



W.P.No.11966 of 2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM

**THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER
KUMAR**

W.P.No.11966 of 2018

and W.M.P.No.13950 of 2018

R.Manohar

Land Surveyor,

S/o.Ramaiah.

...Petitioner

Vs.

1.The Secretary to Government,

Revenue Department,

Government of Tamil Nadu,

Secretariat, Chennai-600 009

2.The Special Commissioner,

and Director of Survey and Land records,

Chepauk

Chennai-600 005.

3.The Zonal Deputy Director,

Land Survey and Land Records,

Chepauk,

Chennai-600 005.

4.The Assistant Director of Land Survey and Land records,



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Cuddalore,

Cuddalore- 607 001.

5.The Inspector of Land Survey (Maintenance)

And Planning Permission Authority

for Patta Pass Book (2),

Cuddalore-607 001.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, praying to call for the records relating to the order dated 13.02.2015 in G.O.Ms.(1D) No.39, Revenue [Ni.A-3(2) Department, on the file of the 1st respondent, confirming the order dated 30.08.2007, passed in Na.Ka.Gna.2/17088/2006 (Ni.a), on the file of the 2nd respondent herein, Affirming the order dated 19.01.2006, passed in Na.Ka.la1/38218/2005 Ni.a) on the file of the 2nd respondent herein, confirming the order dated 21.07.2005, passed in proceedings in Na.Ka.a3/1482/2005, on the file of 3rd respondent, and to direct the 4th respondent to reappoint the petitioner in service, as Land Surveyor, in the office of the Inspector of Land Survey (Survey Committee), District Land Survey, District Land Survey, Cuddalore, within a time frame as may be fixed by this Court.

For Petitioner : M/s.P.Raja

For Respondents : Mrs.V.Yamunadevi
Special Government Pleader



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ORDER

While the petitioner was working as Land Surveyor in the office of the 5th respondent, he was subjected to disciplinary proceedings under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on three charges by issuing charge memo dated 30.07.2000. The said three charges reads as under:

குற்றச்சாட்டுகள்

1. ஜூலை 99, ஆகஸ்டு 99, செப்டம்பர் 99 மற்றும் அக்டோபர் 99 மாத நாட்குறிப்பினை சமர்ப்பிக்கப்படுகிறது.
2. 1.11.99 முதல் விடுப்பு மனு சமர்ப்பிக்காமல் பணியிலிருந்து தன்னிச்சையாக நின்றது.
3. அரசு அன்றாட நிர்வாகப்பணிக்கு குந்தகம் விளைவித்தது.

2.In response to the charge memo dated 30.07.2000, the petitioner submitted his explanation and thereafter, the regular enquiry was conducted as required under rule 17(b) of the said Rules and accordingly, an order was passed in proceedings in Na.Ka. No.AA(1)/13600/99 dated 28.03.2002, imposing punishment of stoppage of increment for next six months period with cumulative effect.



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3. Against the said order dated 28.03.2002, the petitioner preferred an appeal before the 3rd respondent, who having entertained the appeal filed by the petitioner passed an order dated 29.01.2003. Thereafter, the 4th respondent submitted proposal for regularizing the period of absence from duty i.e., from 01.11.1999 to 30.01.2001 to the 2nd respondent. But the 2nd respondent, instead of considering the said proposals submitted by the 4th respondent, suo moto passed an order dated 23.02.2005 setting aside the order of punishment dated 28.03.2002, and another order of punishment, dated 27.08.2003 while requiring the 3rd respondent herein to revise the order of punishment under Rule 36 (1)(4) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Accordingly the 3rd respondent, through proceedings No.Na.Ka.No.A(3)/1482/2005 dated 21.07.2005, imposed the punishment of removal from service under Rule 17(b) of said Rules. Aggrieved by the same, petitioner filed an appeal before the Additional Director of Survey and the said appeal was rejected by an order dated 19.05.2006. Though, the petitioner filed second appeal before the 2nd respondent, the same was also rejected by an order dated 30.08.2007.



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4. Aggrieved by the said order, the petitioner further filed a revision challenging the said order, but the same was finally confirmed by the 1st respondent, through impugned Government Order vide G.O.M.S.No.1 (D) No.39 Revenue Department, dated 13.02.2015. It is aggrieved by the said order dated 13.02.2015, confirming the previous orders passed by the other respondents, namely 21.07.2005, 19.01.2006 and 30.08.2007, the petitioner approached this Court by filing the present writ petition.

