



W.P.No.22003 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.12.2023
Pronounced on	08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22003 of 2023
and
W.M.P.No.21368 of 2023

B.Sivapriya

...Petitioner

Vs.

- 1.Government of Tamilnadu,
Rep. by its Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai – 600 009.
- 2.Inspector General of Registration,
No.100, Santhome High Road,
Mandavellipakkam, R.A.Puram,
Chennai – 600 028.
- 3.The Inquiry Officer,
District Registrar (Admin),
In the cadre of Assistant Inspector General,
O/o. District Registrar,
South Chennai, Nandanam,
Chennai – 600 035.



W.P.No.22003 of 2023

4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorari, to call for the records of the impugned proceedings of the 1st respondent issued in G.O.Ms.No.65, Commercial Taxes and Registration Department, H1, dated 26.06.2023 and quash the same as illegal, arbitrary, contrary to law, unconstitutional and in violation of principle of natural justice.

For Petitioner	: Mr.Ma.Gowthaman for Mr.Velu Karthikeyan
For R1 to R3	: Mr.B.Vijay, Additional Government Pleader
For R4	: Mr.R.Bharanidharan, Standing Counsel

ORDER

Heard Mr.Ma.Gowthaman, learned counsel appearing for the petitioner, Mr.B.Vijay, learned Additional Government Pleader for the respondents 1 to 3 and Mr.R.Bharanidharan, learned standing counsel for the 4th respondent.



W.P.No.22003 of 2023

2. The petitioner herein, while serving as a District Registrar in Joint-I Saidapet Sub-Registrar Office, was implicated of having committed criminal offences through registration of 6 First Information Reports (FIR) by the Police authorities. On 16.02.2018, the 1st respondent had placed her under suspension, with effect from 13.02.2018, when she was arrested in connection with one of the FIRs. Subsequently, a charge memo dated 09.11.2018 came to be issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules'), levelling a charge that while she was serving as a Sub-Registrar at Virugambakkam Sub-Registrar Office, she had registered 45 documents involving Government lands and thereby committed a misconduct of acting in an irresponsible manner, detrimental to the interest of the Government. The petitioner had submitted her explanations on 21.07.2020, 24.07.2020 and 29.12.2020. Not being satisfied with the explanations, an Inquiry Officer, namely S.Prabhakar, Deputy Inspector General (DIG) of Registration, was appointed on 19.11.2019. However, he was replaced with a new Inquiry Officer, namely V.A.Anand, DIG of Registration on 28.01.2020. Subsequently, one D.Swaminathan was appointed as the 3rd Inquiry Officer on 19.03.2020. Ultimately, this appointment was also cancelled and in his



W.P.No.22003 of 2023

place, Tmt. S.Satyapriya, Assistant Inspector General (AIG) of Registration was appointed on 03.06.2020. On completion of the inquiry, it was held that the petitioner had illegally registered 44 documents, except Document No.6354/2010, through an inquiry report dated 31.01.2023. On the strength of the proven charges, the opinion of the Tamil Nadu Public Service Commission was sought for. Ultimately, through the impugned Government Order in G.O.Ms.No.65, Commercial Taxes and Registration Department, H1, dated 26.06.2023, the petitioner was imposed with a punishment of dismissal from service. Challenging the same, the petitioner has preferred the present Writ Petition. Pending the Writ Petition, she had also given a representation to the Principal Secretary of the Commercial Taxes and Registration Department, Chennai, seeking for cancellation of the order of punishment.

3. The learned counsel for the petitioner assailed the order of punishment through the following grounds:-

(a) Since the Inquiry Officer, who submitted the final report belongs to the cadre of the District Registrar, which is the same cadre as that of the petitioner, she had no authority to conduct the inquiry.



W.P.No.22003 of 2023

(b) Pursuant to the final inquiry report, no show cause notice calling for her explanation on the findings of the Inquiry Officer was given.

(c) He further submitted that, prior to the appointment of Tmt.Satyapriya as Inquiry Officer, 3 other Inquiry Officers were appointed, who had all recused themselves to act as Inquiry Officers. Even Tmt.Sathyapriya had sent a letter on 03.07.2022, stating she was responsible for collecting the incriminating materials relating to 45 documents, which were the basis for framing of the charges and hence, it would not be appropriate for her to conduct the inquiry. In view of this, her appointment and continuation of the inquiry would be biased. This aspect was also brought to the notice of the Disciplinary Authority through her duly acknowledged representation dated 03.11.2020.

(d) The documents in question were already subjected to audit of previous years and when the DIG of Registration has ordered for registration of the said documents, in concurrence with the Revenue Department, the charges by themselves are baseless.

(e) According to the learned counsel, in the Audit Report dated 18.05.2013, based on which charges were levelled against the petitioner, one other Sub Registrar, namely Raghumoorthy, who was also alleged to have



W.P.No.22003 of 2023

registered documents relating to Government lands, but was not proceeded with departmental action and therefore, the order of punishment is liable to be set aside on the ground of discrimination.

(f) Since the registration of the subject documents were of the year 2010, framing of the charges in the year 2018, after 8 years and the delay in passing the final order of punishment on 26.06.2023, after more than 5 years, has caused serious prejudice to the petitioner and therefore, the delay in initiation of the disciplinary proceedings, as well as its completion, would be fatal to the Disciplinary Authority.

4. Countering these submissions, the learned Additional Government Pleader raised the following objections:-

(a) As a first preliminary objection, he would submit that when the petitioner has invoked the alternate remedy of filing an appeal petition on 14.08.2023 and final orders have been passed therein, the present Writ Petition seeking for setting aside the same order of punishment is not maintainable, for which purpose, he placed reliance on the decisions of the Hon'ble Supreme Court in the case of *State Bank of India Vs. Narendra Kumar Pandey* reported in (2013) 2 SCC 740 and in the case of *Coal India*



W.P.No.22003 of 2023

Limited Vs. Anand Sha reported in ***(2011) 5 SCC 142***.

WEB COPY

(b) The second preliminary objection is that the petitioner has suppressed material facts of certain disciplinary proceedings initiated against her earlier, as well as her involvement in criminal cases and therefore, the Writ Petition is liable to be dismissed on the ground of suppression of material facts. In this connection, he placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***Prestige Lights Limited Vs. State Bank of India*** reported in ***(2007) 8 SCC 449*** and in the case of ***Kishore Samrite Vs. State of Uttar Pradesh and Others*** reported in ***(2013) 2 SCC 398***, for the proposition that the person seeking equity should come out with clean hands, clean mind, clean heart and clean objective.

(c) He also clarified that the Inquiry Officer, namely Tmt.Satyapriya, was holding the post of AIG of Registration, which is a higher post to that of the petitioner's post of District Registrar, and therefore, there is no illegality in her appointment.

(d) He denied the existence of the letter of the Inquiry Officer dated 03.07.2020 (for which purpose, he produced the original file) and further stated that the Inquiry Officer did not collect any incriminating materials against the petitioner.



WEB COPY

(e) The earlier audit report approving the registration of 45 documents cannot be treated as a clean chit for the petitioner's misconduct, since the Audit Committee had not gone into the question of fraudulent registration of documents relating to Government lands, but has only considered the issue of stamp duty and registration fee charged on these instruments.

(f) With regard to the recusal sought for by the Inquiry Officer, he denied the letter written by Tmt.Satyapriya on 03.07.2020 and stated that the Inquiry Officer has not collected incriminating materials in connection with the charge memo. He also submitted that since the petitioner had participated in the inquiry proceedings after her appointment and has not raised any objection for continuation of the Inquiry Officer, or questioned the Inquiry Officer's appointment in the grounds of the appeal petition dated 14.08.2023, she is precluded from raising these points before this Court. For such a proposition, he placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *State Bank of India and Others Vs. Bidyut Kumar Mitra and Others* reported in (2011) 2 SCC 316, *Sarva Uttar Pradesh Gramin (SUPG) Bank Vs. Manoj Kumar Sinha* reported in (2010) 3 SCC 556 and *H.V.Nirmala Vs. Karnataka State Financial Corporation and Others* reported in (2008) 7 SCC 639.



