IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**10.02.2025**
Pronounced on	**23.04.2025**

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.17912 of 2018 and
W.M.P.No.21210 of 2018

M.Sundaramoorthy

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
Revenue Department and Disaster
Management Services,
Secretariat, Chennai - 9.

2.The District Collector,
Namakkal District,
Namakkal.

3.The Revenue Divisional Officer,
Namakkal.

4.The Tahsildar,
Namakkal. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent relating to order in G.O.(2D).No.303, Revenue Department and Disaster Management Services Wing Ser 4(1) dated 16.10.2017 to quash the same and to issue consequential directions to the respondents to permit the petitioner to retire on 31.12.2007 and to grant him all consequential benefits and disburse his pensionary benefits with interest within a time frame.

For Petitioner	:	Mr.M.Ravi
For Respondents	:	Mr.T.Chezhiyan, AGP

ORDER

The petitioner has filed this Writ Petition to call for the records on the file of the first respondent relating to order in G.O.(2D).No.303, Revenue Department and Disaster Management Services Wing Ser 4(1) dated 16.10.2017 and to quash the same and to issue consequential directions to the respondents to permit the petitioner to retire on 31.12.2007 and grant him all consequential benefits and disburse his pensionary benefits with interest within a time frame.

2. Heard Mr.M.Ravi, learned counsel for the petitioner, Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents and perused the materials available on record.

3. **<u>The brief facts of the case are as follows:</u>**

The petitioner was working as a Village Administrative Officer at Ariyalur, Namakkal District. The second respondent issued a charge memo on 26.04.2006 under Rule 17(b) of the Tamil Nadu Civil Service (D&A) Rules. It is alleged that some irregularities have occurred in the issuance of patta in respect of lands in Survey Nos.94/2 & 93/3 in Tholur Village. Even the above charge memo was subsequently withdrawn and a revised charge memo was issued on 14.11.2006 and the petitioner submitted his explanation on 15.11.2006 denying the charges. The Enquiry Officer conducted the enquiry and submitted his report stating that the charges against the petitioner were not proved. Though the petitioner attained the age of superannuation on 31.12.2007, he was not allowed to retire. After ten years, the first respondent passed a final order by imposing the penalty of dismissal from service against the petitioner.

4. Mr.M.Ravi, learned counsel for the petitioner submitted that the co-delinquents were also involved in the occurrence and the petitioner alone was imposed with the major punishment of dismissal from service; no joint enquiry was conducted; the petitioner has been discriminated and affected due to the inordinate delay of 10 years.

5. Mr.T.Chezhiyan, learned Additional Government Pleader for the respondents submitted that the duties and responsibilities of the Village Administrative Officer are different from other delinquents such as Tahsildar and Deputy Tahsildar. The Village Administrative Officer has got a duty to protect the lands and safeguard the interest of the Government. The petitioner had recommended to issue patta in the name of the private persons for the land which has been treated as Kuttai Poramboke. The passage of time cannot stand as a legal bar for imposing penalty for the serious lapses committed by the petitioner. The charges against the petitioner and other delinquents are different and hence the petitioner is not prejudiced due to the conduction of the individual enquiry. The enquiry has been conducted after giving due opportunity to the petitioner and the charges were also proved basing on the records. There is no arbitrariness or unreasonableness in the award of punishment of dismissal from service. As the petitioner has been dismissed from service, he is not entitled to the pensionary benefits.

6. The petitioner was appointed as a Village Administrative Officer only in the year 2001. Within five years of his service he received a charge memo on the allegation that he has wrongly recommended to grant patta in the name of four private individuals in respect of Survey Nos.94/2 and 93/3, Tholur Village comprising an extent of 0.72.0 Hectares. As the lands have been originally classified as Kuttai Poromboke and it belonged to the Government, it is alleged that the petitioner had deliberately given a false statement and recommended patta to be granted in the name of individuals.

7. Further, the charges against the petitioner is that in view of the lapses on the part of the petitioner, he had omitted to perform his duty with absolute integrity and devotion and in violation of Rule 20(1) of Tamil Nadu Government Servants Conduct Rules, 1973. The lapse on the part of the petitioner was no doubt serious in nature because it involves the property belonged to the Government.

8. Even though the learned counsel for the petitioner had raised the ground of vagueness of charges, the charge sheet was not challenged at any point of time and the petitioner had proceeded to participate in the enquiry by fully understanding the contents of the charge sheet. The petitioner is also aware of the duties and responsibilities where he is the first level officer and has to make his recommendation as to the issuance of the patta on the application made by any individuals in respect of any lands. But, the petitioner has not been alleged with any charges stating that he had any ulterior motive to give recommendation for issuing the patta in respect of the individuals.

