



W.P.No.3059 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 28.02.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.3059 of 2012

Chandravadhanan

.. Petitioner

Versus

1. The State of Tamil Nadu

Rep. by Secretary to Government,
Revenue Department,
St. George Fort,
Chennai - 600 009.

2. The Assistant Commissioner (Excise) /
Enquiry Officer,
Villupuram.

3. The District Collector,
Villupuram District.

4. The Revenue Divisional Officer,
Tindivanam Division,
Tindivanam,
Villupuram District.

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the records of the Revenue Divisional Officer, Tindivanam, the 4th respondent herein culminating in order No.Na.Ka.No.A3/412/2006, dated 10.01.2012 and quash the same and further direct the respondents to pay the arrears of salary by calculating the increments from December, 2005 to November, 2010 and other service benefits to the petitioner.

For Petitioner : Mrs.AL.Gandhimathi,
Senior Counsel
Asst. by Mr.L.Palanimuthu

For Respondents : Mr.Abishek Murthy,
Government Advocate

ORDER

This Writ Petition is filed seeking to quash the order of the fourth respondent, dated 10.01.2012 and to direct the respondents to pay the arrears of salary, by calculating the increments from December 2005 to November 2010 and other service benefits, to the petitioner.

2. The petitioner was appointed as a Village Administrative Officer in



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the year 1984. While so, on 05.03.2003, a charge memorandum, containing six charges, was issued to the petitioner. The petitioner submitted his explanation on 24.05.2003 denying the charges. The crux of the allegations against the petitioner is that there was dereliction of duty on his part in the proceedings relating to lands in S.No.45/5, Nadukuppam village admeasuring Hectares 1.06.5 Ares being assigned to ineligible persons. The explanation of the petitioner is that except for submitting a report, the decision to assign the land is only taken by the higher authorities and the Village Administrative Officer is not the deciding authority and he has not committed any mistake in the entire exercise.

3. The petitioner also requested copies of the documents relied upon in the Annexure to the charge memorandum. However, by G.O.Ms.No.29, dated 14.11.2005, after obtaining a report from the Enquiry Officer, punishment of increment cut with cumulative effect for five years was imposed on the petitioner. The petitioner challenged the said order of



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punishment by way of W.P.No.1051 of 2006 before this Court. By the order, dated 08.11.2010, this Court quashed the order of punishment on the finding that there is no proper opportunity given to the petitioner. The documents that were prayed for by him were not supplied and he was not permitted to examine any witness on his behalf and there is a lack of proper oral enquiry. This Court therefore set aside the order of punishment and remanded the matter back to the respondents with a direction to proceed from the stage of enquiry. It is essential to extract paragraphs Nos.12 and 13 of the said order which read as follows:-

" **12.** In the circumstances, the order passed on 14.01.2005 resulting in major punishment, hence, has to be set aside. Accordingly, the impugned order stands set aside. The respondents are directed to give an opportunity to the petitioner herein and start the proceedings from the stage wherein the illegality had crept in, namely, from the stage of enquiry; that the petitioner be granted an opportunity to examine himself as well as to let in evidence, apart from permitting the petitioner to peruse the records. The respondents shall furnish copies of the materials sought for by the petitioner. After conducting enquiry, it is open to the respondents to initiate such action, as it deems fit.

13. As already pointed out, as the charge memo was issued as early as 2003, the respondents shall complete the proceedings by holding an enquiry and



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passing further orders within a period of twelve weeks from the date of receipt of a copy of this order. It is hereby made clear that the petitioner shall render his cooperation without any default on his part and that there shall not be any postponing of enquiry on any account and that the time frame given by this Court shall be maintained strictly."

4. Thereafter, it seems that no further action was taken and the petitioner filed a Contempt Petition before this Court. Pending the Contempt Petition, notices were issued to the petitioner to attend the enquiry. The first date of enquiry was fixed on 19.12.2011 and notice in respect thereof was served on the petitioner on 15.12.2011. Instead of attending the enquiry, he sent a letter, in which, he stated that since the Contempt Petition filed by him is pending before this Court, he will not attend the enquiry and prayed for stopping the enquiry. Under the said circumstances, since the delinquent official refused to attend the enquiry, the Enquiry Officer returned the papers to the disciplinary authority with a letter requesting to pass orders based on the available records since the enquiry could not proceed.



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5. Based on the letter, the disciplinary authority considered the charge in detail, the explanation and the existing records including the report of the Enquiry Officer during the previous enquiry, dated 26.11.2004 and imposed the same punishment of increment cut for five years with cumulative effect. Aggrieved by the same, the present Writ Petition is filed.