WEB COPY

(g) With regard to the service of the inquiry report, he had produced the original file relating to the inquiry, in which a returned postal registered cover, with an endorsement 'unclaimed', was found and therefore, the second show cause notice is deemed to have been served on the petitioner, in view of the presumption under Section 27 of General Clauses Act, 1897.

(h) With regard to the delay in initiation of the disciplinary proceedings, he submitted that the petitioner has not pleaded as to how any prejudice was caused to her with regard to the delay in conclusion of the proceedings. He further submitted that only after a complaint was made by the general public pointing out the illegalities committed by the petitioner of registering documents relating to Government lands, disciplinary action was initiated immediately and thus, there is no delay in initiation.

(i) With regard to the ground of discrimination, he produced copies of 8 charge memos levelled against R.Gurumurthy and submitted that action was also initiated against him.

5. I have given my anxious consideration to the submissions made by the respective counsels.



6. As a preliminary objection, the learned Additional Government Pleader submitted that, since the petitioner has filed an appeal petition on 14.08.2023, as against the impugned order of dismissal dated 26.06.2023, the Writ Petition is not maintainable, in view of the alternate remedy of appeal, for which purpose, he placed reliance on the cases of *Narendra Kumar Pandey (supra)* and *Coal India Limited (supra)*.

7. Under Rule 14(a)(2)(v) of the Rules, the authority, which may impose the penalty of dismissal from service, shall be the appointing authority or any higher authority. In the instant case, the petitioner was appointed by the Government and hence, the impugned order was also passed by the Government through G.O.Ms.No.65, dated 26.06.2023. The petitioner had preferred a Writ Petition on 11.07.2023 and while the Writ Petition was pending, he had given a representation on 14.08.2023 to the Government, seeking for cancellation of the dismissal order. This representation cannot be treated to be an appeal, when apparently, the Government has passed the order and no appeal remedy has been provided for in the Rules, as against the order passed by the Government.



WEB COPY

8. Assuming that the representation dated 14.08.2023 is treated to be a review petition, the provision for preferring such a review is provided under Rule 20, in the following manner:-

20.(1) A member of a State Service or a member of a Subordinate Service including a person who has ceased to be a member of such service in whose case the Government have passed original orders, shall be entitled to submit, within a period of two months from the date on which the order was communicated to him, a petition to the Government for review of the orders passed by them on any of the grounds specified below:-

(a) that the order was not passed by the competent authority;

(b) that a reasonable opportunity of defending himself was not given;

(c) that the punishment is excessive or unjust;

(d) discovery of new matter or evidence which the appellant alleges and proves to the satisfaction of the Government was not within his knowledge or could not be adduced by him before the order imposing the penalty was passed;

(e) evident error or omission such as failure to apply the Law of Limitation or an error of procedure



apparent on the face of record; Provided that the Government may, in its discretion, condone any delay in submitting the petition for review within the said period of two months.

(2) The petition for review which does not satisfy any of the above grounds shall be summarily rejected.

(3) Where an authority other than the State Government, by virtue of sub-rule (2) of rule 12, has passed orders imposing a penalty on a member of the State Service, such member shall be entitled to appeal to the Head of Department, if the orders were passed by an authority subordinate to the Head of Department or to the Government, if the orders were passed by the Head of Department.

9. A bare reading of the aforesaid Rule would indicate that, preferring a review petition is only a privilege granted to the Government servant and is not a mandatory alternate remedy. The phrase employed under Rule 20 is that the Government servant “shall be entitled to submit” a review petition. Even such a privilege is limited to only certain grounds on which a review petition



W.P.No.22003 of 2023

can be preferred. The grounds provided therein are, when the competence of the authority is questioned or principles of natural justice are violated or the punishment is disproportionate to the charges or discovery of new evidence or evidence which could not be adduced earlier for justifiable reasons or the law of limitation has been violated or error of procedure is apparent on the face of the record. Apart from these exceptions under which a Government servant may exercise his/her option to file a review petition, no other grounds are permissible. As a matter of fact, Sub-rule 2 of Rule 20 provides that, when a review petition is preferred on any other ground, apart from the grounds provided under Rule 20(1)(a) to (e), the petition itself is liable to be summarily rejected.

10. In the background of this provision, a perusal of the representation given by the petitioner, dated 14.08.2023, would reveal that she had questioned the final report of the Inquiry Officer and had attempted to justify her defence on its own merits. In other words, the grounds raised therein are in the nature of a representation, which can never be construed to be a review petition. Thus, the preliminary objection raised by the respondents, with regard to the maintainability of the Writ Petition, stands rejected.



W.P.No.22003 of 2023

WEB.COM

11. The learned Additional Government Pleader had relied upon the cases of **Narendra Kumar Pandey (supra)** and **Coal India Limited (supra)**, seeking for dismissal of the Writ Petition, on the ground that the petitioner has not availed the alternate remedy of appeal. The law that Article 226 of the Constitution of India cannot be invoked to challenge an order, when the statutory rules provide for an effective appeal remedy, has been well settled in a catena of decisions. However, since it is already found in the present case that there is no provision for an appeal against the order passed by the Government and the representation dated 14.08.2023 is not a review petition in view of Rule 20(2), since the grounds raised by the petitioner do not fall under any of the exceptions provided for under Rule 20(1), the decisions relied upon by the learned counsel for the petitioner is of no avail.

12. The second preliminary objection raised is that the petitioner has suppressed her involvement in criminal cases in the present Writ Petition, which are material facts and thus, in view of the decisions in **Prestige Lights Limited (supra)** and **Kishore Samrite (supra)**, the Writ Petition is also liable to be dismissed *in limine*.



WEB COPY

13. This preliminary objection is apparently on a misconception of facts, since the petitioner had disclosed her involvement in 6 criminal cases, which have been registered, in paragraphs 8 to 13 of her affidavit filed in support of the present Writ Petition. Out of these 6 FIRs, 4 have been quashed by orders passed by this Court in petitions filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.). On the remaining FIRs, action has been dropped in FIR No.294/2018 and 1 FIR is pending and these details have also been clearly spelt out in her affidavit. This apart, the copies of the Court orders, quashing the FIRs, have also been produced before this Court in the typed set of papers. Apparently, when there are no suppression of facts, the decisions relied upon by the learned Additional Government Pleader in ***Prestige Lights Limited*** and ***Kishore Samrite (supra)***, does not require consideration.

14. The learned counsel for the petitioner pointed out two procedural irregularities. Firstly, he had questioned the authority of the Inquiry Officer, on the ground that the petitioner held the same cadre of a District Registrar, which position the Inquiry Officer also held. This seems to be a factual misconception. As pointed out by the learned Additional Government Pleader,



W.P.No.22003 of 2023

the Inquiry Officer, namely Tmt.Satyapriya, was holding the post of AIG of Registration, which fact is revealed in her appointment order as Inquiry Officer dated 03.06.2020 itself. When the post of AIG of Registration is a higher post than the post of District Registrar, her authority to act as an Inquiry Officer cannot be questioned.

15. The second irregularity pointed out was that, after the final report was passed, a second show cause notice was not given to the petitioner herein to render her explanation. This ground also seems to be a factual misconception. I had perused the original records pertaining to the inquiry proceedings, wherein it was found that the second show cause notice appears to have been sent through a registered postal cover to the petitioner's last known address and the same has also been returned with an endorsement “unclaimed”. The returned cover, with such an endorsement, is deemed to be a proper service of notice, in view of the presumption under Section 27 of General Clauses Act, 1897. Accordingly, the first two grounds raised by the learned counsel for the petitioner, touching upon the procedural irregularities, cannot be sustained.



W.P.No.22003 of 2023

16. The third ground raised by the petitioner is that the Inquiry Officer, namely Tmt.Satyapriya, had sent a letter on 03.07.2020 to recuse herself from acting as an Inquiry Officer, since she was responsible for collecting incriminating materials against the petitioner, which was the basis for framing of the charges. To such a submission, the learned Additional Government Pleader denied the receipt of the letter dated 03.07.2020 and further submitted that she had not collected any incriminating materials in connection with the charges levelled against the petitioner. He also placed reliance on the decisions in the cases of ***Bidyut Kumar Mitra, SUPG Bank and H.V.Nirmala's case (supra)*** and submitted that when the petitioner has not raised any objection with regard to the appointment of the Inquiry Officer and had participated in the inquiry and had also not raised such a ground in her appeal, she is precluded from raising these grounds before this Court.

