



W.P.No.16856 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 28.01.2025

Coram:

THE HONOURABLE Mr. JUSTICE G. ARUL MURUGAN

W.P.No.16856 of 2015
& W.M.P.No.1265 of 2016

T.Muthusamy,
S/o.Thayumanavan,
Panchanathikulam East & Post,
Vedaranyam Taluk,
Nagapattinam District 614 714.

... Petitioner

/versus/

1. The District Revenue Officer,
Nagapattinam.

2. The Revenue Divisional Officer,
Nagapattinam.

... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, to call for the records in pursuant to the impugned order passed by the 2nd respondent in proceedings Na.Ka.No.7228/2013/A1 dated 24.11.2014 and the consequential Appellate Order issued by the 1st respondent in proceedings Na.Ka.20301/2014/1 2 dated 16.4.2015 and quash these orders and consequently direct the respondents to reinstate the petitioners in service with full backwages and other consequential service benefits.

Page No.1/19



WEB COPY



W.P.No.16856 of 2015

For Petitioner : Mr.R.Prem Narayan.

For Respondents : Mr.P.Ananda Kumar,
Government Advocate

ORDER

The writ petition has been filed challenging the order of the 2nd respondent dated 24.11.2014 and the consequential order passed by the 1st respondent dated 16.04.2015 as well as seeking further consequential relief to reinstate with full back wages.

2. The petitioner was employed as Village Administrative Officer, Pannal Village, Vedaranyam Taluk, Nagapattinam District and he was issued a charge memo dated 17.04.2013, which contemplated the following four charges.

1. குற்றச்சாட்டு எண் - 1

வேதாரண்யம் வட்டம், பஞ்சநதிக்குளம் மேற்கு கிராமத்தில் வறட்சி நிவாரணம் - 2013 வழங்கியதில் சாகுபடி பரப்பினை விட அதிகமாக நிவாரணம் வழங்கியது.

2. குற்றச்சாட்டு எண் - 2

1422 ஆம் பசலிக்கான கிராமக் கணக்குகள் 1, 1A ஆகியவை தணிக்கை நாள் வரை முறையாக எழுதாமல் இருந்தது.

3. குற்றச்சாட்டு எண் - 3

அடங்கல் பதிவேட்டில் சாகுபடி விபரங்கள் பதியாமல்



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W.P.No.16856 of 2015

வறட்சி நிவாரணப் பட்டியல் தயார் செய்தது.

4. குற்றச்சாட்டு எண் – 4

அரசுப் பணியை அலட்சியப்படுத்தி அரசுக்கு இழப்பீடு ஏற்படுத்தியது.

3. The petitioner offered his explanations and not being satisfied with the reply, an enquiry officer was appointed. After completion of the enquiry, enquiry report was submitted on 30.07.2014 and second show cause notice was issued to the petitioner. Thereafter, the 2nd respondent, by order dated 24.11.2014, imposed the punishment of compulsory retirement.

4. The petitioner had filed an appeal before the 1st respondent and the Appellate Authority, by order dated 16.04.2015, while rejecting the appeal and confirming the order of compulsory retirement imposed by the 2nd respondent, had further enhanced the punishment and passed orders of removal from service against the petitioner. Further, the movable and immovable properties of the petitioner have also been attached in view of the loss caused by the petitioner to the Government for a sum of Rs.24,63,375/-. The Appellate Authority had referred to the orders passed by this Court in W.P.No.31945 of 2013, dated 15.07.2014 and



W.P.No.16856 of 2015

based on the directions issued thereunder, the attachment of the properties was undertaken to safeguard against the loss. Assailing the impugned orders, the petitioner has preferred the above Writ Petition.

5. The learned counsel appearing for the petitioner though initially advanced arguments challenging both the original punishment and the enhancement made by the Appellate Authority, however later confined his submissions in respect of the order passed by the appellate authority enhancing the punishment of compulsory retirement to removal from service. It is his contention that, though the appellate authority is empowered to pass an order enhancing the punishment, still while the appellate authority chooses to do so, the provisions contemplated under proviso (ii) to Rule 23(1)(c) of Tamil Nadu Civil Services (Discipline & Appeal) Rules: (hereinafter referred to as: 'Rules') had not been followed in this case and as such the order enhancing the punishment is vitiated and cannot be sustained.

