

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28-04-2009

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.33644 of 2004

M.Karuppiah

.. Petitioner.

Versus

1.The Secretary to Government
of Tamilnadu, Rural Development (E2) Department,
Fort St. George, Chennai-600 009.

2.The District Revenue Officer,
Tiruchirapalli District,
Tiruchirapalli.

3.The Tahsildar,
Manaparai Taluk, Manaparai,
Tiruchirapalli District. ... Respondents.

Prayer: This petition has been filed seeking for a writ of Certiorarified Mandamus, calling for the records relating to G.O. (2D) No.58, Rurl Development (E.2) Department, dated 25.4.2003, issued by the Secretary to Government, Rural Development (E.2) Department, Chennai-9, the first respondent herein, and quash the same and consequently direct the respondents herein to reinstate the petitioner in service with all consequential service and concomitant benefits with due seniority to the petitioner and pay all the arrears to the petitioner within a short date that may be fixed by this Hon'ble Court.

For Petitioner : Mr.K.Rajkumar

For Respondents : Mr.V.Viswanathan (AGP)

O R D E R

This writ petition has been filed praying for a writ of certiorarified mandamus, challenging G.O.(2D).No.58, Rural Development (E.2) Department, dated 25.4.2003 and for a consequential direction to reinstate the petitioner in service, with backwages and continuity of service.

2. It has been stated that the petitioner was appointed as a Village Administrative Officer, on 12.3.1984 and posted at Jegadhapi Village in Karur District. Thereafter, the petitioner had been posted at Several other places. On 26.11.1988, he was posted at Sembia Natham Village in Kulithalai Taluk. He was a Village Administrative Officer at Sembium, from 26.11.1988 to 13.2.1992. While so, he had issued several certificates, including community certificates, nationality certificates, income certificates etc., to various persons. The said certificates had been issued based on the reports given by the Revenue Inspector, who is the field level officer to verify the facts and to report the same to the Village Administrative Officer concerned.

3. It has been further stated that while he was a Village Administrative Officer at Sembiam, thirty Adi Dravidars had approached him for the issuance of the community, income and nationality certificates for obtaining loans under the Integrated Rural Development Scheme from TAHDCO. On receipt of their applications, the petitioner had directed the Revenue Inspector to submit the report, with regard to the genuineness of their claims. The Revenue Inspector, Cuddalore, had made an inspection and had reported that they were eligible for the certificates requested by them. On receipt of the reports from the Revenue Inspector, the petitioner had made his recommendations to the Tahsildar for issuing of the certificates. Thereafter, it is for the Tahsildar to consider the recommendations made by the petitioner and the inspection report of the Revenue Inspector and to issue the necessary certificates to the claimants. There is no independent power vested with the petitioner to issue the certificates. Once the certificates are issued the petitioner has no role in finding out the purpose for which the certificates had been used.

4. It has been further stated that one Vellaikannu, of Kuruniyur Village, is said to have withdrawn the loan amounts in the name of the 30 Adi Dravidars by using the certificates issued to them. The amounts withdrawn by Vellaikannu, had been misappropriated by him. The petitioner, after coming to know of the fact of misappropriation, had informed about the same to the higher officials. After five years from the date of issuing of the certificates, the Government by its letter, dated 23.4.1997, had issued a charge memo to the petitioner, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5. The charges levelled against the petitioner are that while working as a Village Administrative Officer at Sembia Natham Village, from 26.11.1988 to 13.2.1992, he had obtained Integrated Rural Development Programme loan applications from 30 Adi Dravidars and got the loans sanctioned with the help of the manager TAHDCO and some others, without the knowledge of the applicants. Thus, he had misused his official position. It was also alleged that during the said period, the petitioner was responsible for the

misappropriation of the subsidy amount of Rs.90,000/-, under the Integrated Rural Development Programme. Thus, he had failed to maintain absolute integrity.

6. It has been further stated that on receipt of the charge memo the petitioner had submitted his explanation stating that he was not connected with the misappropriation of the loan amounts. In fact, after he came to know about the fraud committed he had brought it to the knowledge of the higher authorities. However, an enquiry had been ordered to enquire into the charges levelled against the petitioner, on 18.11.97, by G.O.(D).No.578, Rural Development Department. The petitioner had been called upon to attend the enquiry, on 29.12.1998.