9. There is no allegation that the petitioner had accepted any bribe for giving recommendation to issue patta. Even if the petitioner, in his capacity as Village Administrative Officer, had given statements which he believed to be true to his knowledge, he is not the authority who can issue patta by affixing his signature. The next level officers namely the Revenue Inspector, Deputy Tahsildar, Tahsildar, ought to have verified

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the records along with the statements of the petitioner and passed orders for issuing patta.

10. In the instant case, the failure was also on the part of the Deputy Tahsildar and Tahsildar. When the incident leading to issuing patta in respect of the Government properties in favour of the individual was a collective act committed by a team of officers, for the reasons best known to the disciplinary authority, he had not chosen to conduct a joint enquiry.

11. As rightly pointed out by the learned counsel for the petitioner, the officers who were superior to the petitioner, were allowed to retire and awarded with lesser punishment. The Deputy Tahsildar was allowed to retire pending disciplinary action and the Tahsildar was imposed with the punishment of cut of Rs.1,000/- from his monthly pension for five years. In fact the authority who had issued patta was the Revenue Divisional Officer who verified the records before issuing the patta and no action has been ordered against the Revenue Divisional Officer for lack of attention on his part to verify the records. When the order for issuing the patta was an immediate next step in pursuant to the recommendation made by the petitioner, no doubt the matter could have been omitted to the notice of any other officers.

12. It is seen that the file used to route through other level officers like the Revenue Inspector, Deputy Tahsildar and Tahsildar and then reaches the Revenue Divisional Officer. The middle level officers ought to have tallied the recommendation of the petitioner along with the records. At every level, the officers appear to have acted mechanically without scrutinizing the records and the mistake was culminated into the order of issuance of patta in the name of private individuals. Though the initial responsibility lies on the shoulder of the petitioner is no way less significant in view of the fact that the file travels through so many officers, a very lenient view taken in favour of higher level officers appears to be discriminatory and selective.

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13. In this regard, it is appropriate to rely on the judgment of this Court held in ***N.Nandagopalan Vs. The Secretary to Government in W.P.No.28301 of 2005, dated 24.04.2006***. In the said case, the well settled principle of law that *if several employees are involved in the same incident, the Department should proceed against all or should not proceed against none*, has been applied. In the case in hand, the petitioner who was working as a Village Administrative Officer was the lower level official who has to submit his recommendation to the Revenue Inspector. Thereafter, the file moves through the hierarchy of officials like Deputy Tahsildar and Tahsildar. As stated already, the patta has been issued by the Revenue Divisional Officer who is the authority to decide ultimately about the issuance of patta based on the file notes and on perusal of the records submitted along with the same.

14. It is seen that the action has not been initiated against some of the authorities who also have handled the file. Even among the officials against whom action was initiated, lesser punishment has been imposed. The Village Administrative Officer has been given with punishment of dismissal from service. When comparing to the penalty of cut in pension of Rs.1000 per month for a period of five years, the punishment of dismissal from service is no doubt too severe.

15. One of the contentions raised by the learned counsel for the petitioner is that even though the petitioner was given with charges under Rule 17(b), no oral evidence was recorded on the side of the Department. It is seen from the annexures attached with the charge sheet that the department did not list any witnesses as Department side witnesses. In this regard, it is also submitted by the learned counsel for the petitioner that in the absence of any definite charge about dishonest motive, the major penalty proceedings cannot be initiated and mere presumption cannot be the reason to attract major penalty.

16. The learned Additional Government Pleader for the respondents further submitted that the facts are very much proved on the basis of records themselves and hence, the allegations does not require the oral evidence.

17. As rightly stated by the learned counsel for the petitioner, the presumption alone is not possible to prove that the delinquent had acted with dishonest motive. In this regard, I feel it is appropriate to refer the judgment of the Hon'ble Supreme Court held in ***Roop Singh Negi Vs. Punjab National Bank and Others, reported in (2009) 2 SCC 570***. In the said case, it is held that the report of the Enquiry Officer cannot be based upon mere surmises and conjectures and the inferences drawn by the Enquiry Officer should be based upon the evidence. The relevant paragraph of the above judgment is given as under:

> *"23......The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipsi-dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known however high, can under no circumstances be held to be a substitute for legal proof."*

18. As the punishment of dismissal was the gravest of all the punishment that can be imposed at the culmination of the disciplinary proceedings, the intentional commission and omission of duties and the amount of negligence coupled with any malicious intention can also be the factum that should be proved before the Enquiry Officer apart from the alleged act of violation found in the charge memo. But the Department has not chosen to examine any of the witnesses and that deprived the petitioner also from getting the benefit of cross examining the witnesses.

