



Writ Petition No.6839 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>26.03.2024</i>
<i>Pronounced on</i>	<i>03.06.2024</i>

CORAM

THE HONOURABLE MR. JUSTICE BATTU DEVANAND

Writ Petition No.6839 of 2017

S.Manoharan

..Petitioner

vs.

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai.9

2.The Secretary to the Government,
Revenue Department,
Secretariat,
Chennai.9

3.The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai-5

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the first respondent vide G.O(3D) No.2, Revenue, Ser.2(2) Department, dated 03.02.2012 and to quash the same and consequently set aside the orders of the first and second respondents vide



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G.O.(2D) No.262, Revenue Ser.2(2) Department dated 17.08.2016 and G.O.(1D) No.388, Revenue, Ser2(2) Department, dated 30.08.2016, respectively and accord notional promotion and other retirement benefits.(Prayer amended vide order dated 05.09.2023 made in WMP No.3812 of 2020 in WP.No.6839 of 2017 by CVKJ).

For Petitioner : Mr.S.Vijay Kumar, Sr.counsel assisted by
Mr.A.V.Balusamy
For Respondents : Mr.L.S.M.Hasan Fizal, AGP

ORDER

This Writ Petition has been filed seeking for issuance of a Certiorarified Mandamus, to call for the records relating to the first respondent vide G.O(3D) No.2, Revenue, Ser.2(2) Department, dated 03.02.2012 and to quash the same and consequently set aside the orders of the first and second respondents vide G.O.(2D) No.262, Revenue Ser.2(2) Department dated 17.08.2016 and G.O.(1D) No.388, Revenue, Ser2(2) Department, dated 30.08.2016, respectively and accord notional promotion and other retirement benefits.

2.The brief facts, which are necessary for disposal of the present Writ



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Petition can be stated as follows:

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The petitioner, while he was working as Tahsildar, Tambaram, was initiated with disciplinary proceedings by way of a charge memo dated 02.03.2010 for serious mis-conduct under Rule 17(b) of the Tamilnadu Civil Services(Discipline & Appeal) Rules (herein after referred to as "the Rules") on the allegation that in respect of the valuable Government lands measuring to an extent of 10 acres in S.No.657/4A3 classified as Sarkar Poramboke-Kazhuveli, which is highly objectionable in Pallikaranai Village of Tambaram Taluk has approved and passed orders on 11.09.2002 to effect change of registry on the petition of one Thiru.K.Krishnan dated 16.08.2002, based on the erroneous orders of the Assistant Settlement Officer, Thiruvannamalai instead of the instructions of the Settlement Commissioner, Chennai vide RC.D2/2844/2001, dated 14.06.2001, wherein, it has been clearly pointed out that the Assistant Settlement Officer, Thiruvannamalai had passed statutory orders under various abolition acts erroneously and not to give effect to the orders in Village and Taluk accounts.

3.It was also alleged that the petitioner has failed to obtain the order



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from the competent authority before passing orders on the petition of Thiru.K.Krishnan and thereby, he has failed to perform his duties sincerely.

Pursuant to the issuance of the charge memo, the petitioner has submitted his explanation on 30.06.2010, repudiating the charges framed against him and requested the disciplinary authority to drop the disciplinary proceedings. The disciplinary authority, being not satisfied with the explanation of the petitioner, ordered enquiry and appointed the enquiry officer vide proceedings dated 19.07.2010. Thereafter, the petitioner was subjected to the enquiry proceedings and participated in the enquiry. After conclusion of the enquiry, the enquiry officer submitted his report dated 02.11.2010, holding that the charges framed against the petitioner have not been proved .

4.It appears that on consideration of the enquiry report submitted by the enquiry officer, the Government had deviated from the findings of the enquiry officer and held that the charges have been proved. Thereafter, the petitioner was issued with the second show cause notice calling for his explanation. The petitioner also submitted his further representation dated 10.09.2011. Stating that the further representation of the petitioner was not



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convincing, the Government has arrived at a provisional decision to impose the punishment of compulsory retirement on the petitioner and accordingly, called for the views of the Tamilnadu Public Service Commission, which in turn confirm the decision of the Government, since the charges were proved and the proposed punishment of compulsory retirement is proportionate to the charges proved and advised the Government to go ahead with their provisional decision. Pursuant to the same, the Government vide G.O.3(D) No.2, dated 03.02.2012, imposed the punishment of compulsory retirement on the petitioner for the proven charges. Aggrieved by the punishment of compulsory retirement inflicted by the first respondent, the petitioner preferred a statutory Appeal to the Appellate Authority on 09.04.2012. The Appellate Authority, on considering of the Appeal preferred by the petitioner, issued G.O.(1D)No.388 dated 30.08.2016, has confirmed the punishment of compulsory retirement imposed on the petitioner. Challenging these two orders, the petitioner has constrained to file the present Writ Petition.

