, the learned counsel for the petitioner relied on the judgment of this Court in ***Indian Express and***



Chronicle Press and M.C.Kapur reported in (1974) 4 Supreme Court

Cases 848 wherein it is held as under:

“ .. 8. It is true that according to the enquiry officer's findings charges with regard to defalcation of certain amounts and falsification of accounts, etc., had been found proved but that is not the matter on which any final decision was given or could be given by the Tribunal and those findings were only of the enquiry officer although it was observed that the enquiry had been conducted in a fair manner. In view of the findings of the Tribunal the charges which were found proved by the enquiry officer would not be covered even by clause (b) of the Standing Order 15(2). At any rate, on the finding of the Tribunal the order which was made was fully justified and we find no reason to interfere with it.”

11. However, the facts of the above judgment is applicable to its own case and the same is not applicable to the case on hand.

12. It is up to the respondents to consider the representation of the petitioner on mercy ground by considering the fact that the petitioner was not an accused in the criminal proceedings and also the delay involved and other punishments given. It is needless to state that even if a person is removed from service some of the terminal benefits like leave encashment, General Provident Fund can be disbursed to him. It is learnt that the



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respondents have not disbursed any of the above benefits so far.

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13. In view of the reasons stated above, these writ petitions are disposed by directing the respondents to consider the petitioner's representation on mercy grounds and pass appropriate orders and also disburse the terminal benefits like leave encashment, General Provident Fund, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

18.03.2024

Index: Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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Home Department,
Secretariat, Chennai – 9.
2. The Joint Secretary to Government,
Home (OP.II) Department,
Secretariat, Chennai – 9.
3. The Secretary Government,
Personnel and Administrative Reforms Department,
Secretariat,
Chennai – 600 009.
4. The Principal Secretary to Government,
Personnel and Administrative Reforms Department,
Secretariat, Chennai – 600 009.



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R.N.MANJULA ,J.

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