5. The petitioner herein is stated to be a person suffering from physical disability to the tune of 70%.

6. Though submissions have been made elaborately by the learned counsel on either side, this Court does not deem it necessary to deal with the matter elaborately for the reason that this Court is satisfied that the 2nd respondent exercised the power which is not otherwise conferred upon him under law, which resulted in passing the impugned orders. The



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2nd respondent passed the order in proceedings Na.Ka.N2/41811/2004-(2) (LS), dated 23.02.2005 setting aside the orders passed by the 4th respondent and directed the 3rd respondent to revise the order dated 23.02.2005 under Rule 36 (1)(iv) of Rules.

7.Pursuant to the said direction issued by the 2nd respondent, through order dated 23.02.2005, the 3rd respondent purported to be in exercise of the power under Rule 36 of the said Rules, passed the impugned order in proceedings Na.Ka.No.A3.1482/05 dated 21.07.2005 removing the petitioner from service. This Court, after having considered the matter on an earlier occasion the *prima facie* felt that the 3rd respondent herein has no such authority to exercise the power under Rule 36 1(iv) of the said Rules, passed the following docket order on 29.06.2024 which reads as hereunder:

"Prima facie, it appears that the Special Commissioner, Land Survey and Settlement has no power to invoke Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which is the basis for passing the impugned order in this Writ Petition.

2.Hence, learned Government



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Advocate is directed to ascertain and inform this Court in exercise of what power, the order dated 23.02.2005 was passed by the said authority by the next date of hearing.

3.Post the matter on 02.07.2024 under the caption "For Orders."

8.In response to the above said docket order, Mrs.V.Yamunadevi, learned Special Government Pleader, brought to the notice of this Court that the 2nd respondent has no authority under the Rules to pass an order dated 23.02.2005 and also stated that there is no other general or special order issued by the State Government, specifying the 3rd respondent herein as the authority to exercise the power of revision as conferred under Rule 36 of the said Rules. Hence, the order passed by the 2nd respondent requiring the 3rd respondent to exercise the power of revision itself, cannot be said to be an order passed with any legal authority. The 2nd respondent, while issuing the order dated 23.02.2005 has not specified the source of power for passing such an order, requiring the 3rd respondent to invoke Rule 36 of the said Rules. Even assuming that the 2nd respondent herein has exercised the power of



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revision in terms of Rule 36 (1) (ii) of the said Rules, such power can be exercised only within the period of time stipulated under Clause 3 of Sub Rule of 1 Rule 36. In terms of Clause 3, such power of Revision can be exercised only by the head of the Department, within a period of six months from the date of order proposed to be revised. The original order i.e., sought to be revised is dated 28.03.2002 and the period of six months prescribed under Clause 3 of Sub Rule 1 of Rule 36, was expired long back by 27.09.2002. But, the 2nd respondent passed the order directing for the revision of the said order through proceedings dated 23.02.2005. Thus, the proceedings dated 23.02.2005 which is the basis for passing of the impugned orders itself, is found to be without any power or authority, consequently the order passed by the 3rd respondent also cannot be said to be an order passed with any authority.

9. In the light of the above, the order passed by the 3rd respondent in proceedings Na.Ka.No.A3.1482/05 dated 21.07.2005 is liable to be declared as one that is passed without any legal entitlement or Authority and all the other orders passed in appeal and revision filed



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there-against, are also liable to be set aside. Accordingly, the impugned order dated 21.07.2005, as confirmed by the orders dated 19.01.2006, 30.08.2007 and G.O.Ms.No.1 (D) 39 dated 13.02.2005, are set aside.

10.Coming to the consequential relief that can be granted in favour of the petitioner, needs to be considered by taking into consideration the fact that the petitioner has also attained the age of superannuation on 31.01.2018 itself. In this context, it is necessary to notice that the petitioner herein having, accepted the proceedings in Na.Ka.N2/41811/2004-(2) (LS) dated 23.02.2005, issued by the 2nd respondent, had participated in all consequential proceedings resulting in passing of the impugned order. Thus, the proceedings dated 23.02.2005 has become final. Further as the petitioner was already removed from service through proceedings dated 21.07.2005, and the appeal and revisional remedies were also exhausted by 13.02.2015, but the petitioner approached this Court only on 20.04.2018.

11.Considering the overall facts and circumstances, especially the fact that the petitioner has approached this Court with delay against the order that was passed by the 1st respondent in G.O.Ms.(1D).No.39,



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dated 13.02.2015 i.e., after lapse of 3 years, this Court is of the considered view that the petitioner shall not be entitled for payment of any backwages. Further, consequent upon setting aside of the impugned orders, the petitioner shall be deemed to have been continued in service till he attained the age of superannuation on 31.01.2018 and accordingly, the respondents are directed to settle all the terminal benefits to the petitioner by treating the petitioner as in service till 31.01.2018, and pay all the terminal benefits, as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands partly allowed. No costs. Consequently connected miscellaneous petition is closed.

02.07.2024

vsn

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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MUMMINENI SUDHEER KUMAR, J.

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