6. *Mrs.AL.Gandhimathi*, learned Senior Counsel for the petitioner would submit that firstly, when this Court had made a finding that even the documents requested by the petitioner have not been supplied to him and a detailed opportunity should be given to him in the enquiry, without even furnishing any document, when the Contempt Petition was pending, only to avoid the Contempt Petition, the petitioner was called for the enquiry. When the petitioner requested for postponement of enquiry, the respondents ought to have directed the petitioner to come for further enquiry or should have even proceeded with the enquiry *exparte*. Without doing either of the same, they simply relied upon the earlier enquiry report which is already set aside



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by this Court and imposed the impugned punishment. Therefore, she would pray that the impugned order of punishment cannot be sustained.

7. Per *contra*, Mr Abishek Murthy, learned Government Advocate for the respondents would submit that by the order, dated 08.11.2010 in W.P.No.1051 of 2006, this Court had directed the petitioner to co-operate with the enquiry. The petitioner has willfully and deliberately not co-operated with the enquiry and had stated that the Contempt Petition filed by him is pending before this Court. On the one hand, after filing the Contempt Petition for non-compliance i.e., for not conducting the second enquiry, the petitioner also requested to stop the enquiry and did not attend the enquiry. Under the said circumstances, the Enquiry Officer returned the papers to the disciplinary authority with a note that he is not in a position to proceed further with the enquiry and already materials are available on record to hold that the charges are proved. The disciplinary authority, thereafter, once again perused the entire records, analysed the materials on record and came



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to the conclusion that the charges are proved and imposed the punishment and therefore, after failing to participate in the enquiry, the petitioner has no *locus standi* to challenge the same.

8. I have considered the rival submissions made on either side and perused the material records of the case.

9. In this case, the rights of the parties have already been decided by the earlier order. The operative portion of the earlier order paragraphs Nos.12 and 13 are extracted above. A perusal of the same, it would be clear that a detailed opportunity has to be given to the petitioner from the stage of the enquiry. The earlier order categorically states that the respondents have to proceed from the stage of the enquiry. Therefore, the authorities cannot rely upon the earlier enquiry report and the conclusion reached therein even if the petitioner remained *exparte* in the present enquiry.



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10. I do agree with the learned Government Advocate that it was not correct on the part of the petitioner to have asked for postponement of the enquiry or in the teeth of the direction issued to participate in the enquiry, by protracting the matter and not participating in the enquiry. Be that as it may, having appointed an Enquiry Officer, if the petitioner had not attended the enquiry, the Enquiry Officer should have proceeded *exparte* and given the finding. Based on that fresh enquiry report, a second show-cause notice ought to have been given to the petitioner and only thereafter, the punishment could have been imposed by the respondents. In the absence thereof, once again the respondents committed a procedural flaw, on account of which, the impugned order of punishment cannot be sustained.

11. In view thereof, this Writ Petition is disposed of on the following terms:-

(i) The impugned order of punishment bearing reference

Na.Ka.No.A3/412/2006, dated 10.01.2012 is set aside;



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(ii) As directed in the earlier Writ Petition in W.P.No.1051 of 2006, the respondents shall once again proceed from the stage of enquiry;

(iii) Within one week from the date of receipt of a copy of this order, the petitioner shall submit a fresh request of documents, if any, required by him and the same, if available on the files, shall be furnished to the petitioner within one week thereafter;

(iv) An Enquiry Officer, in an appropriate cadre, may be appointed to conduct the enquiry afresh;

(v) Upon receipt of notice from the Enquiry Officer, the petitioner shall attend the enquiry without fail. The enquiry shall as far as possible be conducted on a day-to-day basis and completed within four weeks;

(vi) If the petitioner does not attend the enquiry, it will be open for the Enquiry Officer to set the petitioner *exparte* and record *exparte* evidence necessary to arrive at any finding and render the findings according to the evidence on record;

(vii) After conducting a contested enquiry or an *exparte* enquiry, the



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Enquiry Officer shall submit a report to the disciplinary authority who thereafter, depending on the report, shall issue a second show-cause notice afresh and decide the matter following the Tamil Nadu Government Servants (Discipline and Appeal) Rules;

(viii) Until such completion of the disciplinary proceedings, the petitioner is deemed to be under suspension, however, will not be entitled to any subsistence allowance;

(ix) There shall be no order as to costs.

28.02.2024

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The State of Tamil Nadu

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<https://www.mhc.tn.gov.in/judis>



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