17. As per the charge memo dated 09.11.2018, the charge against the petitioner is that she is alleged to have illegally registered 45 documents in respect of the Government lands, detrimental to the interest of the Government. Pursuant to the charge memo, three Inquiry Officers were appointed on 19.11.2019, 28.01.2020 and 19.03.2020. However, the



W.P.No.22003 of 2023

appointment of all these Inquiry Officers were cancelled and ultimately, Tmt.S.Satyapriya, AIG of Registration was appointed as the Inquiry Officer on 03.06.2020.

18. It is claimed by the petitioner that on 03.07.2020, Tmt.Satyapriya, Inquiry Officer, had addressed a letter to the Inspector General of Registration, Chennai, stating that while she was holding the post of Sub-Registrar at Virugambakkam, she had dealt with and prepared incriminating documents, relating to the petitioner's charges of irregularities in registering all the Government lands and expressed her apprehension that it would be improper for her to conduct the inquiry and therefore had sought for permission to recuse herself from acting as an Inquiry Officer. This duly signed letter dated 03.07.2020 of the Inquiry Officer is reproduced below:-



W.P.No.22003 of 2023

WEB COPY

478

03.07.2020

சென்னை - 28.

அனுப்புநர்:

திருமதி.ச.சத்தியபிரியா,
உதவிபதிவுத்துறைத்தலைவர்,
(கணினிமையமாக்கல்)
பதிவுத்துறைத்தலைவர் அலுவலகம்,
பதிவுத்துறை,
சென்னை - 28.

பெறுநர்:

பதிவுத்துறைத்தலைவர் அவர்கள்,
பதிவுத்துறைத்தலைவர் அலுவலகம்,
பதிவுத்துறை,
சென்னை - 28.

அம்மையர்,

பொருள்:

பொதுப்பணி - பதிவுத்துறை திருமதி.பா.சிவப்பிரியா
மாவட்டப்பதிவாளர் (தற்காலிக பணிநீக்கம்)
தமிழ்நாடு குடிமைப்பணி (ஒழுங்கு மற்றும்
மேல்முறையீடு) விதிகளில் விதி 17(b)-ன் கீழ்
விசாரணை அலுவலராக நியமனம் செய்தது
தொடர்பாக - விவரம் தெரிவித்தல் - குறித்து.

பார்வை:

- 1) பதிவுத்துறைத்தலைவர் ஆணை
எண்.36444/வி3/2018 நாள்.12.06.2020.
- 2) பதிவுத்துறைத்தலைவர் ஆணை
எண்.41880/வி3/2018 நாள்.12.06.2020.
- 3) பதிவுத்துறைத்தலைவர் ஆணை
எண்.41878/வி3/2018 நாள்.12.06.2020.

திருமதி.பா.சிவப்பிரியா, மாவட்டப்பதிவாளர் (தற்காலிக பணிநீக்கம்) மீதான
தமிழ்நாடு குடிமைப்பணி (ஒழுங்கு மற்றும் மேல்முறையீடு) விதிகளில் விதி 17(b)-ன்
கீழான குற்றக்குறிப்பாணைகள் தொடர்பாக பார்வையில் உள்ள
பதிவுத்துறைத்தலைவர் அவர்களின் ஆணைகளின்படி விசாரணை அலுவலராக
நியமிக்கப்பட்ட ஆணைகளைப் பெற்றுக்கொண்டேன் என்பதை பணிவுடன்
தெரிவித்துக்கொள்கிறேன்.

..2



W.P.No.22003 of 2023

WEB COPY

-2-

479 மேற்படி குற்றக்குறிப்பாணைகள் தொடர்பாக எனது பணிவான கோரிக்கையினைப் பின்வருமாறு தெரிவித்துக்கொள்கிறேன்.

பார்வை (1)-ல் உள்ள ஆணைத் தொடர்பாக குற்றக்குறிப்பாணையானது திரு.முகம்மது ஷாகீப் என்பவரின் புகாரின் படி விருகம்பாக்கம் சார்பதிவாளர் அலுவலக ஆவண எண்.5558/2009 முறைகேடாகப் பதிவு செய்யப்பட்டு அதுத் தொடர்பான பதிவுக் கட்டணங்கள் அரசுக் கணக்கில் செலுத்துவதுத் தொடர்பான முறைகேடுக் குறித்ததாகும். இதுத் தொடர்பான கோப்பு "R"-பிரிவில் நடவடிக்கை எடுக்கப்பட்டு வந்தபோது, அந்த சமயத்தில் உதவிப்பதிவுத்துறைத்தலைவர் (சிறப்பு விழுப்புணர்வு) பணியினை நான் கூடுதலாக கவனித்து வந்தேன். இக்கோப்புத் தொடர்பான பணிகளை ஆகஸ்டு, செப்டம்பர் 2018 மாதங்களில் செய்துள்ளேன். இப்புகார் குறித்தான கடிதப் போக்குவரத்துக்கள் என் வழியாகவும் பரிசீலிக்கப்பட்டு பதிவுத்துறைத்தலைவர் அவர்களுக்கு சமர்ப்பிக்கப்பட்டுள்ளது. குற்றச்சாட்டுத் தொடர்பான சம்மந்தப்பட்டக் கோப்பு "R"-பிரிவின் பொறுப்பில் இருந்தப்போது என்னாலும் பரிசீலிக்கப்பட்டுள்ளதால் இதுத்தொடர்பாக நாளை விசாரணைச் செய்வது என்பது உசித்தமாக இருக்காது என்ற எனதுப் பணிவானக் கருத்தினை தெரிவித்துக்கொள்கிறேன் மேலும், குற்றச்சாட்டுத் தொடர்பான விசாரணையில் சரியான முடிவு எடுப்பதில் தவறு நிகழுமோ என்ற ஐயப்பாடும் உள்ளது. எனவே, இப்பணியில் இருந்து என்னை விடுவீக்குமாறு தாழ்மையுடன் கேட்டுக்கொள்கிறேன்.

அதேப்போல் பார்வை (2),(3)-ல் உள்ள ஆணைகள் தொடர்பான குற்றக்குறிப்பாணைகளின் "R"-பிரிவின் கோப்பும் உதிவுப்பதிவுத்துறைத்தலைவர் (சிறப்பு விழுப்புணர்வு) கூடுதல் பொறுப்பாக பணியாற்றியபோது என்னாலும் கோப்பு பரிசீலிக்கப்பட்டுள்ளது. இவைத் தொடர்பாக பதிவுத்துறைத்தலைவர் அவர்களின் ஆணையின்படி அவை சம்மந்தப்பட்ட இரண்டு குற்றக்குறிப்பாணைகள் கோப்புகளின் அடிப்படையில் என்னால் தயார் செய்யப்பட்டு பதிவுத்துறைத்தலைவரின் பார்வைக்கு சமர்ப்பிக்கப்பட்டுள்ளது என்பதைப் பணிவுடன் தெரிவித்துக்கொள்கிறேன். எனவே, இவைத் தொடர்பான விசாரணையினை விசாரணை அலுவலர் என்ற முறையில் விசாரிப்பது என்பதும், அதன் நடுநிலைத் தன்மைக்கு குந்தகம் விளைவிப்பதாக அமைந்துவிடுமோ என்ற ஐயப்பாடு உள்ளது என்ற தாழ்மையானக் கருத்தினைத் தெரிவித்துக்கொள்கிறேன். எனவே, மேற்படி விசாரணைப் பணிகளில் இருந்தும் என்னை விடுவீக்குமாறு தாழ்மையுடன் கேட்டுக்கொள்கிறேன்.