6. Further, the learned counsel for the petitioner submitted that



W.P.No.16856 of 2015

though the appellate authority had conducted an enquiry by giving opportunity to the petitioner, still it was only in respect of the punishment imposed by disciplinary authority and after the appellate authority had come to a conclusion that the appeal is to be rejected confirming the punishment and further the punishment has to be enhanced, then it is for the authority to issue notice intimating the proposed punishment and to afford an opportunity to the petitioner, in compliance to the mandatory provisions of Rule 23 (1)(c) proviso(ii).

7. Further, the learned counsel for the petitioner contended that when the punishment that could be imposed for a charge memo under 17(b) of Rules could be only any of the punishments that are enumerated under Rule 8, the order of attachment issued by the Appellate Authority is beyond the powers contemplated under the Act and therefore, the attachment imposed is arbitrary and requires to be interfered with.

8. Per contra, Mr.P.Ananda Kumar, learned Government Advocate appearing for the respondents by relying on the counter affidavit submitted that



W.P.No.16856 of 2015

when huge loss has been caused to the Government to the tune of Rs.24,63,375/-

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and the same was taken note of by this Court and already a direction has been

issued to take appropriate proceedings against the petitioner including the registration of a criminal case, only to safeguard the loss caused to the Government, the Authority had particularly referring to the directions, attached the properties of the petitioner which is perfectly in order. It is his further contention that, as per Rule 9(a) of the Rules, the 2nd respondent is entitled to conduct the enquiry by himself where several acts of delinquency by many employees are involved. After affording sufficient opportunity to the petitioner, it was found that the petitioner had in fact committed the offence and due to which huge loss has been caused. The Appellate Authority which is vested with the power to enhance the punishment under Rule 23 of the Rules had imposed the punishment of removal from service. Further, he submitted that pursuant to the direction of this Court, a criminal case has also been registered as against the petitioner which is pending trial and therefore, challenge made to the impugned order cannot be sustained.

9. Heard the rival submissions and perused the materials available on record.

Page No.6/19



W.P.No.16856 of 2015

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10. The petitioner while he was working as Village Administrative Officer was allegedly involved in certain irregularities whereby he allowed non-competent persons to avail the drought relief from the Government to a tune of Rs.24,63,375/-. As such a charge memo came to be issued on 17.04.2013 framing the above said four charges.

11. In fact, due to the huge drought situation prevailing in that area at that point of time, the Government through G.O.Ms.No.48 (Revenue Department), dated 13.02.2013 had granted a drought relief of Rs.15,000/- per acre to the land owners and cultivators and the crops were damaged more than 50% during the year 2012-13. On complaint from the villagers, it was found that the petitioner being incharge for taking assessment of the affected crops had involved in the irregularities by which the abovesaid amount has been paid to the ineligible persons.

12. The petitioner has submitted his explanation on 25.09.2013 and not being satisfied with the same, an Enquiry Officer was appointed on



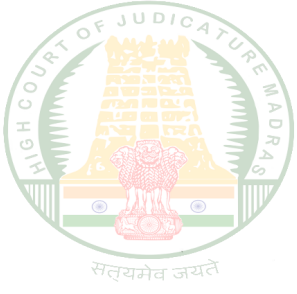
30.12.2013. Pursuant to the completion of enquiry, report was submitted on 05.02.2014 listing out the discrepancy found and the loss amount has been fixed at Rs.24,63,375/-. Based on the report, a revised charge memo was issued to the petitioner by the 2nd respondent on 07.02.2014. Further charge was framed which reads as under:

குற்றச்சாட்டு எண்.1

வேதாரண்யம் வட்டம், பஞ்சநதிக்குளம் மேற்கு கிராமத்தில் கிராம நிர்வாக அலுவலராக பணியாற்றியபோது கீழ்க்குறிப்பிட்டவாறு நிலங்களுக்கு தகுதி அற்ற முறையில் 2013-இல் வறட்சியால் பயிர் பாதிப்புக்கான நிவாரணம் வழங்குவதற்கு அரசுக்கு நிதி இழப்பு ஏற்படும் வகையில் தவறான பயனாளிப்பட்டியல் தயார் செய்து நிவாரணம் வழங்கிடக் காரணமாக இருந்தது.