19. The Enquiry Officer has given his ultimate findings as under:

> *"I carefully gone through the records available with me, the explanation of VAO, perusal of the connected files. I am of opinion that all the charges framed against him are held proved. Thus he has not carried out his duty with absolute integrity and devotion to duty and thereby violated the provision, laid down under rule 20 (1) of Tamil Nadu Government Servant Conduct Rules, 1973."*

20. The above findings of the Enquiry Officer not only relates to the acts committed by the petitioner which can be found from the records but also speaks about the integrity of the petitioner. Since the observation of integrity has something to be proved with evidence, examination of witnesses to prove the above fact is essential.

21. On the finding of the Executive Officer that all the four charges against the petitioner have been proved, (but revolving around one occurrence of wrong recommendation for issuance of patta), the first respondent on 16.10.2017 passed the impugned order of punishment of dismissal from service. In the said order, a reference has been made about the recommendation made by the Tamil Nadu Public Service Commission.

22. The learned counsel for the petitioner further submitted that the petitioner was not furnished with the copy of the recommendation of the Commission along with the second show cause explaining how the order of punishment of dismissal from service has been imposed without giving due opportunity to the petitioner.

23. As the first respondent also got influenced with the above recommendation and passed the order of dismissal, non-furnishing of the copy to the petitioner to make submission before awarding punishment appears to be in violation of the principles of natural justice. Even on perusal of punishment order passed by the first respondent, it appears that the first respondent has simply narrated the enquiry report and accepted the recommendation of punishment of dismissal from service made by the Commission. The first respondent has not made any detailed analysis and observation as to how the charges proved against the petitioner invite some major punishment of dismissal. It appears that the first respondent had simply accepted the recommendation of the Commission without making any independent analysis.

24. The petitioner who has reached the age of superannuation as early as on 31.12.2007 was kept under suspension on the eve of his retirement in view of the pending disciplinary proceedings against him. When the Department knows about the date of superannuation of the petitioner, the disciplinary proceedings should have been expedited and should have seen the end of the tunnel at the earliest. Atleast after putting the petitioner on suspension, the decision should have been taken within a reasonable short time. Even though the enquiry report has been submitted in the year 2007 itself, for the reasons best known to the respondents, the file was kept pending for more than 10 years and the petitioner was imposed with the punishment of dismissal from service by the first respondent's proceedings dated 16.10.2017.

25. The inordinate and unacceptable delay no doubt would frustrate the entire proceedings. Time and again, the Hon'ble Supreme Court has held in the series of cases that unexplained delay would cause serious prejudice to the delinquent. The inordinate delay had been the reason to set aside the penalty in several cases. In this regard, I feel it is appropriate to mention the judgments of the Hon'ble Supreme Court held in the case of ***(i) M.V.Bijlani Vs. Union of India, reported in 2006 5 SCC 88. (ii) Ranjith Singh Vs. State of Haryana, reported in 2008 (3) CTC 781. (iii) P.V.Mahadevan Vs. M.D.Tamil Nadu Housing Board, reported in 2005 4 CTC 403.***

26. The above preposition of law has been followed in several judgments of this Court and in the case of ***B.Maximus Vs. State of Tamil Nadu and Others (W.P.No.34197 of 2016 dated 12.04.2022),*** a reference has been made to various judgments of the Hon'ble Supreme Court and held that the inordinate and unexplained delay can alone be the reason to set aside the penalty.

27. In the case in hand, the petitioner has made out his case not only on the ground of delay, but also by raising various grounds of discrimination in the matter of punishment imposed against different levels of officers involved in the same occurrence and the absence of oral evidence during 17(b) enquiry and not furnishing of copy of the recommendation of the Commission and they have been found to be correct. Hence, I feel it is appropriate to set aside the impugned order and grant the relief as sought for. Though it is also possible to remit the matter back to the first respondent to decide afresh, by considering the delay of more than a decade, I feel a finality should be given. As the petitioner was not allowed to retire from the year 2007 in view of the pending proceedings, I prefer to set aside the order by granting the reliefs.

28. In the result, **this Writ Petition is allowed** and the order passed by the first respondent in G.O.(2D).No.303, Revenue Department and Disaster Management Services Wing Ser 4(1) dated 16.10.2017 is set aside and the respondents are directed to permit the petitioner to retire with effect from 31.12.2007 and grant him all the consequential and pensionary benefits and pass appropriate orders in this regard within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

23.04.2025

Index : Yes
Speaking
Neutral Citation : Yes
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R.N.MANJULA, J.

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To

1.The Secretary to Government,
Revenue Department and Disaster
Management Services,
Secretariat, Chennai - 9.

2.The District Collector,
Namakkal District,
Namakkal.

W.P.No.17912 of 2018 and
W.M.P.No.21210 of 2018

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