தங்கள் உண்மையுள்ள,

உதவிப்பதிவுத்துறைத்தலைவர்
(கணினிமையுறாகல்)

3-7-2023



W.P.No.22003 of 2023

19. By placing reliance on the aforesaid letter, the petitioner had also given a representation to the Inspector General of Registration on 03.11.2020, which was duly acknowledged by the respondent Department on 04.11.2020, in which the petitioner had sought for removal of Tmt.Satyapriya as the Inquiry Officer and appoint a new Inquiry Officer in her place. This representation dated 03.11.2020, with the acknowledgment dated 04.11.2020, is reproduced below:-



W.P.No.22003 of 2023

Page 1 of 3

WEB COPY

அனுப்புநர்

திருமதி.பா.சிவப்பிரியா,

1 து இணைசார் பதிவாளர் (த.ப.நீ)

(மா.ப.நிலை)

மா.ப.அ.மத்திய சென்னை

சென்னை

பெறுநர்

பதிவுத்துறைத்தலைவர் அவர்கள்

பதிவுத்துறைத்தலைவர் அலுவலகம்,

சென்னை 600 028



அய்யா,

பொருள் பொதுப்பணி - பதிவுத்துறை - தமிழ்நாடு குடிமைப்பணி ஒழுக்கு மற்றும் மேல்முறையீடு விதிகளின் விதி 17 (டு)ன் கீழ் வரையப்பட்ட மூன்று குற்றக்குறிப்பாணைகள் தொடர்பாக விசாரணை செய்யும் அலுவலராக திருமதி.சுசத்தியப்பிரியா உ.ப.து.த. (கணினி) அவர்கள் நியமனம் செய்வப்பட்டு, 21.7.2020 அன்று கேசில் ஆஜராக அழைப்பாணை அனுப்பப்பட்டு, ஆஜரானதிவிடுத்து நானது வரையில் என் முன்னிலையில் விசாரணை நடத்தாமைக் குறித்தும், அனணையர நிக்கம் செய்யக் கொடும் மனு.

- பார்வை
- 1 பதுத குறிப்பாணை எண்.41880'வி3'2018 நாள்.2.11.2018
 - 2 பதுத குறிப்பாணை எண்.36444'வி3'2018 நாள்.12.11.2018
 - 3 பதுத குறிப்பாணை எண்.41878'வி3'2018 நாள்.9.11.2018
 - 4 விசாரணை அலுவலர் நியமன நாள்.7.11.2019 (திரு.பிரபாகர், துபதுத நிலை) 41880'வி3'2018, 41878'வி3'2018
 - 5 விசாரணை அலுவலர் நியமன நாள். 30.1.2020 (திரு.ஆனந்த் துபதுத நிலை) 41878'வி3'2018, 41880'வி3'2018
 - 6 விசாரணை அலுவலர் நியமன நாள்.21.2.2019 (திரு.கவாமிநாதன் துபதுத நிலை) 36444'வி3'2018
 - 7 விசாரணை அலுவலர் நியமன நாள். 11.5.2020 (திரு.கவாமிநாதன் துபதுத நிலை) 41878'வி3'2018, 41880'வி3'2018
 - 8 விசாரணை அலுவலர் நியமன நாள்.4.6.2020 சுத்தியப்பிரியா உ.ப.து.த. (கணினி)
 - 9 விசாரணை அலுவலரின் விசாரணைக்கான அழைப்பாணை எண்கள்.16622, 16623, 16624/Cs1/2020 நாள்.6.7.2020
 - 10 விசாரணைக்கு ஆஜராகி தற்காப்பு - 41878'வி3'2018 41880'வி3'2018 அறிக்கை சமர்ப்பித்த நாள்.21.7.2020
 - 11 குறிப்பாணை எண்.36444'வி3'2018-க்கு தற்காப்பு அறிக்கை சமர்ப்பித்த நாள்.3.8.2020

-க-

மேல்கண்ட விவரத்தில் வசித்து வரும் மனுதாரராகிய நான் முறைபற்ற கைது காரணமாக தற்காலிக பணிநீக்கத்தில் வைக்கப்பட்டுள்ளேன் என பணிஷ்டன் தெரிவித்துக் கொள்கிறேன், என மீது வரையப்பட்டுள்ள குற்றச்சாட்டுகளை பணிஷ்டன் மறுக்கிறேன்.



WEB COPY

தென்சென்னை 1 ந* இணைசார்பதிவாளராக (மா.ப.நிலையில்) பணிபுரிகையில் 12711/2015, 8386/2015, 10689/2015, 7978/2016, 1317/2016, 3269/2016, 1632/2016, 1318/2016, 3767/2016, 3768/2016 ஆகிய ஆவணங்களின் பதிவு தொடர்பாக பார்வை 1-ல் கண்ட குற்றச்சாட்டும், விருகம்பாக்கம் சா.ப. அலுவலக இணைசார்பதிவாளராக பணிபுரிந்து பணிக்காலத்தில் என்னிடம் பதிவுக்கு தாக்கல் செய்யாத மேசடி ஆவணம் 5558/2009 பார்வை 2-ல் கண்டுள்ள குற்றச்சாட்டாகவும், சிறப்பு தணிக்கை இன்ஸ்பெக்டர் மனு தணிக்கைக்குமுவால் இறுதியான பிறப்பிக்கப்பட்டு பதிவு செய்யப்பட்ட இனங்கள் பார்வை 3-ல் கண்ட குற்றச்சாட்டாகவும் வரையப்பட்டு, பார்வை 4 முதல் 7 வரையிலான விசாரணை அலுவலர்கள் நியமனம் செய்யப்பட்டும், விசாரணை நடத்தப் பெறாமலும், இறுதியாக பார்வை 8 -ல் கண்ட விசாரணை அலுவலர் நியமனம் செய்யப்பட்டு பார்வை 1, 2, மற்றும் 3-ல் கண்ட குறிப்பானைக்கு விசாரணை அலுவலராக பதிவுத்துறைத்தலைவர் அலுவலக கணினி பிரிவு, உதவிப்பதிவுத்துறைத்தலைவர் திருமதி.ச.சத்தியப்பிரியா அவர்கள் நியமனம் செய்யப்பட்ட, நிலையில் விசாரணை அலுவலரான திருமதி.ச.சத்தியப்பிரியா அவர்கள், விசாரணை அலுவலராக நீடிப்பதிலும், விசாரிப்பதிலும், நடைமுறைச் சிக்கல் இருப்பதாக தெரிவித்தும், மேற்கண்ட குற்றச்சாட்டுகளை சுமத்தும் பதவிநிலையில் கூடுதல் பொறுப்பில் பணிபுரிந்தமையாலும், "தன் வழக்கில்" ("No-one is judge in his own cause.") நீதிபதியாக இருந்து விசாரிக்க விரும்பவில்லை" என கூறி விசாரணை அலுவலர் பதவியை ராஜினாமா செய்யும் நோக்கில் பதிவுத்துறைத்தலைவருக்கு ராஜினாமா மனு ஒன்றை சமர்ப்பித்திருந்தார், பிரஸ்தாப ராஜினாமா மனு அரசிற்கு முகவரிக்காமல், ஒருதலைப்பட்ச விசாரணை அறிக்கையை சமர்ப்பிக்கும் நோக்கில், பார்வை 8-ல் கண்ட விசாரணை அலுவலரே தன்னிச்சையாக தீர்வுண்ணம் கொண்டும், இயற்கை நீதிகோட்பாட்டுகளை அனுசரிக்காமலும், என் தரப்பு வாதங்களையும், நியாயங்களையும், வழக்குரைஞரின் உதவியின்றி நடத்தி முடித்திடும் எண்ணத்துடன், என்னை விசாரிக்காமலேயே தன்னிச்சை விசாரணை அறிக்கை சமர்ப்பித்திடவும் நானது வரையில் என்னிடம் விசாரிக்க வேண்டியவற்றை விசாரிக்காமலும், எனது தரப்பு விளக்கங்களையும், சாட்சியங்களையும் விசாரிக்க அனுமதிக்காமலும், தன்னிச்சையாக விசாரணை இடத்தை மாற்றியும், குற்றஞ்சாட்டப்பட்ட எனது



WEB COPY

Page 3 of 3

1152

முன்னிலையில் யாதொரு விசாரணையையும் நடத்தாமல், தன்னிச்சையாக மறைமுகமாக விசாரணை நடத்தியுள்ளதாலும், வினாப்படிவ வாக்குறுதிகளின் நடைமுறைகள் மீறப்பட்டு, தன்னிச்சையாக விசாரணை நடந்து வருவதை, கண்டு அதிர்ச்சியுற்ற நான் இம்முறையீட்டு மனுவினை பணிவுடன் சமர்ப்பித்துக் கொள்கிறேன்.