5.A detailed counter affidavit has been filed on behalf of the respondents, wherein, it has been stated that the petitioner, while working as



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Tahsildar, Tambaram has approved and passed orders on 11.09.2002, to effect change of registry on the petition of Thiru.K.Krishnan, S/o.Kavalaikaran dated 16.08.2002 for 10 acres of lands in Survey Field no.657/1A2 in Pallikaranai Village of Tambaram Taluk, based on the orders of the Assistant Settlement Officer, Thiruvannamalai in K.Dis.B2/1138/A1, dated 20.07.2000. The land was classified as Kazhuveli poramboke in Revenue records. The Assistant Settlement Officer has no powers to pass orders granting patta to the Government Poramboke land in Ryotwari Villages that too a Kazhuveli poramboke for which the Government alone is competent.

6.Hence, the petitioner was initiated departmental proceedings and placed him under suspension and also not permitted to retire from service on his attaining the age of superannuation on 30.06.2011. It is further stated that the petitioner had ignored the instructions of the Settlement Commissioner, Chennai dated 14.06.2001, wherein, it was clearly pointed out that the Assistant Settlement Officer, Tiruvannamalai had passed statutory orders under various abolition acts erroneously and that the instruction to the Tahsildar is concerned not to give effect to the orders in Village and Taluk accounts. However, the petitioner has not followed the



specific instructions of the Settlement Officer but implemented the orders of the Assistant Settlement Officer, Tiruvannamalai, which was considered to be erroneous by the Settlement Commissioner, Chennai. The subject land i.e., "Kazhuveli Poramboke" is a highly objectionable and Pallikaranai Village is Ryotwari Village and the Assistant Settlement Officer, Tiruvannamalai has no jurisdiction to grant patta by re-classifying the Government land into the patta land and his order is illegal and without any merits. However, the petitioner had instructed his subordinates to make necessary changes in respect of the subject land in Taluk and Village accounts. As a responsible Tahsildar, the petitioner ought not to have taken the shelter under the orders of the District Revenue Officer in giving effect to erroneous order of the Assistant Settlement Officer, Tiruvannamalai in granting patta in respect of the subject land, in respect of which already specific orders were issued by the Settlement Commissioner to the effect that not to give effect to such erroneous orders. Further, the Government is the only competent authority for change of classification of water bodies and for granting of patta. Even if the petitioner received any direction for re-classifying objectionable poramboke land, he should have inspected the land and send proposals through the District Collector. But in this case, the



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petitioner failed to do so.

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7.Further, the petitioner was already transferred from the post of Tahsildar, Tambaram vide proceedings of the District Collector, Kancheepuram dated 09.09.2002 and relieved from the post of Tahsildar, Tambaram on 11.09.2002. But the petitioner with dishonest intention and for his personal gain colluded with the individual and processed the file in a hurried manner and passed orders on the last day of his duty as Tahsildar, Tambaram i.e., 11.09.2002 for change of classification of the highly objectionable Government land and for grant of patta in favour of an individual.

8.Hence, it is clear that the petitioner passed the order for his wrongful gain colluding with the individual and thereby, committed a serious mis-conduct. As a Tahsildar, the petitioner should have protected the Government land, instead he colluded with the private individual and abated him in usurping the Government land. Therefore, the petitioner was rightly proceeded with the disciplinary proceedings by issuing a charge memo under Rule 17(b) of the Rules.



