

The Management Vs. The Presiding officer

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Court : Chennai

Decided On : Dec-23-2014

Judge : D.Hariparanthaman

Appellant : The Management

Respondent : The Presiding officer

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

09. 10.2009 CORAM THE HONOURABLE MR. JUSTICE
D.HARIPARANTHAMAN W.P.No.40600 of 2006 S. Subramanian ... Petitioner vs.

1. State of Tamilnadu represented by its Secretary to Government, Revenue Department, Fort St. George, Chennai 600 009.

2. The Principal Commissioner and Commissioner for Revenue Administration, Chepauk, Chennai 5.

3. The District Collector, Villupuram District, Villupuram. ... Respondents PRAYER:
This writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of Original Application in O.A.No.8699 of 2000 to call for the records relating to the order of the first respondent in G.O.(D) No.461 Revenue (Ser.4(1)) dated 09.09.1999 and quash the same. For Petitioner : Mr.M.Govindaraj
For Respondents : Mr.P.Muthukumar Government Advocate

ORDER

The Original Application in O.A.No.8699 of 2000 before the Tamil Nadu Administrative Tribunal is the present writ petition. 2.The petitioner was appointed as Junior Assistant in May 1964 and he was granted various promotions and he became Tahsildar in July 1992. While so, a charge memo dated 14.04.1995, under 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued to him, making eleven (11) allegations. An enquiry was conducted. In the enquiry, the Enquiry Officer found the charges were not established. However, the third respondent passed an order dated 30.05.1996, disagreeing with the findings of the Enquiry Officer and held that all the charges, except charge No.8 were established. In view of such a conclusion, he imposed the punishment of stoppage of increment for one year without cumulative effect. 3.Against the said order, the petitioner preferred an appeal dated 01.08.1996 before the second respondent. The appeal was partly allowed by the second respondent, by an order dated 27.01.1997. The Appellate Authority held that while the third respondent differed with the findings of the Enquiry Officer, the third respondent did not give any reasons for his disagreement and that the third respondent simply held that the charges were established. In view of such a conclusion of the second respondent, the second respondent set aside the order of the third respondent and remanded the matter to the third respondent to decide the matter afresh. The order of the second respondent in this regard is extracted here-under: VERNACULAR (TAMIL) PORTION DELETED4 On remand, the third respondent, again passed an order dated 10.06.1997, imposing the same punishment. However, the third respondent held that the charge Nos.2,6,7,9,10 and 11 were established and other charges were not established. 5.The petitioner preferred an appeal dated 22.08.1997 before the second respondent. This time, the Appellate Authority, the second respondent, confirmed the order of the third respondent, by an order dated 29.07.1998. 6.Therefore, the petitioner filed a revision petition dated 12.11.1998 before the first respondent. The first respondent also confirmed the orders of the Appellate Authority that confirmed the order of the Disciplinary Authority, by an order in G.O.(D)No.461, Revenue (Ser) 4(1) Department, dated 09.09.1999. 7.The petitioner filed Original Application in O.A.No.8699 of 2000 (W.P.No.40600 of

2006) praying to quash the order dated 09.09.1999 of the first respondent, confirming the order dated 29.07.1998 of the second respondent and order dated 10.06.1997 of the third respondent. 8.Heard Mr.M.Govindaraj, learned counsel for the petitioner and Mr.P.Muthukumar, learned Government Advocate for the respondents. 9.The learned counsel for the petitioner submits that the third respondent committed the very same mistake that was committed by the third respondent in the earlier order dated 30.05.1996, when the revised order dated 10.06.1997 was passed. That is, the third respondent did not give any reasons for his differed findings. He has taken me through the order of the third respondent dated 10.06.1997. It is also submitted that the law is well settled that whenever a differed finding is recorded by the Disciplinary Authority, the Disciplinary Authority is enjoined to furnish the differed findings to the delinquent and to seek his views on the differed findings. The learned counsel has relied on the Division Bench judgment of this Court in V.ARULKUMAR VS. HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED (HUDCO) reported in 2009 (3) CTC388 in this regard. The Division Bench, after considering various judgments of the Honourable Apex Court on the point, held that if the Disciplinary Authority failed to hear the petitioner on the differed findings, the punishment based on such a differed findings is vitiated. 10.The learned Government Advocate made his submissions based on the instructions. 11.I have considered the submissions made on either side. The submissions of the learned counsel for the petitioner are well founded. The third respondent committed two grave errors in the order dated 10.06.1997. Firstly, he did not give any reasons for his differed views, as rightly contented by the learned counsel for the petitioner. The third respondent held that the charge Nos.2, 6, 7, 9, 10 and 11 were established. The reasons given by the Enquiry Officer for holding that the charges were not established as well as the findings recorded by the third respondent that the charges were established, are extracted here-under for the charges 2, 6, 7, 9, 10 and 11, which would amply demonstrate that the third respondent passed order without giving any reasons. Findings of the Enquiry Officer - Charge No.2 In this charge, it has been stated that the delinquent officer has assigned the land in Survey No.22/9 to a person who is not in enjoyment and not to the person who is in enjoyment. He has stated that he finds from the records that there is no recorded evidence for proving the