விசாரணை அலுவலர் விசாரணை நடைமுறைகளுக்கு ஒவ்வாதவற்றை புரிவதாலும், விசாரணை வளையத்தை தனது விருப்பம் போல் விரிவாக்கம் செய்து என் முன்னிலையில் விசாரணை நடத்த மனமில்லாதவராக மாறியுள்ளதாலும், எனக்கெதிராக விசாரணை அறிக்கையை சமர்ப்பிக்க மனச்சாய்வு எண்ணங்கொண்டிருப்பதாலும், பிரஸ்தாப விசாரணை அலுவலரான திருமதி.ச.சுத்தியப்பிரியா (உ.ப.து.த.(கணினி) உடனே நீக்கம் செய்து வேறு ஒரு விசாரணை அலுவலரை நியமனம் செய்திட பணிவுடன் வேண்டுகிறேன்.

எனது தற்காலிக பணிநீக்க காலம் ஆறு மாதங்களை கடந்திருத்தும், அடிப்படை விதிகளின் கீழ் வழங்கப்படவேண்டிய 75% பிழைப்பூதியம் மற்றும் இதர படிகள் வழங்காமலும், சம்பவ இடத்தில் விசாரணை நடத்தாமலும், முறையான விசாரணையை நாளது வரை நடத்தப்பெறாமலும், எனக்கெதிராக, தன்னிச்சையான மறைமுக விசாரணையை, விசாரணை அலுவலர் செய்து வருவதாலும், பிரஸ்தாப அலுவலரின் செய்கை விசாரணை நெறிகளுக்கு எதிரானதென்பதாலும், மனச்சாய்வுக் கொண்ட விசாரணை அலுவலரை, விசாரணை செய்வதிலிருந்து நீக்கி புதிய விசாரணை அலுவலரை நியமனம் செய்து நீதி வழங்கிட பணிவுடன் வேண்டுகிறேன்.

தங்கள் உண்மையுள்ள

hno. [Signature]

இணைப்புகளுடன்

முன்னால் பணிந்து சமர்ப்பிக்கப்படுகிறது மற்றும் பதிவுத்துறை, தலைமைச் செயலகம், மாண்புமிகு அரசு செயலாளர், வணிகவரி மற்றும் பதிவுத்துறை, தலைமைச் செயலகம், சென்னை 9 அவர்களுக்கு பணிந்து சமர்ப்பிக்கப்படுகிறது.



20. The petitioner, in paragraphs 31 and 32 of the affidavit filed in support of this petition, had made a reference to the letter of the Inquiry Officer dated 03.07.2020, in the following manner:-

“31. It is most humbly submit that, vide Letter dated 03-07-2020, the Inquiry Officer made a communication to Inspector General of Registration to inquire into the allegations of the Petitioner. It has been stated by the Inquiry Officer in the said communication that she was involved in gathering documents in relation with the alleged registration of land belong to the Government and therefore she has submitted to the Inspector General of Registration that the Inquiry Officer will be motivated by the previous occurrences and she further submitted that she will be influenced by those documents collected prior to the inquiry and expressed her refusal in being an Inquiry Officer.

32. It is most humbly submit that the officer who prepared the charges has been appointed as an inquiry officer to enquire the same charges will itself crystal clearly prove the intention of the Respondents is to only get a proved minutes.”



WEB COPY 21. To the aforesaid submission, the respondents have replied in paragraph 27 of their counter affidavit, in the following manner:-

“27. With regard to the averments set out in Paragraphs 31 and 32 of the affidavit, it is submitted that the Inquiry Officer, third respondent herein is neither the reporting officer for the impugned charges nor was she involved in collecting evidences for framing of the charges and hence the appointment of the third respondent as the Inquiry Officer is well within law.”

22. Apparently, the respondents had not denied the specific statement of the petitioner about the letter of recusal dated 03.07.2020 written by the Inquiry Officer. However, the learned Additional Government Pleader, in his oral submissions, denied the receipt of such a letter itself. In order to ascertain this disputed fact, I had called for and perused the original inquiry file. The letter dated 03.07.2020 was also not found in the file. Since this letter itself has been disputed and is missing in the file, I do not intend to delve upon venture to this disputed fact, which would be improper for this Court,



W.P.No.22003 of 2023

exercising its powers under Article 226 of the Constitution of India.

WEB COPY

23. Nevertheless, the mere absence of the letter in the file may not absolve the respondents from wriggling out of the situation on the ground of bias pleaded by the petitioner with regard to the appointment of Tmt.Satyapriya as the Inquiry Officer. Though the petitioner had specifically pleaded in paragraphs 31 and 32 of her affidavit about the letter dated 03.07.2020, the respondents have not denied the petitioner's claim on this letter, apart from a general denial that the Inquiry Officer was not involved in collecting evidences for framing of the charges, which portion of the counter affidavit has been extracted above. Even if the letter has not been found in the inquiry file, the subsequent representation given by the petitioner on 03.11.2020 has also not been denied by the respondents. As a matter of fact, this representation has been acknowledged by the 2nd respondent herein through their office seal dated 04.11.2020 and counter signed by the Inquiry Officer herself. In the representation, the petitioner had, in toto, referred to the Inquiry Officer's letter dated 03.07.2020 and by referring to her request for recusal from the inquiry, had sought for change of a new Inquiry Officer. In paragraph 26 of her affidavit, the petitioner had referred to the representation



W.P.No.22003 of 2023

dated 03.11.2020, which has not been answered or denied in the counter affidavit of the respondents. Even though the original letter of the Inquiry Officer dated 03.07.2020 is not to be found in the file, the presence of the petitioner's representation dated 03.11.2020, making a reference to the Inquiry Officer's letter dated 03.07.2020, substantiates the fact that the petitioner had brought to the notice of the Disciplinary Authority on the possibility of a bias that the Inquiry Officer may have. When such a plea of bias has been raised at the very inception and that too immediately after the appointment of the Inquiry Officer, the Disciplinary Authority, in all fairness, ought to have taken further action on the petitioner's request and considered for a change of the Inquiry Officer.

24. A basic postulate of the rule of law is that the “justice should not only be done but it must also be seen to be done”. In the case of ***State of Punjab Vs. Davinder Pal Singh Bhullar and Others*** reported in (2011) 14 SCC 770, the principles of bias and its consequences were dealt in dealt by the Hon'ble Supreme Court, with references to several of its own decisions, in the following manner:-

“28. The principle in these cases is derived from



the legal maxim—nemo debet esse judex in propria sua causa. It applies only when the interest attributed is such as to render the case his own cause. This principle is required to be observed by all judicial and quasi-judicial authorities as non-observance thereof is treated as a violation of the principles of natural justice. (Vide Rameshwar Bhartia v. State of Assam [(1952) 2 SCC 203 : AIR 1952 SC 405 : 1953 Cri LJ 163] , Mineral Development Ltd. v. State of Bihar [AIR 1960 SC 468], Meenglas Tea Estate v. Workmen [AIR 1963 SC 1719] and Transport Deptt. v. Munuswamy Mudaliar [1988 Supp SCC 651 : AIR 1988 SC 2232].)

29. *The failure to adhere to this principle creates an apprehension of bias on the part of the Judge. The question is not whether the Judge is actually biased or, in fact, has really not decided the matter impartially, but whether the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. (Vide A.U. Kureshi v. High Court of Gujarat [(2009) 11 SCC 84 : (2009) 2 SCC (L&S) 567] and Mohd. Yunus Khan v. State of U.P. [(2010) 10 SCC 539 : (2011) 1 SCC (L&S) 180])*



30. *In Manak Lal v. Prem Chand Singhvi [AIR 1957 SC 425] this Court while dealing with the issue of bias held as under : (AIR p. 430, para 6)*

Actual proof of prejudice in such cases may make the appellant's case stronger but such proof is not necessary.... What is relevant is the reasonableness of the apprehension in that regard in the mind of the appellant.

31. *The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether the adjudicator was likely to be disposed to decide the matter only in a particular way. Public policy requires that there should be no doubt about the purity of the adjudication process/administration of justice. The Court has to proceed observing the minimal requirements of natural justice i.e. the Judge has to act fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality, is a nullity and the trial coram non judice. Therefore, the consequential order, if any, is liable to be quashed. (Vide Vassiliades v. Vassiliades [AIR 1945 PC 38], S.*



Parthasarathi v. State of A.P. [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] and Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988 SCC (L&S) 1].)

