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W.A.No.319 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A.No.319 of 2025

and

C.M.P.No.2515 of 2025

1.The Commissioner,
The Tribunal for Disciplinary Proceedings,
Salem.

2.The Principal Secretary/
Commissioner for Revenue Administration,
Chepauk, Chennai - 5.

3.The Secretary to Government,
Revenue [Pani 7(2)] Department,
Fort St. George,
Chennai - 9.

... Appellants

Vs.

J.Santhilingam.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed in W.P.No.12087 of 2013 dated 01.06.2023.



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For Appellants : Mr.R.Neelakandan
Additional Advocate General
assisted by Mrs.Yamuna Devi,
Special Government Pleader

For Respondent : Mr.K.Venkataramani, Senior Counsel
for Mr.M.Muthappan

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

Challenge is to the order of the writ Court made in W.P.No.12087 of 2013 dated 01.06.2023.

2. The writ petition was filed by the respondent challenging the punishment of dismissal from service imposed upon him, consequent upon the finding of the Tribunal for disciplinary proceedings that the respondent is guilty of severe dereliction of duty and also receipt of illegal gratification.

The facts leading to the punishment are as follows:-

3. The respondent was working as a Village Administrative Officer of Kudoor Village in Madurantakam Taluk during the years 1992 - 95. Upon a



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complaint by one Ragnatha Reddy, Advocate claiming that the respondent along with another Village Administrative Officer by name Ramachandran had received commission to the tune of Rs.1,37,000/- on a promise to assist the Trust to purchase lands in certain villages at Madurantakam Taluk and enquiry was launched against the respondent in the year 1995. An enquiry was conducted on 08.08.1995 by the Tahsildar and it was found that the allegations were false and the complaint was closed. Thereafter, a charge memo was issued in the year 2001 and the same was also closed after enquiry.

4. However, based on the Government Order in G.O.(2D)No.250 dated 20.08.1998 the Tribunal for Disciplinary Proceedings was constituted on 18.03.2003 and a fresh charge memo was issued against the respondent on the same allegations. The Tribunal conducted enquiry and came to the conclusion that the charges have been proved. The report of the Tribunal was accepted by the Disciplinary Authority and a second show cause notice was issued seeking explanation as to why the punishment of dismissal from service should not be imposed. After obtaining an explanation for the second show cause notice eventually orders were passed on 28.07.2010 imposing a punishment of dismissal from service. The respondent preferred an appeal against the said order.



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5. The appellate Authority referred the matter to the Tamil Nadu Public Service Commission and on a receipt of the opinion from the Tamil Nadu Public Service Commission, dismissed the appeal solely based on the opinion from the Tamil Nadu Public Service Commission without independently considering the matter on merits. It is this order of the appellate Authority that was subject matter of challenge before the writ Court.

6. The writ Court found several irregularities in the proceedings. The writ Court found that the complainant Ragunatha Reddy who had made the initial complaint has deposed before the Tribunal for disciplinary proceedings that the complaint was made on a wrong notion. There were at least nine witnesses examined before the Tribunal for disciplinary proceedings. Out of the nine, two were Sub-Collectors, who had conducted preliminary enquiry based on which the Tribunal for Disciplinary Proceedings were constituted. The other seven witnesses turned hostile and they dis-owned the complaint. However, the Tribunal relied upon the preliminary enquiry reports to conclude that the respondent is guilty.

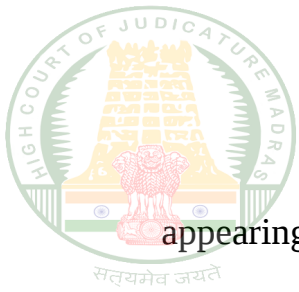


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7. The fact that two enquiries were held before the constitution of the Tribunal for Disciplinary Proceedings and in both the enquiries no further action was taken and the proceedings were closed was not taken into account by the Tribunal for Disciplinary Proceedings. The writ Court also relied upon the judgment of the Hon'ble Supreme Court which held that the reliance upon the material that was collected during the preliminary enquiry after oral evidence has been tendered before the Tribunal for Disciplinary Proceedings is unwarranted. The writ Court also found that the appellate Authority which was vested with the power to entertain and decide the appeals against the order of punishment had not considered the matter independently. But, they had chosen to go by the recommendations of the Tamil Nadu Public Service Commission. The writ Court faulted the appellate Authority for not having considered the material independently and blindly accepting the opinion of the Tamil Nadu Public Service Commission. On the above grounds the writ Court set aside the punishment. Aggrieved the State is on appeal.

8. We have heard Mr.R.Neelakandan, learned Additional Advocate General assisted Mrs.Yamuna Devi, learned Special Government Pleader



appearing for the appellant and Mr.K.Venkataramani, learned Senior Counsel for Mr.M.Muthappan, learned counsel appearing for the respondent.