charge in favour of the delinquent officer. There is no record to prove that the land was in the enjoyment of third person. It is on record that assignees of Survey No.22/12 and 22/13 are in occupation of Tmt. Selvi and Chinnammal as reported by the Sub Collector, Tindivanam, a copy of which was made available to the delinquent officer. A close perusal of the extract from adangal for the Fasli year 1401 onwards shows that the lands assigned had been in the enjoyment of T.Kandeepan who is none other than the husband of Tmt.Selvi one of the assignees and S/o. Chinnammal another assignee and the other assignees being the wife of another legal heir Pandurangan S/o.Thanakotti the earliest encroacher of the land. He finds that there is no enough material to prove that the delinquent officer has assigned the land to third persons who are not in enjoyment of the land. Findings of the third respondent Charge No.2 VERNACULAR (TAMIL) PORTION DELETED Findings of the Enquiry Officer - Charge No.6 The delinquent officer has explained that the Revenue Inspector or Village Administrative Officer, has not reported the availability of trees in the land proposed for assignment. A perusal of the connected record confirms this statement of the delinquent officer. It is also seen from the notice of inspection of the delinquent officer that he has certified that there are no trees in the land. The delinquent officer has deposed that the said trees are available in the land of adjacent land owner duly fenced. Only this had made all the officials to state that there are no trees in the land. The delinquent officer has also added in his deposition that this could have been rectified at the time when the lands were sub-divided by the field surveyor. Similar is the position in respect of other two sub-divided land in S.No.22/12 and 22/13. When the question of availability of trees was not reported the question of deciding tree value and collecting the amount did not arise. The delinquent officer has further deposed that as action has been taken to cancel the assignment on the point among others there would not be any loss of revenue to Government. All these points go in favour of delinquent officer. The question of collecting market value for the trees as mentioned in the charge would not also arise as explained and deposed by the delinquent officer. Findings of the third respondent Charge No.6 VERNACULAR (TAMIL) PORTION DELETED Findings of the Enquiry Officer - Charge No.7 This charge forms part and parcel of the earlier Charge No.6. As reported by the delinquent officer in the explanation and deposition there could be

no loss of revenue. When the trees are available in the fenced portion of the adjacent land owner the question of assigning the land with trees would not also arise. Therefore, the charge fails to be proved. Findings of the third respondent Charge No.7 VERNACULAR (TAMIL) PORTION DELETED Findings of the Enquiry Officer - Charge No.9 The delinquent officer has deposed that the land has been assigned only after following the rules and according to eligibility of the assignees. The connected records show that the market value has been worked out and the amount is found to be within his powers to assign the land. The assignees Rani and Selvi do not possess any land of their own and the other assignees Chinnammal possess land which not disqualify her from obtaining assignment. The report of the Sub Collector, Tindivanam also confirms this point. It has therefore been proved on record that the assignment has been made within the frames work of rules and that there is nothing to prove as alleged in this charge. Findings of the third respondent Charge No.9 VERNACULAR (TAMIL) PORTION DELETED Findings of the Enquiry Officer - Charge No.10 The delinquent officer has deposed that is one case DKT261404 pre-scrutiny has been made on 07.09.94 and that he had ordered assignment on 19.09.94 which is in order. Only in respect of the other case his order of assignment has preceded the pre-scrutiny. Though the delinquent officer has blamed his subordinate officers for not bringing this to his notice he has regretted for this. A perusal of the record D.K.T. 21/1404 shows that pre-scrutiny has been done on 02.09.94. This charge does not have much velocity on this feeble point. Findings of the third respondent - Charge No.10 VERNACULAR (TAMIL) PORTION DELETED Findings of the Enquiry Officer - Charge No.11 This charge is of general nature and needs to specific remarks. However the delinquent officer has explained various item of work taken up and completed by him as Tahsildar. Gingee during his tenure. As already reported against each charge based on the explanation offered by the delinquent officer, his deposition before the enquiry officer and on the connected records are documentary evidences, it is found that none of the charges could be proved, beyond any reasonable doubt. Findings of the third respondent - Charge No.11 VERNACULAR (TAMIL) PORTION DELETED12Secondly, as pointed out by the learned counsel for the petitioner, after recording a differed findings from that of the Enquiry Officer, the third respondent cannot straight way pass the order

dated 10.06.1997, imposing the punishment. The third respondent is bound to give his differed views to the petitioner and the views of the petitioner should have been obtained thereon before passing the impugned order dated 10.06.1997. But, both the second and first respondents failed to notice the said grave errors committed by the third respondent. 13. In matters like this, normally I could have remanded back for deciding the matter afresh. However, it is submitted that the petitioner is retired from service already. Hence, no purpose would be served to prolong the agony, as ultimately the respondents were only thought of imposing a minor punishment. The petitioner underwent the ordeal of facing the proceedings for a long time. Hence, in these circumstances, the impugned order is quashed for the reasons stated above and the writ petition is allowed. No costs. ogy/tk To 1. The Secretary to Government Government of Tamil Nadu Revenue Department, Fort St. George, Chennai 600 009.

2. The Principal Commissioner and Commissioner for Revenue Administration, Chepauk, Chennai 5.

3. The District Collector, Villupuram District, Villupuram

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