32. In Rupa Ashok Hurra v. Ashok Hurra [(2002) 4 SCC 388] this Court observed that public confidence in the judiciary is said to be the basic criterion of judging the justice delivery system. If any act or action, even if it is a passive one, erodes or is even likely to erode the ethics of the judiciary, the matter needs a further look. In the event, there is any affectation of such an administration of justice either by way of infraction of natural justice or an order being passed wholly without jurisdiction or affectation of public confidence as regards the doctrine of integrity in the justice delivery system, technicality ought not to outweigh the course of justice—the same being the true effect of the doctrine of ex debito justitiae. It is enough if there is a ground of an appearance of bias.

33. While deciding Rupa Ashok Hurra case [(2002) 4 SCC 388] , this Court placed reliance upon the judgment of the House of Lords in R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet



Ugarte (No. 2) [(2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)] , in which the House of Lords on 25-11-1998, restored warrant of arrest of Senator Pinochet who was the Head of the State of Chile and was to stand trial in Spain for some alleged offences. It came to be known later that one of the Law Lords (Lord Hoffmann), who heard the case, had links with Amnesty International (AI) which had become a party to the case. This was not disclosed by him at the time of the hearing of the case by the House. Pinochet Ugarte, on coming to know of that fact, sought reconsideration of the said judgment of the House of Lords on the ground of appearance of bias and not actual bias. On the principle of disqualification of a Judge to hear a matter on the ground of appearance of bias, it was pointed out : (Pinochet case [(2000) 1 AC 119 : (1999) 2 WLR 272 : (1999) 1 All ER 577 (HL)] , AC p. 132)

An appeal to the House of Lords will only be reopened where a party though no fault of its own, has been subjected to an unfair procedure. A decision of the House of Lords will not be varied or rescinded merely because it is subsequently thought to be wrong.



34. *In Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. [2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)] the House of Lords (sic Court of Appeal) considered the issue of disqualification of a Judge on the ground of bias and held that in applying the real danger or possibility of bias test, it is often appropriate to inquire whether the Judge knew of the matter in question. To that end, a reviewing court may receive a written statement from the Judge. A Judge must recuse himself from a case before any objection is made or if the circumstances give rise to automatic disqualification or he feels personally embarrassed in hearing the case. If, in any other case, the Judge becomes aware of any matter which can arguably be said to give rise to a real danger of bias, it is generally desirable that disclosure should be made to the parties in advance of the hearing. Where objection is then made, it will be as wrong for the Judge to yield to a tenuous or frivolous objection as it will be to ignore an objection of substance. However, if there is real ground for doubt, that doubt must be resolved in favour of recusal. Where, following appropriate disclosure by the Judge, a party raises no objection to the Judge hearing or continuing to hear a case, that party cannot*



subsequently complain that the matter disclosed gives rise to a real danger of bias.

35. In P.D. Dinakaran (1) v. Judges Inquiry Committee [(2011) 8 SCC 380] this Court has held that in India the courts have held that, to disqualify a person as a Judge, the test of real likelihood of bias i.e. real danger is to be applied, considering whether a fair-minded and informed person, apprised of all the facts, would have a serious apprehension of bias. In other words, the courts give effect to the maxim that “justice must not only be done but be seen to be done”, by examining not actual bias but real possibility of bias based on facts and materials. The Court further held : (SCC p. 410, para 41)

“41.... The first requirement of natural justice is that the Judge should be impartial and neutral and must be free from bias. He is supposed to be indifferent to the parties to the controversy. He cannot act as Judge of a cause in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. He must be in a position to act judicially and to decide the matter objectively. A Judge



must be of sterner stuff. His mental equipoise must always remain firm and undetected. He should not allow his personal prejudice to go into the decision-making. The object is not merely that the scales be held even; it is also that they may not appear to be inclined. If the Judge is subject to bias in favour of or against either party to the dispute or is in a position that a bias can be assumed, he is disqualified to act as a Judge, and the proceedings will be vitiated. This rule applies to the judicial and administrative authorities required to act judicially or quasi-judicially.”

36. Thus, it is evident that the allegations of judicial bias are required to be scrutinised taking into consideration the factual matrix of the case in hand. The court must bear in mind that a mere ground of appearance of bias and not actual bias is enough to vitiate the judgment/order. Actual proof of prejudice in such a case may make the case of the party concerned stronger, but such a proof is not required. In fact, what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. However, once such an apprehension exists, the trial/judgment/order, etc. stands vitiated for want of impartiality. Such



judgment/order is a nullity and the trial coram non judice.”

25. On an overall appreciation of the dictum laid down in the aforesaid decisions, that in a given case when the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision, the outcome, which is the result of bias, would be a nullity and all the consequential orders are liable to be quashed.

26. Though the plea of bias was brought to the notice of the Disciplinary Authority through the petitioner's representation dated 03.11.2020, the same were totally disregarded by the Disciplinary Authority and Tmt.Satyapriya, Inquiry Officer continued with the inquiry and held the charges as proved against the petitioner. In the light of the decisions rendered by the Hon'ble Supreme Court and referred supra, the entire inquiry itself would stand vitiated and the consequential order of punishment imposed by the 1st respondent herein will also require to be rendered as illegal.

27. The learned Additional Government Pleader had placed reliance on



the decisions of ***Bidyut Kumar Mitra, SUPG Bank and H.V.Nirmala's case***

(supra) and submitted that since the petitioner had participated in the inquiry proceedings without raising any objections therein, she is precluded from raising the plea of bias.

28. In ***Bidyut Kumar Mitra's case (supra)***, the delinquent therein had raised a “new plea” before the Division Bench of the High Court for the first time with regard to non-supply of certain documents during the course of the departmental inquiry and in this given background, the Hon'ble Supreme Court had held that it was incumbent on the delinquent to plead and prove the prejudice caused by the non-supply of documents and had condoned the failure on his part in having failed to raise his grievance about the non-supply of documents during the inquiry proceedings or even before the Single Judge of the High Court. Neither the facts nor the legal ratio laid down therein, would help the respondents to take a shield on the plea of bias raised by the petitioner against the Inquiry Officer, which plea he had admittedly made to the Disciplinary Authority within a reasonable and acceptable time after the appointment of the Inquiry Officer.



WEB COPY

29. In ***SUPG Bank's case (supra)***, the facts before the Hon'ble Supreme Court was only on the ground that the Division Bench of the High Court had held the action of the Bank as violative of the principles of natural justice, since a copy of the inquiry report was not served on the delinquent officer. In this factual background, the Hon'ble Supreme Court, in paragraphs 29 to 31 of its decision, had held that since the delinquent officer did not make any protest before the Inquiry Officer of not being permitted to cross examine the witnesses and having failed to substantiate the prejudice that was caused to him by the non-supply of the inquiry report, had allowed the appeal of the Bank. The facts or the legal ratio laid down in this decision is in no way connected with the petitioner's case and hence is distinguishable.

30. In ***H.V.Nirmala's case (supra)***, the appellant therein did not raise any objection with regard to the appointment of the Inquiry Officer and had participated in the inquiry proceedings without any dimmer whatsoever. In this factual scenario, the Hon'ble Supreme Court had held that a jurisdictional issue should be raised at the earliest possible opportunity and thereby rejected the contention of the appellant. Contrary to the facts involved before the Hon'ble Supreme Court, the petitioner had questioned the appointment of the



W.P.No.22003 of 2023

Inquiry Officer, through a representation dated 03.11.2020 and sought for change of the Inquiry Officer. This request was totally disregarded by the Disciplinary Authority. The ratio laid down in *H.V.Nirmala's case* revolves around the fact that the appellant had not raised any objection with regard to the appointment of Inquiry Officer, who had participated in the inquiry, which are totally contrary to the present facts and thus, this decision also would not be of any assistance to the respondents.