1. திடல், தரிசு மற்றும் அரசு புறம்போக்கு நிலங்கள்	1.38.0 ஹெக்டேர்ஸ்
2. அடங்கல் மற்றும் அ பதிவேட்டில் புல எண் இல்லாத இனங்கள்.	10.84.5 ஹெக்டேர்ஸ்
3. அடங்கலில் சாகுபடி பதிவு செய்யப்படாத இனங்கள்	2.70.5 ஹெக்டேர்ஸ்
4. அடங்கலில் உள்ள திட்டப்பரப்பை விட அதிகமாக நிவாரணம் வழங்கப்பட்ட இனங்கள்	9.08.0 ஹெக்டேர்ஸ்
5. சவுக்கு, பனை மற்றும் இதர சாகுபடி இனங்கள்	24.21.5 ஹெக்டேர்ஸ்
6. இரட்டைப் பதிவு இனங்கள்	23.98.0 ஹெக்டேர்ஸ்
மொத்தம்	72.20.5 ஹெக்டேர்ஸ்

மேற்குறிப்பிட்டவாறு அரசுக்கு மிக அதிகமான நிதி இழப்பு ஏற்படுத்தியதும் முறைகேடாக பயிர் நிவாரணப் பயனாளிகள் பட்டியல் தயார் செய்ததன் காரணமாக கிராம விவசாயிகளின் புகாருக்கும் உயர்நீதிமன்ற வழக்கு ஏற்படுவதற்கும் காரணமாக இருந்தது. மேற்கண்ட வகையான குறைபாடுடைய இனங்களுக்கான 72.20.5 ஹெக்டேர்ஸ் பரப்பின் 83% என்பது 59.93



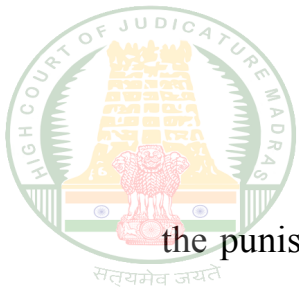
W.P.No.16856 of 2015

WEB COPY

ஹெக்டேர்ஸ் அதாவது 148.03 ஏக்கர் ஆகும். ஆகவே, ஏக்கர் ஒன்றிற்கான நிவாரணத்தொகை ரூ.15,000/- என்ற அடிப்படையில் 148.03 ஏக்கருக்கான நிவாரணத் தொகையான சுமார் ரூ.22,20,450/- கிராம கணக்குகளுக்கு முரணாக நிவாரணம் வழங்கியது.

13. Pursuant to the completion of enquiry, the enquiry report was submitted holding that all the charges are proved. Based on the further response submitted by the petitioner, the 2nd respondent *vide* order dated 24.11.2014 accepting the enquiry report had imposed punishment of compulsory retirement. Before imposing the punishment an opportunity of personal hearing was also afforded to the petitioner on 11.09.2014.

14. Challenging the punishment imposed, the petitioner had preferred appeal before the 1st respondent. The appellate authority, *vide* order dated 16.04.2015 while rejecting the appeal confirming the punishment imposed by the 2nd respondent, has further enhanced the punishment from compulsory retirement to that of removal from service. Since the learned counsel is restricting his arguments in respect of the order passed by the Appellate Authority in enhancing



the punishment, the submission raised in this regard alone is adverted to and the

relevant portion of the Rule dealing with power of appellate authority to enhance punishment is extracted hereunder.

Rule 23: Power and procedure of the Appellate Authorities

Rule 23 (1)(c)(i) and the proviso (ii) are extracted hereunder:

“23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider.

(a).....

(b).....

(c) whether the penalty is excessive, adequate or inadequate and pass orders.

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that-

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi), (vii) and (viii) of Rule 8 and an inquiry under sub-rule (b) of Rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of Rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of Rule 17 and thereafter, on a consideration of the proceedings of such



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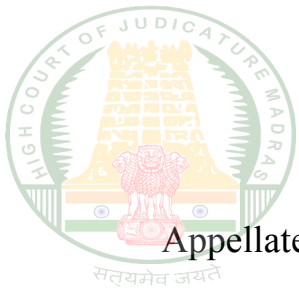
W.P.No.16856 of 2015

inquiry make such orders as it may deem fit; (Vide G.O.Ms.No.117, P&AR(N) Department, dated 28.9.2011)

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi), (vii) and (viii) of Rule 8 and an inquiry under sub-rule (b) of Rule 17 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit;”

15. As per Rule 23(1)(c)(i), the Appellate Authority while deciding the appeal is having the powers to either confirm, enhance, reduce or set aside the penalty. Though the appellate authority is having the power to enhance the punishment imposed by the Disciplinary Authority, the procedure that is contemplated under proviso (ii) to Rule 23(1)(c) is that when the Appellate Authority proposes to impose one of the penalties specified in clauses (iv), (v), (vi), (vii) & (viii) of Rule 8 and where an inquiry under sub-rule (b) of Rule 17 has already been held as in the instant case, then the Appellate Authority shall, after giving a reasonable opportunity of making representation against the penalty proposed, on the basis of evidence may make such orders as it deems fit.

