IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2025

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P No.20508 of 2018
and
WMP.No.24106 of 2018

K.Bopalan,
Deputy Inspector of Survey,
Office of the Assistant Director of Survey,
Chennai 600 001.

Now residing at
No.5, Pillayar Koil Street,
Arumbakkam,
Chennai 600 106. ... Petitioner

Vs.

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

2. The Additional Director of
Survey & Land Records,
Chepauk, Chennai 600 005.

3.The Tribunal for Disciplinary Proceedings,
Chennai 600 108.
Rep. by its Commissioner. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent Tribunal comprised in its order dated 26.11.2015 passed in TDS Case

No.2 of 2013 and the consequential proceedings bearing Reference in Na.Ka.L2/28295/2014 dated 15.12.2016 issued by the first respondent and quash the same as being arbitrary, illegal, violative of principles of natural justice and without application of mind and consequently direct the first respondent to release the pensionary benefits due to the petitioner upon his retirement on 31.12.2015.

For Petitioner	:	Mr.Vishnu Mohan
For Respondents	:	Mr.P.Kumaresan, AAG assisted by Mrs.S.Anitha, SGP

ORDER

This writ petition has been filed to call for the records of the 3rd respondent Tribunal pertaining to the order dated 26.11.2015 made in TDS Case No.2 of 2013 and the consequential order of the 1st respondent dated 15.12.2016 in Na.Ka.L2/28295/2014 and quash the same and direct the first respondent to release the pensionary benefits due to the petitioner upon his retirement on 31.12.2015.

2.Heard Mr.Vishnu Mohan, learned counsel for the petitioner and Mr.P.Kumaresan, learned Additional Advocate General for the respondents 1 to 3 and perused the materials available on record.

3. The petitioner joined as Surveyor-cum-Draughtsman in the Survey and Settlement Department on 16.09.1983. Thereafter he was promoted to the post of sub-inspector of survey and reached the age of superannuation on 31.12.2015. On 21.05.2014 the petitioner was issued with a charge memo alleging that he had been in possession of assets and pecuniary resources disproportionate to his own source of income for which he could not give a satisfactory account, thereby committing grave misconduct and conducting himself with due integrity and devotion to his duty. After giving an opportunity to the petitioner, the 3rd respondent Tribunal commenced the inquiry on 21.10.2014 and concluded the inquiry by recording that the petitioner had a disproportionate asset to the value of Rs.33,71,409.02. After furnishing a copy of the report, the report was transmitted to the Head of the Department through proper channels. In the meanwhile, the petitioner has attained the age of superannuation on 31.12.2015. But he was not allowed to retire, and he was placed under suspension. Thereafter he was issued with the order of punishment of dismissal from service by the 1st respondent. Hence, the petitioner has filed this writ petition challenging said order.

4.Mr. Vishnu Mohan, learned counsel for the petitioner submitted that as per the Government Order issued in G.O.Ms.No.409 Personnel and Administrative Reforms (Per-A) Department dated 24.12.1992, an amendment was brought to Sub-Rule (1) Clause (a) of Tamil Nadu Government Servants' Conduct Rules, 1973 and according to which a government servant is not required to get prior permission or give prior notice in case immovable properties are acquired or disposed by the members of the government servant, if the acquisition is not from the sources of the government servant; as the petitioner's wife was doing real estate business and the properties which stood in the name of the petitioner's wife and son were acquired from and out of her the pettioner's wife income.

5. He further submitted that income tax returns have been submitted to show the tax paid on the income earned by his wife, but that was not considered by the 3rd respondent. Even though the petitioner has produced the income tax returns for the period from 1997 to 2007, the petitioner's wife, who was examined as the petitioner's side witness during the inquiry, has stated in her cross-examination that she has studied up to VII standard in Tamil medium and she was conducting the real estate business not with the help of her husband but with the help of her brother. She has stated that the alleged real estate business does not have any business name, and no accounts have been maintained for the

income and expenditure.