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9. Even if the petitioner received any instructions from the higher officials for re-classifying objectionable poramboke lands he should have inspected the land and sent proposals to the Government through the District Collector based on merits of the case. But he failed to do so. In fact, the petitioner passed orders on the last date of his duty as Tahsildar at Tambaram on 11.09.2002, with dis-honest intention for his wrongful gain. Normally, the Government will not entertain, re-classification of water bodies for eventual assignments to private individuals. In rare cases, where the encroachments are in existence for several years without detriment to the usage or stoppage of water, proposals can be initiated, after personal inspection by the District Collector/District Revenue Officer, to satisfy the need to assign the land. Further, the technical opinion of the PWD(WRO) has to be obtained and thereafter, a public notice is to be published in the Village calling for objections besides obtaining the resolution of the Panchayat. Thereafter, a proposal for transfer of classification has to be sent to the Government. It is further stated that the Government vide G.O.Ms.No.41, Revenue Department dated 20.01.1987 has imposed a total



ban for regularisation of encroachment in water course porambores. In this case, there is no encroachment in the land and a perusal of the order passed by the Assistant Settlement Officer will reveal that the land was vacant and water stagnates in the land. However, the patta was issued by the Assistant Settlement Officer erroneously for water body which was laying vacant and the petitioner also given effect to the erroneous order with dis-honest intention for his wrongful gain on the last day of his duty as Tahsildar, Tambaram and thereby he mis-used his final decision and issued patta for the land falling under an highly objectionable poramboke category. In such circumstances, the disciplinary authority can dis-agree with the findings of the enquiry officer and as such the Government has rightly held that the report of the enquiry officer cannot be accepted and rightly proceeded further against the petitioner. It is further stated that for the proven charges, the Government has arrived at a provisional decision to impose punishment of compulsory retirement on the petitioner and in this regard, the views of the TNPSC were also obtained and accordingly, the impugned orders have been passed imposing punishment of compulsory retirement on the petitioner, which requires no interference. With these averments, the respondents sought for dismissal of the Writ Petition.



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10. Challenging the impugned orders, Mr.S.Vijay Kumar, learned Senior counsel appearing for the petitioner would vehemently contend that the impugned order of punishment imposed on the petitioner is illegal and arbitrary and cannot be sustained. He would further contend that there is absolutely no ground to frame serious charges against the petitioner since he has not committed any lapse in passing orders of change of Registry since it is vested with the quasi judicial authority i.e., Assistant Settlement Officer, who had exercised his quasi judicial power and passed orders for grant of patta in respect of the subject land. He would also contend that the petitioner has no power either to recommend or to make any comments on the issue of transfer of patta and it is purely vested with the competent authority(Director of Survey and Settlement Officer) to take appropriate decision. In this case, the District Revenue Officer in his letter dated 10.09.2002, directed the petitioner to pass appropriate orders on the petition of the applicant for effecting change of patta in favour of the applicant and as such according to the learned Senior counsel, the petitioner just obliged the directions of the higher official and absolutely there in no lapse on his part in effecting the change of Registry in the revenue records.



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11. The learned Senior counsel has also contended that after conducting a detailed enquiry, the enquiry officer has given a clean chit by holding that the charges framed against the petitioner were not proved, however, the disciplinary authority without accepting the same, has proceeded further and ultimately inflicted the punishment of compulsory retirement on the petitioner which is arbitrary and without any basis and further, it is shockingly disproportionate to the charges levelled against the petitioner. He also contended that the appellate authority also without considering the material in a proper perspective, after a lapse of 4 years, rejected the appeal, confirming the order of punishment of the disciplinary authority, which also cannot be sustained.

12. The learned Senior counsel, relying upon Rule 12, would contend that the petitioner has no power to revise the order of the Assistant Settlement Officer as there is no jurisdiction vested upon him to exercise the same. He would refer to the Government instructions issued by the Special Commissioner and the Commissioner of Land Administration vide proceedings dated 06.02.1999, which was followed by the Commissioner of



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Survey and Settlement vide proceedings dated 15.09.2011 and in terms of the said proceedings, it has been instructed to the District Head Quarters to follow the orders of the Assistant Settlement Officer, as such the petitioner has just followed the orders of the Assistant Settlement Officer. Therefore, the petitioner cannot be held responsible for any alleged lapse and he passed the orders to effect change of Registry in respect of the subject land based on the approval of his higher officials. With these contentions, the learned Senior counsel would pray this Court to quash the impugned proceedings.