7. During the enquiry, the enquiry officer had asked the petitioner to reply to the charges levelled against him. After eliciting the statements of defence of the petitioner, the enquiry officer had examined the other witnesses. While examining the witnesses he had simply marked the earlier statements given by them to the Vigilance Inspector. The said statements had been taken as statements made in the chief examination. However, copies of the statements had not been supplied to the petitioner. In the absence of such statements, the petitioner was not in a position to cross examine the witnesses.

8. After the enquiry, the enquiry officer had made an enquiry report stating that on the basis of the statements given by the witnesses to the Inspector of Vigilance, the charges levelled against the petitioner had been proved. While coming to his conclusions the enquiry officer had failed to marshal the evidence available on record in view of the cross examination of the witnesses who have categorically stated that they had no knowledge about the petitioner's involvement and they had also stated that the petitioner had not instigated them, in any way.

9. Thus, even though there was sufficient evidence available on record in favour of the petitioner, the enquiry officer had given a contrary finding that the charges against the petitioner had been proved. Even though it was found that Vellaikannu was instrumental in the misappropriation of the funds, including the subsidy amount, the enquiry officer had erroneously come to the conclusion that the charges levelled against the petitioner had been proved. Such a finding by the enquiry officer is without evidence and therefore, it is perverse in nature.

10. It has been further stated that the enquiry officer, after recording a finding, on 12.3.1999, had forwarded his report to the Government. Thereafter, a copy of the enquiry report had been supplied to the petitioner. The petitioner, by his representation, dated 2.2.2000, had submitted his reply to the findings of the enquiry officer. Thereafter, the Government had

sought for the opinion of the Tamil Nadu Public Service Commission on the findings of the enquiry officer and also with regard to the question of imposing penalty on the petitioner. Though an opinion had been sought for from the Tamil Nadu Public Service Commission, the details of the opinion, as well as the advice given by the Commission, were not supplied to the petitioner before final orders had been passed.

11. Though the Government had come to the provisional conclusion of imposing the punishment of stoppage of increments, with cumulative effect for three years and also the recovery of a sum of Rs.4,500/- from the pay of the petitioner in 10 equal monthly instalments, it had imposed the punishment of removal from service on the petitioner based on the opinion of the Tamil Nadu Public Service Commission. Thereafter, the Government on receipt of the opinion from the Tamil Nadu Public Service Commission had issued final orders in G.O.(2D) No.58, Rural Development (E2) Department, dated 25.4.2003, had imposed the punishment of removal from service on the petitioner. Proper reasons have not been given in the order passed by the Government to impose the punishment of removal from service on the petitioner. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the Constitution of India.

12. The learned counsel appearing on behalf of the petitioner had submitted that, as per the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Tahsildar is the competent authority to pass the order of removal from service against the petitioner. However, the impugned order had been issued by the Secretary, Rural Development Department, which is an alien Department. Since the impugned order passed by the first respondent is without jurisdiction it is void in the eye of law. In support of the above contentions, the learned counsel for the petitioner had relied on the decisions of the Supreme Court in Kiran Singh V. Chaman Paswan (AIR 1954 SC 340) and Central Bank of India Vs. C.Bernard (1991(1) SCC 319).

13. It has been further contended that the petitioner had been deprived of his right of appeal, since the impugned order has been passed by the Government of Tamil Nadu, instead of the order being passed by the Tahsildar, who is the appropriate authority to pass such an order. In support of the above contentions, the learned counsel for the petitioner had relied on the decision of the Supreme Court in Surjit Ghosh V. Chairman & M.D., United Commercial Bank (AIR 1995 SC 1053). The power to appoint cannot be delegated and also the power to take disciplinary action cannot be delegated. The appointing authority for the petitioner is the Revenue Divisional Officer. In support of the above contentions, the learned counsel for the petitioner had relied on the decision of the Supreme Court in Hindustan Lever Ltd., V. Ashok Vishnu Kate and others (AIR 1996 SC 285).