16. The provision leaves no manner of doubt that though the



W.P.No.16856 of 2015

WEB COPY

Appellate Authority is empowered to pass an order enhancing the punishment and impose a punishment of removal from service, and even when already an enquiry as contemplated under Rule 17 (b) had been undertaken, still the appellate authority if based on the evidence comes to a conclusion that an enhanced punishment is to be imposed then it is mandatory on the part of the Appellate Authority to issue a notice to the appellant indicating the proposed punishment to be imposed based on the evidence and afford him reasonable opportunity of making a representation against the proposed penalty.

17. The impugned order of the 1st respondent, dated 16.04.2015, reveals that, in the appeal, the Appellate Authority had given reasonable opportunity to the appellant to provide documents to satisfy that the amount has been disbursed only to the eligible beneficiaries, and the appellant was not able to substantiate the same and thereby, the Appellate Authority came to the conclusion that the charges framed as against the petitioner stands proved and no interference is required in the appeal. However, when the Appellate Authority had ordered that, in view of the evidences available, the punishment is enhanced from compulsory retirement to that of removal from service, then from the order it is able to be seen



that no notice has been issued by the Appellate Authority affording the petitioner a

reasonable opportunity indicating the proposed punishment. Paragraphs 4 to 7 of the impugned order is extracted for easy reference.

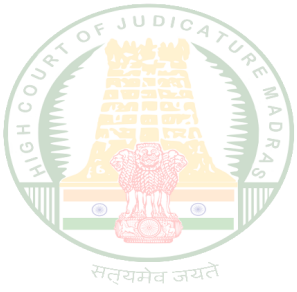
4) உண்மையில், ஸ்தலத்தில் உரிய ஆய்வு மேற்கொண்டு , பாதிக்கப்பட்ட புல எண்கள் எவை எவை, இழப்பீடு பெற தகுதியான நபர்கள் யார் யார், நெற்பயிர் அல்லாத பணப்பயிர்கள் எந்தெந்த புல எண்களில் பயிர் செய்யப்பட்டுள்ளது என்ற விவரங்களை கண்டறிந்து, உண்மையாக நிவாரணம் பெற தகுதியான நபர்களை கண்டறிந்து ஸ்தல ஆய்வு செய்து அறிக்கை தயாரிக்க வேண்டிய கடமையும் பொறுப்பும் சம்மந்தப்பட்ட கிராம நிர்வாக அலுவலர் திரு.தா.முத்துசாமி என்பவருக்கே உள்ளது. இந்நிலையில் ஸ்தலத்தினை நேரில் பார்வையிட்டு தவறான பல நபர்களுக்கு தவறான வழியில் பயிர் நிவாரணம் கொடுத்துள்ளது சம்மந்தப்பட்ட

கிராம நிர்வாக அலுவலர் தான் என்பது தெளிவுபட தெரிய வருகிறது. இந்நேரில் மேற்கண்ட வகையில் குற்றங்கள் அனைத்தையும் சம்பந்தப்பட்ட கிராம நிர்வாக அலுவலரே செய்திருப்பது விசாரணையின் மூலமும் ஆவணங்களின் மூலமும் உண்மை என தெரியவருவதால் திரு.தா.முத்துசாமி கிராம நிர்வாக அலுவலரே மேற்கண்ட குற்றச்சாட்டுகளுக்கு முழு பொறுப்பு என முடிவு செய்து அவரீது உரிய நடவடிக்கை எடுப்பதோடு அவரால் அரசுக்கு ஏற்பட்ட இழப்பு தொகை ரூ.24,63,375/-ஐ வசூல் செய்திட உரிய நடவடிக்கை எடுக்கப்பட வேண்டும். நாகப்பட்டினம் வருவாய் கோட்டாட்சியரின் 24.11.2014-ஆம் தேதிய ஆணையினை எதிர்த்து குற்ற அலுவலர் திரு. தா. முத்துசாமி என்பவர் கடந்த 5.12.2014 அன்று மாவட்ட வருவாய் அலுவலர் முன்பாக மேல்முறையீடு மனு தாக்கல் செய்தார். அவர் மீது சாட்டப்பட்ட குற்றச்சாட்டுகளுக்கு எதிரான ஆதார ஆவணங்களை அவர் தாக்கல் செய்திட, 9.4.2015 வரை 126 நாட்கள் கால அவகாசம் மற்றும் அவருக்கான அனைத்து வாய்ப்புகளும் அளிக்கப்பட்டது. ஆனால் குற்ற அலுவலர், மேற்கண்ட நிவாரணத் தொகை ரூ. 24,63,375/-ஐ அரசுக்கு இழப்பு ஏற்படுத்தியது தொடர்பான குற்றச்சாட்டுகளை மறுப்பதற்கான போதுமான ஆதாரங்களை விசாரணை அலுவலர் / மேல்முறையீடு அலுவலர் முன்பாக தாக்கல் செய்யாத காரணத்தினால், குற்றம் நிரூபணம் ஆகிறது. குற்ற அலுவலரின் மேல்முறையீடு மனு இதன் மூலம் நிராகரித்து ஆணையிடப்படுகிறது.