31. The 4th and 5th grounds raised by the petitioner, challenging the inquiry proceedings and the consequential punishment, are that the documents, which were the subject matter of the charge memo, were already audited during the previous years and the DIG of Registration has also passed orders for registering all the subject documents and therefore, the charges are baseless. This apart, in the subsequent audit report dated 18.05.2013, another Sub-Registrar, namely Raghumoorthy, who was also alleged to have registered documents relating to Government lands, was not levelled with any departmental action and therefore, the plea of hostile discrimination was raised. Certain sequence of events narrated by the petitioner raises a serious suspicion as to the possibility of the Disciplinary Authority to implicate the



W.P.No.22003 of 2023

petitioner with such charges. Some of the undisputed facts contributing to these sequence of events, are as follows:-

31.1. While the petitioner was serving as a District Registrar in Joint-I Saidapet Sub-Registrar Office, this Court had passed orders in CrI.O.P.No.4413 of 2013, dated 18.11.2016, prohibiting registration of marshlands at Pallikaranai, Chennai. In the subsequent order dated 27.03.2017 passed in the same petition, this Court had directed the Government, as well as the petitioner herein, to produce documents and details of the officials, including retired staff, who may have been involved in such registration, the details of the beneficiaries and the action taken on such erring officials. The petitioner claims to have prepared a report in this regard and had submitted the same before this Court on 01.08.2017, by reporting the involvement of the staff in the illegal registration of marshlands. Just one day prior to filing of the report before this Court, the petitioner was transferred to Chennai (Central) Joint-I, Sub-Registrar Office on 31.07.2017. By taking note of this transfer, this Court had interfered with the transfer and had ordered to keep the transfer in abeyance for conducting an effective inquiry on the registration of marshlands, with a further direction to the Government to refrain from transferring the petitioner.



W.P.No.22003 of 2023

WEB COPY

31.2. At this point of time, a complaint from a third party, namely Mr.Mohammed Shakeeb, came to be made to the Deputy Superintendent of Police, Vigilance and Anti Corruption, based on which, a criminal case came to be registered against the petitioner on 12.10.2017. This was followed by filing of criminal complaints against the petitioner on 27.10.2017, 09.12.2017, 10.01.2018 and 15.02.2018.

31.3. In the meantime, the petitioner was also arrested on 13.02.2018 and on 16.02.2018, she was suspended from her services. When the petitioner's husband had preferred a Habeas Corpus Petition in HCP.No.316 of 2018, she was granted a short leave from the prison on 15.02.2018. Once again, she was arrested on 21.02.2018. Thereafter, the petitioner had challenged all these criminal proceedings before this Court by invoking Section 482 of Cr.P.C. and 4 out of the 6 FIRs were quashed by this Court and in 1 FIR, the Police themselves had dropped further action.

31.4. In this background, the 2nd respondent herein had framed charges against the petitioner on 09.11.2018 under Rule 17(b) of the Rules, thereby initiating disciplinary proceedings on the basis of the charge that she had registered various documents relating to the year 2010.



32. From the aforesaid sequence of events, it could be reasonably inferred that when the petitioner had implicated certain officials of the Registration Department as responsible for registering marshlands at Pallikaranai, through a report dated 01.08.2017 produced before this Court, serious consequences had followed, commencing from her transfer, registration of criminal cases, suspension of her services and framing of charges for the departmental action.

33. As stated earlier, the charges against the petitioner are on the allegations of illegal registration of Government lands through 45 documents, when the petitioner was holding the post of Sub-Registrar. At the time of registration of these documents, the DIG of Registration had also passed orders, authorizing the petitioner to register these documents. These registrations were also subjected to an internal audit and no objections were raised, touching upon these registrations. If at all these objections of the internal audit were to be overruled based on the subsequent audit conducted pursuant to the complaint from a third party, the DIG of Registration, who had ratified the registration of 45 documents by the petitioner, would equally be responsible.



W.P.No.22003 of 2023

WEB COPY

34. The learned Additional Government Pleader submitted that the original Audit Committee had not gone into the question of fraudulent registration of documents but had considered the issue of stamp duty and registration fees on the alleged instruments only and when a complaint was made by the general public pointing out the illegalities, the issue was referred to a second Audit Committee, which had pointed out the illegalities committed by the petitioner.

35. I do not endorse such objections. As pointed out earlier, the petitioner's action of registering the 45 documents was already referred to the DIG of Registration, who had ratified these registrations and had passed orders. This aspect has not been disputed by the respondents. If at all there were any illegality in such registrations, the same ought to have been pointed out by the DIG of Registration at that point of time itself. Likewise, when the action of registrations was audited by the Internal Audit Committee, it cannot be said that the Audit Committee would not venture to audit the classification of lands that were registered. Apart from making a vague statement that the role of the Audit Committee would be restricted only to the validity of levy of stamp duty and registration fee and not about the classification of the lands in



question, the respondents have not placed any regulation touching upon the powers of the Internal Audit Committee, nor have relied upon any of their own department circulars in this regard.

36. When a second audit was conducted pursuant to the third party's complaint and a report dated 18.05.2013 was made, one Raghumoorthy, Sub-Registrar, was also alleged to have registered documents relating to Government lands, along with the petitioner. To the claim made by the petitioner that no departmental action was initiated against the said Raghumoorthy, the learned Additional Government Pleader had produced copies of the actions initiated against the said Mr.Raghumoorthy, the details of which are mentioned hereunder:-

<i>S.No</i>	<i>Date</i>	<i>Charge Memo No.</i>	<i>Nature of Charges</i>
1.	26.12.2012	12228/V1/2011-1	Possession of unaccounted money during the surprise check conducted by DVAC on 07.03.2011
2.	26.10.2015	2819/A1/15-1	Loss of revenue to the Government due to registration of documents in a careless and perfunctory manner
3.	25.10.2017	45760/V3/2017	Failure to report in the transferred place in the office of the Inspector General of Registration with effect from 03.08.2017



W.P.No.22003 of 2023

<i>S.No</i>	<i>Date</i>	<i>Charge Memo No.</i>	<i>Nature of Charges</i>
4.	09.11.2018	41879/V3/2018	Committed misconduct of acting in an irresponsible manner, detrimental to the interest of the Government, by registering Document Nos.4140/2010 and 4994/2010 involving Government lands
5.	24.02.2020	42671/V3/2019	Failure to scrutinise the identification certificates of Document No.791/2014
6.	17.11.2022	34952/V3/2022	Failure to scrutinise the title deeds and encumbrance certificate while registering Document No.10574/20112
7.	27.04.2023	2915/V3/2023	Failure to scrutinise the encumbrance certificate at the time of registration of Document No.10351/2015
8.	02.09.2023	5551/H1/2022-3	Failure to scrutinise the title deeds, patta, death certificate and legal heirship certificate while registering Document Nos.2971/2014 and 2972/2014

37. In the aforesaid charges levelled against Mr.Raghumoorthy, except Serial No.4, all the other charge memos do not relate to the delinquency touching upon illegal registration of Government lands, as objected to in the audit report dated 18.05.2013 and hence cannot, by any stretch of imagination, construed as disciplinary action initiated on the basis of the audit



W.P.No.22003 of 2023

report dated 18.05.2013.

WEB COPY

38. Insofar as Serial No.4 is concerned, though the charge levelled relates to registration of Government Puramboke lands by Mr.Raghumoorthy, while he was serving as a Sub-Registrar at Virugambakkam, South Chennai, these two Document Nos.4140/2010 and 4994/2010, which are subject matter of his charges, did not find place in the audit report dated 18.05.2013. The name of Mr.Raghumoorthy was implicated of having registered 16 documents relating to Government lands, along with the petitioner's 45 documents. All these 16 documents were registered as Document Nos.6502/10; 6578/10; 6811/10; 6812/10; 6890/10; 6925/10; 6941/10; 6990/10; 6908/10; 5381/10; 5409/10; 5572/10; 6802/10; 6811/10; 6812/10 and 5813/10. While the petitioner alone was subjected to disciplinary action, with a charge of having registered 45 documents pertaining to Government lands, based on the objections in the audit report dated 18.05.2013, no specific charges were levelled against Mr.Raghumoorthy, against the audit objections relating to 16 documents alleged to have been registered by him, while serving as a Sub-Registrar.



39. The 8 charge memos produced by the learned Additional Government Pleader are totally unconnected to the objections raised in the audit report dated 18.05.2013. In other words, no disciplinary proceedings seems to have been initiated against Mr.Raghumoorthy on the objections raised in the audit report dated 18.05.2013.