14. Further, the initiation of the disciplinary proceedings against the petitioner has not been made, in accordance with Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, read with Personnel and Administrative Reforms instructions of the Government and the law laid down by the Supreme Court of India and the High Courts. It has been held that the charge memo should enclose the list of witnesses, the list of documents and copies of the documents relied on by the prosecution. Since such documents had not been supplied to the petitioner, the enquiry conducted against him is vitiated. The procedure followed by the enquiry officer is contrary to law and the principles of natural justice. The enquiry officer had come to his conclusions by simply relying on the statements of the witnesses recorded during the preliminary enquiry and without giving an opportunity to the petitioner to defend himself by producing the necessary records relied on by the enquiry officer. No opportunity had been given to the petitioner to cross examine the witnesses. Therefore, the impugned order removing the petitioner from service is illegal and void. In support of the above contentions, the learned counsel for the petitioner had relied on the decisions of the Supreme Court in Mohd.Quaramuddin V. State of A.P (1994(5) SCC 118) and State Bank of India V. D.C.Aggarwal (AIR 1993 SC 1197).

15. The disciplinary proceedings initiated against the petitioner and the consequential punishment imposed on him are liable to be set aside on the ground of delay. The alleged incident is said to have taken place in the year, 1990. However, the charge memo had been issued in the year, 1997. There is no proper explanation given by the respondents for the undue delay in the initiation of the proceedings. In support of the above contentions, the learned counsel for the petitioner had relied on the decision of the Supreme Court in P.V.Mahadevan V. MD, T.N.Housing Board (2006(6) SCC 636)

16. It has also been contended that the impugned order, based on vague charges, cannot be sustained. The allegation that the petitioner had connived with the manager of TAHDCO, for getting the loan, is not specific in nature. No details had been given with regard to the role of the petitioner. In support of the above contentions, the learned counsel for the petitioner had relied on the decisions of the Supreme Court in (Transport Commr. V. V.A.Radha K.Moorthy (1995(1) SCC 332); Dy.Inspector General of Police V. V.K.S.Swaminathan (1996(11) SCC 498) and G.Anand V. Principal Commissioner (2007(8) MLJ 10).

17. The Enquiry officer had not discussed the evidence available on record. In spite of the Government proposing to impose the punishment of stoppage of increment, with cumulative effect, for a period of three years and the recovery of Rs.4,500/-, in 10 equal instalments, the Tamil Nadu Public Service Commission had deviated from the established procedure by recommending the

imposing of the punishment of removal from service on the petitioner. However, the opinion of the Tamil Nadu Public Service Commission had not been supplied to the petitioner. Thus, it is in violation of the principles of natural justice. In support of the above contentions, the learned counsel for the petitioner had relied on the decision of the Supreme Court in *State of Gujarat V. R.G.Teredesai* (AIR 1969 SC 1294).

18. Further, there is no evidence that the petitioner had moved the manager TAHDCO for the sanction of the loans in favour of 30 applicants. The petitioner had only recommended for the issuing of the certificates, based on the report of the Revenue Inspector. The petitioner is not the authority to issue the certificates. It is only the Tahsildar who is the issuing authority. However, no action has been initiated against the Tahsildar for issuing the certificates, alleged to be bogus in nature. The impugned penalty is highly disproportionate in nature compared to the alleged discrepancy said to have been committed by the petitioner. In support of the above contentions, the learned counsel for the petitioner had relied on the decisions of the Supreme Court in *Bhagat Ram Vs. State of H.P.* (1983(2) SCC 442) and *Ranjit Thakur V. Union of India* (1987 (4) SCC 611).

19. Since there is no independent application of mind by the Government, as it had entirely relied on the opinion of the Tamil Nadu Public Service Commission, the impugned order removing the petitioner from service is arbitrary and illegal. In support of the above contentions, the learned counsel for the petitioner had relied on the decision of the Supreme Court in *Mansukhlal Vithaldas Chauhan V. State of Gujarat* (AIR 1997 SC 3400).

20. The enquiry officer had relied on certain statements recorded during the preliminary enquiry and submitted to the Vigilance Inspector. The persons who had made the statements had not been examined during the enquiry and therefore, the petitioner did not have sufficient opportunity to cross examine them. The detailed explanation submitted by the petitioner for the alleged misconducts have not been properly considered by the enquiry officer and the disciplinary authority before they had arrived at their conclusions.

21. Based on the report of the enquiry officer, according to which all the charges levelled against the petitioner had been proved, the State Government had arrived at a provisional conclusion to impose the punishment of stoppage of increment for three years, with cumulative effect, besides the recovery of Rs.4,500/-, in 10 monthly equal instalments, from the pay of the petitioner, towards the loss said to have been caused to the Government.