5) நாகப்பட்டினம், வருவாய் கோட்ட அலுவலரால் வழங்கப்பட்ட கட்டாய ஓய்வு (Compulsory retirement) குறித்த செயல்முறை ஆணை ந.க. 7238/2013 அ.1 நாள் 24.11.2014 ஆணையினை நிறுத்தி வைத்து (Withheld) நாகப்பட்டினம், மாவட்ட வருவாய் அலுவலரால் பிறப்பிக்கப்பட்ட இடைக்கால செயல்முறை ஆணை ந.க. 20301/ 2014 ஐ.2 நாள் 12.12.2014-ஐ இதன் மூலம் விலக்கி ஆணையிடப்படுகிறது.

6) நாகப்பட்டினம், வருவாய் கோட்டாட்சியரால் திரு. தா. முத்துசாமி, கிராம நிர்வாக அலுவலர் மீது பிறப்பிக்கப்பட்ட இறுதி ஆணையில் “ கட்டாய ஓய்வு ” (Compulsory Retirement) என்ற தண்டனை ரத்து செய்யப்பட்டு, இந்நேரில் வருவாய் கோட்டாட்சியரால் ஏற்படுத்தப்பட்ட குற்றச்சாட்டுகள் சம்பந்தமாக அனைத்து ஆவணங்களையும் சரியாக, முறையாக பரிசீலனை செய்து குற்ற அலுவலர் மீது ஏற்படுத்தப்பட்ட குற்றச்சாட்டுகள் உண்மை என தெரியவருவதாலும், தவறான நபர்களுக்கு நிவாரணம் வழங்கப்பட்டது உண்மை என தெரியவருவதாலும் திரு. தா.முத்துசாமி என்பவரை “பணியில் இருந்து அகற்றி” (Removed from service) ஆணையிடப்படுகிறது.

7) விசாரணை அலுவலரின் அறிக்கையின்படி மேற்கண்ட இழப்பீட்டுத் தொகை ரூ. 24,63,375/-ஐ மேற்கண்ட கிராம நிர்வாக அலுவலர் திரு. தா. முத்துசாமி என்பவர் மூலமாக தவறாக பெற்ற தொகையினை பயனாளிகளிடமிருந்து திரும்பப் பெற்றும், மேலும் கிராம நிர்வாக அலுவலரின் அசையும் மற்றும் அசையா சொத்துக்களை விதிகளுக்கு உட்பட்டு முடக்கி அரசுக் கணக்கில் சேர்ப்பதன் மூலமும் மேற்படி தொகையினை நாகப்பட்டினம் வருவாய் கோட்டாட்சியர் (Appointing Authority) வசூல் செய்திட உரிய நடவடிக்கை மேற்கொள்ள ஆணையிடப்படுகிறது.



W.P.No.16856 of 2015

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18. As such, when the Appellate Authority had passed an order enhancing the punishment, admittedly the Authority had not followed the mandatory provisions as contemplated under proviso (ii) to Rule 23(1)(c) of the Rules. As the opportunity of making a representation before imposing the enhanced punishment had not been afforded to the petitioner, the enhanced punishment is not in consonance with the proviso (ii) to Rule 23(1)(c) and is also in violation of principles of natural justice.