13. On the other hand, the learned Additional Government Pleader appearing for the respondents would contend that the Assistant Settlement Officer, Tiruvannamalai has no jurisdiction to grant patta by re-classifying the Government poramboke land into patta land Ryotwari villages. As such, the petitioner before acting on the instructions of the superior officer i.e., DRO, he ought to have informed his superior officers citing specific instructions of the Commissioner of Survey and Settlement, which he had failed to do so. The action of the petitioner in granting patta in respect of highly objectionable government land



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(Kazhuveli poramboke) is a serious mis-conduct. Therefore, the action of the Commissioner of Revenue Administration in issuing charge memo under Rule 17(b) of the Rules, is valid and legal. The contention of the petitioner that he has only followed the orders of the Assistant Settlement Officer, Joint Commissioner of Land Administration is without any merits. The learned Additional Government Pleader further contends that the disciplinary authority need not agree with the findings of the enquiry officer and can very well dis-agree with the findings of the enquiry officer on valid grounds. Accordingly, the Government have carefully examined the enquiry report and decided to proceed with the disciplinary proceedings against the petitioner and passed the impugned order of compulsory retirement, which was confirmed by the appellate authority in accordance with law and hence, no interference is required against the orders of the disciplinary authority and the appellate authority as those orders were issued by following due procedure provided under law and sought to dismiss the Writ Petition.

14.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and



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carefully examined the materials available on record.

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15.The main charge levelled against the petitioner is that while he was working as Tahsildar, Tambaram, he has approved and passed orders on 11.09.2002 to effect change of registry on the petition of one Thiru K.Krishnan, S/o. Kavalakaran, dated 16.08.2002 for 10.00 acres of land in Survey Field No.657/1A12 in Pallikaranai Village of Tambaram Taluk, based on the orders of the Assistant Settlement Officer, Tiruvannamalai in K.Dis.B2/1138/A1 dated 20.07.2000. As the petitioner failed to obtain the order from the competent authorities before passing such orders on the petition of Thiru.K.Krishnan, the petitioner has failed to perform his official duty sincerely as expected of him and thereby violated Rule 20(1) of the Rules. The petitioner submitted his explanation on 30.06.2010, requesting the disciplinary authority to drop the proceedings initiated against him. Thereafter, an enquiry officer was appointed by the disciplinary authority vide proceedings dated 19.07.2010. After conducting a detailed enquiry and on perusal of the relevant documents, the Enquiry Officer concluded the proceedings and submitted the report on 02.11.2010 with his findings that charges framed against the petitioner have not been proved. It appears



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that the disciplinary authority disagreed with the report of the enquiry officer and issued a show cause notice dated 23.08.2011 to the petitioner, for which, he submitted his explanation on 10.09.2011. But the disciplinary authority without agreeing with the findings of the enquiry officer, decided to impose penalty of compulsory retirement on the petitioner. The disciplinary authority, after getting opinion from the Tamil Nadu Public Service Commission, passed order dated 03.02.2012, imposing punishment of compulsory retirement against the petitioner. Aggrieved by the said punishment order, the petitioner has preferred an Appeal before the Appellate Authority on 09.04.2012. After 4 years, the Appellate Authority passed an order in Appeal by issuing G.O(1D) No.388, Revenue Ser.2(2) Department dated 30.08.2016 confirming the order of punishment imposed by the disciplinary authority and dismissed the Appeal. Against the order of the Appellate Authority in dismissing the Appeal and confirming the order of the disciplinary authority, the present Writ Petition has been filed.

16.The main contention of the petitioner is that the petitioner has no power to revise the order of the Assistant Settlement Officer as no jurisdiction is vested upon him. As per the Government instructions issued



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by the Special Commissioner and Commissioner of Land Administration vide proceedings no.Roc.E2/11859/97 dated 06.02.1999, which was followed by the Commissioner of Survey and Settlement in his proceedings Ne.Mu.Ka.Na.Ka.I.1/15443/10 dated 15.09.2011, wherein, it has been instructed to all the District Headquarters to follow the orders of the Assistant Settlement Officer. The said Government letter was circulated by the District Collector to all the Taluk Offices to follow strictly in accordance with the instructions given therein. It is also the contention of the petitioner that in spite of definite categorical findings of the enquiry officer, the respondents have chosen to impose punishment of compulsory retirement, which is illegal and arbitrary.