40. In the case of ***Bongaigaon Refinery & Petrochemicals Ltd. And Others Vs. Girish Chandra Sarma*** reported in ***(2007) 7 SCC 206***, three charges were levelled against the employee therein, which resulted in a punishment of reversion of his post to a lower pay scale. The respondent therein was one among the five members of the Price Negotiation Committee. The charges came to be framed only against the respondent and others were left scot-free. When the matter came to be finally appealed, the Hon'ble Supreme Court had frowned upon the manner in which the respondent alone was made a scapegoat, while the others, who had a similar role to play in the delinquency, were not levelled with similar charges. In this factual background, the following observations were made:-

“18. After going through the report and the finding recorded by the Division Bench of the High Court, we are of



opinion that in fact the Division Bench correctly assessed the situation that the respondent alone was made a scapegoat whereas the decision by all three Committees was unanimous decision by all these members participating in the negotiations and the price was finalised accordingly. It is not the respondent alone who can be held responsible when the decision was taken by the Committees. If the decision of the committee stinks, it cannot be said that the respondent alone stinks; it will be arbitrary. If all fish stink, to pick one and say only it stinks is unfair in the matter of unanimous decision of the Committee.”

41. With the above observations, the Hon'ble Supreme Court had observed that when the decision of all the Committee members was unanimous, then to pick up one and put the entire blame on him is definitely a perverse approach and in this manner, have ruled the case in favour of the employee therein.

42. Following these principles of hostile discrimination, which the Hon'ble Supreme Court termed it as perversity, I had also interfered with an order of suspension of the services of a Government employee on the ground



W.P.No.22003 of 2023

of hostile discrimination and perversity, in the case of ***K.Murugesan Vs.***

District Collector, Nagapattinam and Others reported in ***2022 SCC OnLine***

Mad 590. A similar view was also taken in the case of ***P.Jeyabalakrishnan***

Vs. Secretary to Government, Rural Development & Panchayat Raj

Department and Others reported in ***2022 SCC OnLine Mad 1420***.

43. By applying the ratio laid down by the Hon'ble Supreme Court in the case of ***Bongaigaon Refinery & Petrochemicals (supra)***, to the facts of the present case in hand, I am of the affirmed view that the conduct of the Disciplinary Authority in acting upon the audit report dated 18.05.2013 and framing charges against the petitioner alone and ignoring the objections against Mr.Raghumoorthy, would definitely amount to hostile discrimination and thus, would be a perverse action.

44. I have detailed the sequence of events that had followed after the petitioner had filed a report before this Court implicating certain Officers of the Registration Department, including her transfer, registration of criminal cases and her suspension. If at all the respondents really intended to pursue action based on the audit report dated 18.05.2013, they ought to have framed



W.P.No.22003 of 2023

similar charges against the said Raghumoorthy also. In this given background, the charges levelled against the petitioner alone would also amount to a selective and hostile discrimination and thus, the entire disciplinary action would stand vitiated.

45. The last ground raised by the learned counsel for the petitioner is on the ground of undue delay in initiating and completing the departmental proceedings. The charge against the petitioner was that she had registered 45 documents relating to Government lands, while she was serving as a Sub-Registrar at Virugambakkam. These registrations relate to the year 2010. Based on a complaint given by one Mohammed Shakeeb, the respondents claim to have subjected the registrations done by the petitioner during her tenure as a Sub-Registrar, Virugambakkam, to an Audit Committee, which had submitted their report on 18.05.2013. Thereafter, though more than 5 years had lapsed, the audit report was not acted upon. Ultimately, on 12.11.2018, the charges under Rule 17(b) came to be framed against the petitioner.

46. The learned Additional Government Pleader attempted to justify the



W.P.No.22003 of 2023

delay in initiation of the proceedings by stating that the petitioner has not pleaded the prejudice caused to her on account of the delay. He further attempted to substantiate the delay stating that only after a complaint was received from the public, action was initiated against the petitioner and therefore, there is no delay in framing the charges.

47. The delay between 2010 and the receipt of the alleged complaint from the public, has not been explained at all. Even thereafter, the delay of more than five years from 18.05.2013, when the audit report was made, till 09.11.2018 when charges were framed, also remains unexplained. This apart, after the charges were framed on 09.11.2018, the disciplinary proceedings were kept pending for almost five years, until the punishment of dismissal from service was imposed on 26.06.2023. The respondents were unable to render any explanation for this inordinate delay of more than five years for concluding the proceedings.

48. In several decisions rendered by the Hon'ble Supreme Court, as well as this Court, it has been consistently held that the delay in initiating or concluding the disciplinary proceedings, would cause unbearable mental



agony and distress to the officer concerned and accordingly interfered with the entire disciplinary proceedings. Some of these decisions are referred below:-

“1. In the case of ***State of Madhya Pradesh v. Bani Singh and another reported in 1990 (Supp) SCC 738***, the Supreme Court had come down heavily against the laches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

2. In ***State of A.P., v. N.Radhakrishnan reported in 1998 (4) SCC 154***, the Supreme Court, at Paragraph 19, held as follows:

"Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

3. In ***Union of India v. CAT reported in 2005 (2)***



WEB COPY



W.P.No.22003 of 2023

CTC 169 (DB), this Court held that,

"The delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

4. In ***P.V.Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403***, this Court after referring to various decisions, held that,

"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. *We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The*



WEB COPY



W.P.No.22003 of 2023

retiral benefits shall be disbursed within three months from this date. No cost."

5. In ***The Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy reported in 2005 (5) CTC 451***, the Division Bench of this Court held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant failed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

6. In yet another decision in ***R.Tirupathy and others v. the District Collector, Madurai District and***



others reported in 2006 (2) CTC 574, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994-95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

7. The Supreme Court in *M.V.Bijlani v. Union of India and other reported in 2006 (5) SCC 88*, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

8. In *M.Elangovan v. The Trichy District Central Co-operative Bank Ltd., reported in 2006 (2) CTC 635*, this Court, while quashing the second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in *Parameswaran v. State of Tamil Nadu reported in 2006 (1) CTC 476.*”



WEB COPY

49. In view of the belated framing of the charges, as well as the delay in concluding the same, serious prejudice seems to have been caused to the petitioner. The petitioner was implicated in several criminal cases and was also arrested. In view of her arrest, the petitioner was suspended from her services. The petitioner had time and again sent representations to the respondents to revoke her suspension, apart from filing a Writ Petition before this Court challenging the suspension order also. It is needless to point out that all the service benefits from the date of the charge memo would have been denied to her, causing further prejudice.

50. Thus, for the various reasons assigned by this Court in finding the entire disciplinary proceedings as vitiated, perverse and an act of hostile discrimination, the entire disciplinary proceedings, including the punishment, is also liable to be interfered with, on the ground of inordinate delay in initiating the disciplinary proceedings, as well as concluding the same. Hence, on an overall appreciation of the facts and circumstances of this case, the entire proceedings are to be rendered as illegal and the petitioner herein would, therefore, be entitled for all the consequential benefits arising



W.P.No.22003 of 2023

therefrom.

WEB COPY

51. In the light of the above observations and findings, the impugned proceedings of the 1st respondent, issued in G.O.Ms.No.65, Commercial Taxes and Registration Department, H1, dated 26.06.2023, stands quashed. Consequently, there shall be a direction to the respondents 1 and 2 herein to forthwith reinstate the petitioner back into service, together with continuity of service and extend all the service and monetary benefits to the petitioner, within a period of two (2) weeks from the date of receipt of a copy of this order.

52. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

08.03.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

To

57/59



W.P.No.22003 of 2023

- 1.The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai – 600 009.
- 2.Inspector General of Registration,
No.100, Santhome High Road,
Mandavellipakkam, R.A.Puram,
Chennai – 600 028.
- 3.The Inquiry Officer,
District Registrar (Admin),
In the cadre of Assistant Inspector General,
O/o. District Registrar,
South Chennai, Nandanam,
Chennai – 600 035.
- 4.The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.



WEB COPY



W.P.No.22003 of 2023

M.S.RAMESH,J.

hvk

**PRE-DELIVERY ORDER MADE IN
W.P.No.22003 of 2023**

08.03.2024