19. In view of the above finding, the order of the 1st respondent, insofar as enhancing punishment from compulsory retirement to that of removal from service, is liable to be interfered with and since there is a procedural violation, the matter is to be remanded back to the file of the 1st respondent to pass fresh orders from the stage of issuing a notice as contemplated under proviso (ii) to Rule 23(1)(c) of the Rules.

20. Regarding the petitioner's submission that the movable and immovable properties had been attached and the authority is not empowered to



W.P.No.16856 of 2015

pass an order of attachment, as it is not a punishment enumerated under Rule 8 of the Rules, it could be seen that though the orders passed by the Division Bench of this Court in W.P.No.31945/2013, dated 15.07.2014 is not available but however, in the order passed by the 1st respondent, the relevant portion of the orders passed in the Writ Petition has been referred, which is extracted hereunder:

(3)....Hence the specific charges were made against the Village Administrative Officer, concerned under rule 17(b) of Tamilnadu Civil Service (Discipline and Appeal) Rules by the 2nd respondent vide Rc.7228/2013/A1. Dated: 07.02.2014. The Village Administrative Officer, concerned will be dealt with according to the procedures laid down under Tamilnadu Civil Service (Discipline and Appeal) Rules. In much as the severe disciplinary action has been taken against the Village Administrative Officer, concerned who is the route cause for the irregular payments at the field level. It is further submitted that after finalizing the detailed enquiry by the Enquiry Officer, Criminal Proceedings will be initiated on the outcome of the Enquiry report.

(4) In view of the said averment in the counter affidavit, we are of the considered view that no further adjudication is required. However, the respondent No.1 is directed to expedite the proposed action against erring



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W.P.No.16856 of 2015

officials. Accordingly, the writ petition is disposed of. No costs. The connected M.P.No.1 of 2013 is also closed.

21. As referred earlier, the Government had issued orders to compensate the land owners and farmers in respect of the severe drought and the petitioner was the person to assess the crops, based on which the drought relief was to be distributed to the farmers. However, the petitioner is found to have indulged in irregularities due to which ineligible persons had been disbursed with benefits, thereby causing loss to the Government's exchequer to the tune of Rs.24,63,375/-. In the dispute raised by the beneficiary before this Court, taking note of the serious irregularities caused, directions have been issued to the respondents to initiate criminal proceedings after taking note of the disciplinary proceedings already undertaken by them.

22. In compliance with the orders passed, already a criminal case has been registered, which is pending trial. Now, it is also brought to the notice of this Court that the petitioner was appointed only in the year 2009 and he is also not eligible for payment of pension. In such circumstances, the significant loss caused to the Government to the tune of Rs.24,63,375/-, needs to be redressed. As such,



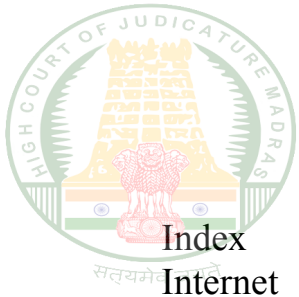
W.P.No.16856 of 2015

this Court is not inclined to disturb the attachment made in the order at this stage.

WEB COPY Therefore, without expressing any opinion on merits in this aspect, the attachment is to continue till fresh orders are passed by the 1st respondent on remand, where the authority shall take note of the objections made by the petitioner. It is also made clear that the observations made are for the purpose of disposal of this Writ Petition and it shall not have any bearing effect on the trial which the petitioner is undergoing.

23. In view of the above deliberations, the Writ Petition is partly allowed. The impugned order of the 1st respondent, dated 16.04.2015, insofar as enhancing the punishment alone is set aside and remanded back to the file of the 1st respondent for passing fresh orders. While passing fresh order, after complying with the procedures as contemplated under proviso (ii) to Rule 23(1)(c) of the Rules, the issue in respect of attachment will also be taken note of and appropriate directions to be issued after hearing the objections of the petitioner in this regard. No costs. Consequently, connected Miscellaneous Petition is closed.

28.01.2025



W.P.No.16856 of 2015

Index :Yes/No.

Internet :Yes/No.

Speaking Order/Non-Speaking order
bsm

To,

1. The District Revenue Officer, Nagapattinam.

2. The Revenue Divisional Officer, Nagapattinam.



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W.P.No.16856 of 2015

G.ARUL MURUGAN, J.

bsm

W.P.No.16856 of 2015

28.01.2025

Page No.19/19