22. However, proper reasons are not found in the impugned

order, dated 25.4.2003, to impose the punishment of removal from service on the petitioner. It has been stated in the said order that the punishment of removal from service had been imposed on the petitioner in the light of the views of the Tamil Nadu Public Service Commission. However, it is not clear as to the nature of the materials available before the Tamil Nadu Public Service Commission, based on which it had given its opinion to remove the petitioner from service, in stead of giving its opinion on the original proposal of the Government to impose a lesser punishment on the petitioner. The question as to whether it was open to the Tamil Nadu Public Service Commission to enhance the punishment, instead of giving its opinion on the punishment originally proposed by the Government, has not been answered by the respondents.

23. However, at this stage of the hearing of the writ petition, the petitioner had filed an affidavit stating that, in the event of this Court accepting the contentions and allowing his writ petition, the petitioner is willing to forgo 50% of his backwages.

24. In such circumstances, this Court is of the considered view that the ends of justice would be met if the impugned order of the first respondent, dated 25.4.2003, is set aside, and if appropriate directions are issued to the respondents, with regard to the payment of backwages and other service benefits of the petitioner. Accordingly, the impugned order, dated 25.4.2003, is set aside and the respondents are directed to calculate and disburse the amounts due to the petitioner, as a consequence of the setting aside of the said order, including the backwages and other retiral benefits that would have accrued to him, within a period of twelve weeks from the date of receipt of a copy of this order. However, it is made clear that the petitioner would be eligible to get only 50% of the backwages for the period when he was out of service, in view of the affidavit filed by him before this Court. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar
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To

1.The Secretary to Government
of Tamilnadu, Rural Development (E2) Department,
Fort St. George, Chennai-600 009.

2.The District Revenue Officer,
Tiruchirapalli District,
Tiruchirapalli.

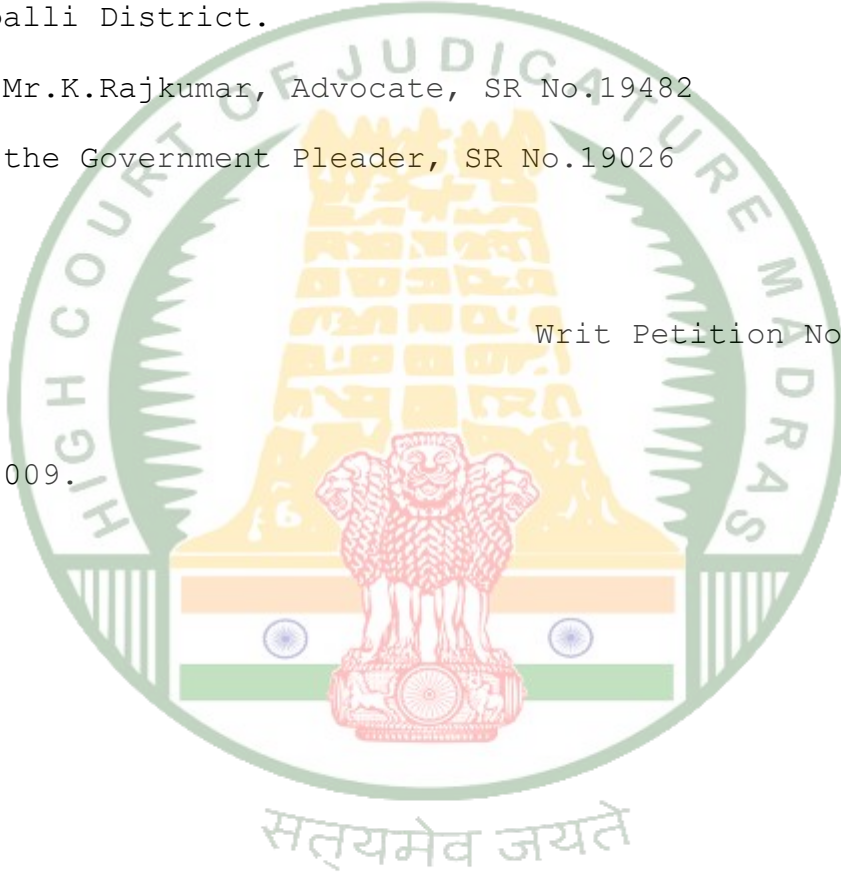
3.The Tahsildar,
Manaparai Taluk, Manaparai,
Tiruchirapalli District.

+ 1 cc to Mr.K.Rajkumar, Advocate, SR No.19482

+ 1 cc to the Government Pleader, SR No.19026

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