9. While Mr.R.Neelakandan, learned Additional Advocate General would vehemently contend that the fact that the respondent received commission for arranging sale of land has been proved beyond doubt. As a Government servant he is not supposed to indulge in such activities and that by itself would constitute a cause for his removal from service. He would also draw our attention to the explanation offered by the respondent, wherein, the respondent has stated that he had at times received monies on behalf of the person who had arranged the sale of the land. According to Mr.R.Neelakandan this statement by itself would show that he has acted as a middle man which he is not supposed to do under the conduct Rules. It is also the further submission of Mr.R.Neelakandan that the High Court exercising power under Article 226 of the Constitution of India cannot go into the correctness of the findings of the disciplinary Authority, if it is based on evidence.

10. Contending contra, Mr.K.Venkataramani, learned Senior Counsel appearing for the respondent would submit that during the enquiry before the



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Tribunal for Disciplinary Proceedings all the witnesses had turned hostile and it was the case of no evidence. The Tribunal, however, chose to rely upon the material that formed subject matter for the preliminary report prepared by PW1 and PW2 to impose the punishment. This according to the learned Senior Counsel is impermissible.

11. Reliance is placed on the judgment of the Division Bench of this Court in W.P.No.2620 of 2018 dated 30.01.2023 to which one of us [Hon'ble Mr. Justice R.Subramanian] was a party, wherein, after referring to various pronouncements of the Hon'ble Supreme Court, it was concluded that it would not be open to the enquiry officer to rely upon the findings in the preliminary report.

12. Mr.K.Venkataramani, learned Senior Counsel would also further contend that the appellate Authority is bound to re-consider the evidence and come to its own conclusion. A perusal of the order of the appellate Authority in the case on hand would, according to the learned Senior Counsel, show that the appellate Authority had not considered the case on merits but has chosen to go by the opinion of the Tamil Nadu Public Service Commission.



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13. We have considered the rival submissions.

14. No doubt, the law relating to the power of the Court under Article 226 of the Constitution of India is too well settled to the effect that this Court will not substitute its own findings to that of the findings of the disciplinary Authorities. At the same time, if the findings of the Authorities are based on no evidence or based on the material which ought not to have been accepted as evidence in departmental enquiry, definitely this Court can interfere with the findings. As rightly pointed out by the learned Single Judge, we find that all the witnesses have turned hostile and even Mr.Ragunatha Reddy the initial complainant has chosen to depose that the complaint itself was made on a mistaken impression. The Tribunal for Disciplinary Proceedings however chosen to rely upon the evidence collected by the Authorities during the preliminary enquiry and relied upon the statements which have been dis-owned by the persons in the oral enquiry to conclude that the respondent is guilty.

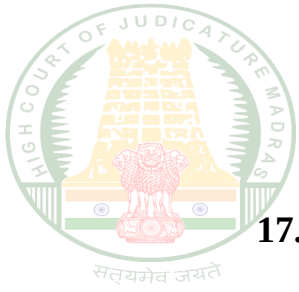
15. This in our considered opinion cannot be done. The law is too well settled to the effect that reliance cannot be placed upon materials collected during the preliminary enquiry at the time of disciplinary enquiry. As regards



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the contention on the order of the appellate Authority we find much force in the contentions of Mr.Venkataramani. We find that the appellate authority had mechanically gone by the opinion of the Tamil Nadu Public Service Commission. Of course, the appellate Authority has to seek the opinion of the Tamil Nadu Public Service Commission on the quantum of punishment, but, at the same time, the appellate Authority will have to re-appreciate the evidence regarding the guilt and come to its own conclusion. That exercise is evidently absent in the case on hand. We are therefore unable to fault the writ Court for having come to the conclusions as it did in favour of the respondent.

16. Yet another feature which militates against the appellants is the delay. The incident is said to have occurred between 1992-95. The Government Order was issued constituting a Tribunal for disciplinary proceedings on 20.08.1998. But, the Tribunal started the enquiry only in 2003 and finally submitted its report in 2005. Though the report was communicated to the respondent and his explanation was obtained in the year 2007, the order imposing penalty came to be passed only in the year 2010 after a delay of 3 years, by the time 15 years had passed from the date of the alleged occurrence.



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17. We therefore see no merit in the Writ Appeal. The appeal fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petitions are closed.

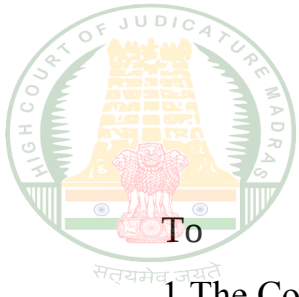
(R.S.M.,J.) (G.A.M.,J.)
19.03.2025

dsa

Index : No

Neutral Citation : No

Speaking order



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To

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