



W.P.No.32568 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.P. No.32568 of 2012**

L.Vijayan  
Sub-Inspector of Survey  
O/o. The Special Tahsildar,  
Town Settlement, Taluk Office,  
Arani, Thiruvannamalai District.

... Petitioner

- Vs -

1.The Principal Secretary and Commissioner  
Survey and Settlement, Chennai-600 005.

2.Regional Deputy  
Director of Survey and Settlement,  
Chennai-5.

3.Assistant Director of Survey and Settlement,  
Thiruvannamalai.

... Respondents

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India,  
praying to issue a writ of Certiorari calling for the records relating to the 1<sup>st</sup>  
Respondent proceedings in Na.Kha.La1/28525/12 dated 08.09.2012 and  
quash the same.

For Petitioner : Mr.K.Venkataramani  
for Mr.M.Muthappan



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For Respondents : Mr.S.John J.Raja Singh  
Additional Govt. Pleader (for R1 to R3)

### **ORDER**

The instant writ petition has been filed seeking for a relief of writ of certiorari to quash the proceedings dated 08.09.2012 in Na.Kha.La1/28525/12.

2. The learned counsel for the petitioner would vehemently submit that on 30.07.2010, the disciplinary authority issued an order to the petitioner imposing punishment of stoppage of increment for a period of 6 months without cumulative effect. The petitioner has taken the matter by way of an appeal before the appellate authority. The appellate authority has set aside the punishment and remanded the matter back to the disciplinary authority. Once again, the disciplinary authority imposed a punishment of stoppage of increment for a period of 6 months with cumulative effect. Against which, once again an appeal was preferred by the petitioner wherein the appellate authority has modified the punishment to censure.

3. The learned counsel for the petitioner would vehemently submit that the Government has *suo moto* reviewed the order passed by the authority and



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the Head of the Department enhanced the punishment by restoring the punishment imposed by the disciplinary authority *qua* withholding of stoppage of increment cumulatively for a period of 6 months.

4. The main contention of the learned counsel for the petitioner is under Rule 36 of the Tamil Nadu Civil Services Discipline and Appeal Rules whenever the Head of the Department *suo moto* reviewed the punishment and the order of punishment is enhanced, there is a mandatory duty cast upon the reviewing authority to issue a notice to the employee, whereas in the present case revisional authority did not give any notice. Therefore, the learned counsel would contend that the impugned *suo moto* review is liable to be quashed on the ground of want of notice.

5. Per contra, the learned counsel for the Respondents would vehemently contend that although reference is made to Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules regarding serving of notice before enhancement of punishment, however, as per sub clauses (4) to (8) to Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules no question of issuance of notice to the delinquent employee would arise. It is



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further contended that the order of reviewing authority is ultimately resulted in restoring the order of the disciplinary authority and cannot be construed as enhancement of punishment.

6. I have given my anxious consideration to the submissions made on either side.

7. The short point to be decided is whether the Head of the Department while reviewing the order of punishment by invoking power under Rule 36 Tamil Nadu Civil Services (Discipline and Appeal) Rules, is right in enhancing the punishment without issuing notice to the employee.

8. As rightly contended by the learned counsel for the petitioner in the appeal, the punishment of stoppage of increment for a period of 6 months without cumulative effect has been modified as Censure. It appears that the reviewing authority vide order dated 08.09.2012 *suo moto* reviewed and enhanced the punishment to stoppage of increment for a period of 6 months with cumulative effect. Admittedly, the reviewing authority did not give any notice. At this juncture, it is relevant to refer to Rule 36 of the Tamil Nadu



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Civil Services (Discipline and Appeal) Rules:

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**“36. REVISION :**

*(1) Notwithstanding anything contained in these rules -*

*(i) the State Government; or*

*(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or*

*(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or*

*(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order ; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -*

*(a) confirm, modify or set aside the order; or*

*(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or*

*(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or*

*(d) pass such other orders as they or it may deem fit;*

***Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)\*, (vi), (vii) and (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, and if an inquiry under sub-rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary:***

*\*(Vide G.O.Ms.No.117, P&AR(N) Department, dated 28.9.2011)*

*Provided further that no power of revision shall be exercised by the head of the department, unless -- (i) the authority which made the order in*



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*appeal, or (ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him. (2) No proceeding for revision shall be commenced --*

*(a) Where no appeal has been preferred, before the expiry of the period of limitation for an appeal, or*

*(b) Where an appeal has been preferred, before the disposal of such appeal.*

*(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules. “*

*(emphasis supplied)*

9. As per the above provision, the reviewing authority is directed to issue notice only when the punishment enhanced as per sub clauses (IV) to VIII of Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and the proviso to the above Rule, does not mandate the authority to issue notice to the delinquent employee in respect of other punishment i.e., the punishment which the revisional authority ordered qua withholding of increment with cumulative effect. Thus, the impugned order is not in contravention to the aforesaid rules. Therefore, the instant writ petition is devoid of merits and liable to be dismissed. In the result, the writ petition stands dismissed. No costs.

**12.09.2024**

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

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To:

- 1.The Principal Secretary and Commissioner  
Survey and Settlement, Chennai-600 005.
- 2.Regional Deputy  
Director of Survey and Settlement,  
Chennai-5.
- 3.Assistant Director of Survey and Settlement,  
Thiruvannamalai.



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**C.KUMARAPPAN, J.**

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