6. It is also stated that there was no bank transaction in connection with the real estate business. The petitioner has also stated in his explanation that apart from the real estate business, his wife had other sources of income from agriculture. Even for the questions pertaining to the agriculture, the petitioner's wife has stated that she does not have any record to show that she was earning income from agriculture. Though it is understandable that agricultural income sometimes cannot be based upon records, there is not even any bank transaction pertaining to the alleged agricultural income. She did not have the support of her parents also. Though she has stated that certain lands were let on lease, no documents have been produced to show the same. So the income tax returns were proved to be only the documents procured by the petitioner for saving himself from the action initiated against him.

7. Reliance was placed by the petitioner on the judgment of the Hon'ble Supreme Court held in *M.V.Bijlani Vs. Union of India and others,* reported in *(2006) 5 Supreme Court Cases 88.* In the said case, the Hon'ble Supreme Court has held that the departmental enquiry done by the enquiry officers is quasi-judicial in nature, and hence his conclusion should be based upon preponderance of probability to prove the charges on the basis of materials on the record. It is further held that during that process, the enquiry officer shall not refuse to consider the relevant facts and that his conclusion cannot be based upon surmises and conjectures. The relevant part of the above judgment is produced as under:

> *"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with. "*

8. In the instant case, the 3rd respondent has not arrived at the conclusion based on any surmises or conjectures but only on the basis of solid evidence. As stated already there were substantive and corroborative materials available on record and the conclusion was arrived only basing on the same.

9. Mr.P.Kumaresan, learned Additional Advocate General for the respondents 1 to 3, submitted that there are concrete materials available to substantiate the charges against the petitioner and that was rightly considered by the 3rd respondent Tribunal for arriving at a right conclusion. As the charges against the petitioner were serious in nature, the 1st respondent has also rightly imposed a fitting punishment of dismissal from service.

10. In fact, the officer from the Income Tax Department has also been examined as departmental witness 9, and he has stated that the income tax returns have only been given for the years 2005, 2006, 2007, and 2008. With regard to the returns filed in respect of the rest of the years, he did not have any records. The petitioner has not confronted DW.9 by showing the return 'C' marked as documents on his side in order to prove his genuineness and reliability. Even for the loans availed by the petitioner's wife in the banks and other financial institutions, the petitioner alone stood as a guarantor. Though he stood as a guarantor for certain loans availed by his wife, he did not give the intimation to the department. So this would only show the clandestine manner in which the petitioner had acquired the properties in the name of his wife, son, and other family members.

11. At that time, when the petitioner joined the service in the year 1997, he had revealed only 5 properties standing in the name of his wife. Thereafter, within 10 years, 5 properties multipled into several properties and they mostly stand in his wife's name. 29 items of properties were found to be possessed by the petitioner's family in the year 2007. Neither the petitioner nor his wife had any source of income to purchase 24 more properties between the period from 1997 to 2007.

12. Since the substantial and documentary evidence were available during the inquiry of the 3rd respondent, the 3rd respondent cannot be found fault for his report confirming the fact that the petitioner was possessing assets in excess of his known source of income. As the charges framed against the petitioner have been proved through an enquiry was conducted under due procedure and by giving sufficient opportunity to the petitioner, I do not find any reason to set aside the proceedings of the 3rd respondent as prayed by the petitioner.

13. It is seen from his order that the 1st respondent had applied his mind by carefully examining the records. He had also stated the seriousness of the proved charges as the reason for imposing the capital punishment of dismissal from service. Both the order of the 1st respondent and the proceedings of the 3rd respondent are based on sound evidence and reasons. Hence, I do not find any illegality or violation of due procedure. For the reasons best known to the petitioner, he did not confront the income tax returns produced by him with the concerned authority who was examined as a witness. Filing of the income tax returns, not supported by any evidence to show the source of income, cannot come to the rescue of the petitioner. In view of the above stated reasons, this writ petition is liable to be dismissed.

In the result, the Writ Petition stands **dismissed.** There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

18.02.2025

Index : Yes
Internet : Yes/No
Speaking/Non- Speaking
Neutral: Yes/No
jrs

R.N.MANJULA, J.

jrs

To
1. The Principal Secretary and
   Commissioner of Survey and Settlement,
   Chepauk, Chennai 600 005.

2. The Additional Director of
   Survey & Land Records,
   Chepauk, Chennai 600 005.

3.The Commissioner.
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