17.On perusal of the material available on record, it is clearly established that the Joint Commissioner of Land Administration, Office of the Commissioner of Land Administration, Chennai vide letter no.N.Dis.J.C.Confidential 09/2002 dated 27.06.2002 instructed the petitioner to make necessary changes in the Village and Taluk accounts without any further delay by following the order of the Assistant Settlement Officer, Thiruvannamalai. The District Revenue Officer,



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Kancheepuram in his letter no.54402/2002/N.I dated 10.09.2002 referring to the letter dated 20.07.2000 of the Assistant Settlement Officer, Thiruvannamalai and letter dated 27.06.2002 of the Joint Commissioner of Land Administration, Chennai directed the petitioner to make necessary changes in Village and Taluk accounts. There was no dispute that these two officers i.e., (i) the District Revenue Officer, Kancheepuram and the Joint Commissioner of Land Administration are the superior officers to the petitioner. The petitioner, being subordinate to the said Officers, it appears that he followed the instructions of said two officers and effected necessary changes in Village and Taluk accounts with respect to the subject land involved in the present issue.

18.This Court, cannot brush aside the contention of the petitioner that as a subordinate officer, it is his bounden duty to follow the directions of his superior officers i.e., the District Revenue Officer and the Joint Commissioner of Land Administration. There is substantial force in the contention of the petitioner that he would be exposed to the charges of in-subordination in the event of his failure to oblige with the directions of his superior officers. Though the respondents have chosen to



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filed a detailed counter in the present Writ Petition, but there is no whisper with respect to any action initiated against the concerned District Revenue Officer and the Joint Commissioner of Land Administration, who instructed the petitioner to effect necessary changes in the revenue records. It appears no proceedings have been initiated against them. Without taking any action against those two officers under whose instructions, the petitioner effected necessary changes in the Village and Taluk accounts, initiating action against the petitioner that too even after the specific findings of the enquiry officer that the charges levelled against the petitioner were not held proved, continuing the proceedings against the petitioner appears to be unreasonable and arbitrary. Admittedly, the petitioner is a subordinate. Being subordinate, certainly, he could show his audacity to question the orders passed by the Assistant Settlement Officer and subsequent instructions given by the Joint Commissioner (Land) and the District Revenue Officer, Kancheepuram. In the order passed by the petitioner effecting necessary changes in the Village accounts, he clearly referred to the instructions of the Joint Commissioner (Land), Chennai and the District Revenue Officer, Kancheepuram. As such, in our considered view, the action of the respondents in initiating the proceedings against the



petitioner only without initiating any action against the superior officers under whose instructions the petitioner had acted, is unjust and not sustainable.

19. On perusal of the orders of the disciplinary authority and the Appellate authority and for the reasons stated therein to impose punishment of compulsory retirement against the petitioner, in the considered opinion of this Court, definitely it is disproportionate. It is well settled proposition of law that unless and until the charges are very serious, the question of imposing punishment of compulsory retirement does not arise. Admittedly, in the present case, the alleged incident took place in the year 2002 and the charge memo was issued on 02.03.2010. There has been an inordinate delay of more than 8 years in disposing the disciplinary proceedings. The Appellate authority also disposed of the Appeal after a lapse of 4 years. Considering the entire facts and circumstances of the case, in any event, the order of the disciplinary authority imposing major punishment for compulsory retirement from services is unreasonable, arbitrary and disproportionate in the absence of any action initiated against the Joint Commissioner (Land) and the District Revenue Officer,



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Kancheepuram. The Appellate authority also without considering the grounds raised by the petitioner in his Appeal, dismissed the Appeal in a mechanical way without dealing with the grounds raised by the petitioner in a proper prospective. The order of the disciplinary authority and the order of the Appellate authority would not sustain in the eye of law and as such, they are liable to be set aside.

20.For the reasons stated above, the Writ Petition is allowed, with the following directions:

(i) The G.O(3D)No.2, Revenue Ser.2(2) Department dated 03.02.2012, G.O.(2D) No.262, Revenue Ser.2(2) Department dated 17.08.2016 and G.O.(1D) No.388, Revenue, Ser2(2) Department, dated 30.08.2016 are hereby set aside.

(ii) The respondents shall accord notional promotion and other consequential benefits and settle the retirement benefits and revise the pension of the petitioner within a period of two months from the date of receipt of a copy of this order. No costs.

03.06.2024

Index : Yes/No

Speaking order:Yes/No



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Note to Registry:
Issue order copy on 04.06.2024

To

1.The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai.9

2.The Secretary to the Government,
Revenue Department,
Secretariat,
Chennai.9

3.The Principal Secretary/
Commissioner of Revenue Administration,
Chepauk,
Chennai-5



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BATTU DEVANAND, J

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Pre-Delivery order in
Writ Petition No.6839 of 2017

03.06.2024