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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

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THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.28664 of 2013
and M.P.Nos.1 and 2 of 2013 and 1 of 2014

S.Chakravarthi

.. Petitioner

Vs.

The Agricultural Production Commissioner
and Secretary to Government,
Agricultural Department,
Fort St. George, Chennai - 9.

.. Respondent

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order of punishment passed by the respondent herein under the proceedings bearing Government Order (3D) No.145 dated 27.08.2013 (served on the petitioner on 03.09.2013) and quash the same and also direct the respondent to grant promotion to the petitioner on the basis of his original seniority.

For Petitioner : Mr.G.Ilamurugu

For Respondent : Mr.E.Veda Bagath Singh,
Spl. Govt. Pleader

ORDER

Challenging the proceedings bearing Government Order (3D) No.145 dated 27.08.2013 (served on the petitioner on 03.09.2013) and for a consequential direction to the respondent to grant promotion to the petitioner on the basis of his original seniority, the present writ petition has been filed.

2. Earlier, this Court had passed final orders in this writ petition on 28.11.2016 and had set aside the order of punishment on the ground that there was an inordinate delay in concluding the disciplinary proceedings and also that the Tamil Nadu Public Service Commission's recommendations were not served on the delinquent officer. On appeal, the Honourable Division Bench of this Court in an order passed in W.A. No.1029 of 2017 dated



23.01.2018 had remanded back the matter for the purpose of rendering a finding on the proven charges against the petitioner herein. In this background, the writ petition was once again taken on file and heard.

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3. The petitioner herein was arrayed as the 8th delinquent in the enquiry proceedings before the Tribunal for disciplinary proceedings (hereinafter referred to as 'TDP'). The charge against the petitioner was that when he was working as Seed Certification Officer in Vazhapadi Taluk, Salem District during the year 2003-2004, he had created records as if the yield were taken from some of the seed farms, where actually the farm owners had denied the sale of ground nut seeds. As per the charge, such a report was prepared with a view to secure wrongful gain and for misappropriation. Not being satisfied with the petitioner's explanation, an enquiry was conducted and during the course of enquiry, P.W.72 was one among the long list of witnesses who had deposed in the enquiry.

4. Based on the evidences, TDP had held the charges against the petitioner to be proved and the respondent herein, while placing reliance on the TNPSC's recommendations dated 14.08.2013, had imposed the punishment of stoppage of increment for a period of two years with cumulative effect and for recovery of a sum of Rs.3,999.75 from the petitioner's salaries, through the impugned order dated 27.08.2013. The said order is under challenge in the present writ petition.

5. Insofar as the proven charge No.2 is concerned, the TDP had held that the petitioner herein/8th delinquent had inspected the seeds and had procured the same. After holding so, the TDP had recorded that since the witnesses have deposed that these seeds were not sold, delinquent officers 1 to 7 were liable for the said false claim of having sold the seeds. There was absolutely no reference to the involvement of the petitioner/8th delinquent in the report of the TDP with regard to procurement or disbursal of subsidies or any sort of cash transaction. This aspect has not been considered, either by the TNPSC in its recommendations through their report dated 14.08.2013, nor by the disciplinary authority in the impugned order dated 27.08.2013.

6. This apart, learned counsel for the petitioner drew the attention of this Court to the evidence of P.W.72 who was also employed as Seed Certification Officer at the relevant point of time along with the petitioner herein. According to the learned counsel, the duties and responsibilities of Seed Certification Officer had been clearly deposed by him, which aspect has not been considered by the TDP as well as the disciplinary authority.

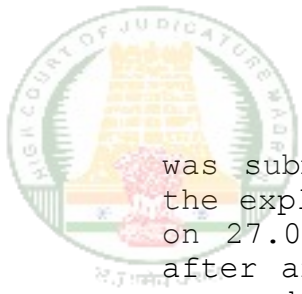


7. Per contra, learned Special Government Pleader submitted that the disciplinary proceedings were conducted in accordance with the procedure contemplated under the Act and the punishment came to be imposed by following the principles of natural justice. Since the TNPSC had recommended that the charges have been proved against the petitioner herein, the disciplinary authority had also passed the impugned order of punishment in conformity with the TNPSC recommendations.

8. But the fact remains that the evidence of P.W.72 speaks otherwise whereby the petitioner's duties and responsibilities appears to be totally irrelevant to the charges. According to P.W.72, he had earlier held the post of Seed Certification Officer along with the petitioner herein. In his chief examination as well as cross examination, he had categorically stated the duties of Seed Certification Officer commence from the inspection of the seeds, till they reach the concerned godown and thereafter it is the Assistant Agricultural Director, who would fix the price of the seeds and all other procurement and disbursement of subsidies are done by him. In other words, as per the version of P.W.72, the duties and responsibilities of a Seed Certification Officer is purely a field work which commences from the inspection and ends when the seeds reach the godown. All further activities which involve fixation of price, release of subsidies etc., are done by the Agricultural Director and the Seed Certification Officer has absolutely no role in it.

9. The charge against the petitioner is that he, along with other Agricultural Development Officers/Assistant Agricultural Officers, had created reports as if yield were taken from the seed farms and had falsely stated that the seeds were procured from 12 farmers for the purpose of misappropriating the Government funds. When the petitioner had absolutely no role in procuring the seeds and such role is vested with the Agricultural Development Officers/Assistant Agricultural Officers, the TDP had totally ignored the evidence of P.W.72 and held the charge against the petitioner/Seed Certification Officer as proved. Above all, the TDP had implicated the delinquencies on the seven officers alone and not on the petitioner. Thus, this Court is of the view that the enquiry report itself is based on 'No evidence' and therefore the report holding the petitioner guilty of Charge No.2 cannot be sustained.

10. Apart from this, it is seen that there is an inordinate delay in the entire process leading to passing of the impugned order. In this connection, I find that the charge memo dated 16.11.2006 was in respect of the occurrence took place during 2003 and 2004 and thereby there is a delay of three years in serving the charge memo itself. Pursuant to the charge memo, the show cause notice was issued on 13.09.2010, calling for further explanation after four years and the petitioner's explanation



was submitted on 26.10.2010. Though the respondent has received the explanation, the punishment was imposed on 27.08.2013 to the petitioner after three years and that too after an order was passed in W.P.No.24529 of 2010 directing the respondent to consider the petitioner's explanation within a period of six months. The inordinate delay in every stage of the proceedings by itself is detrimental to the enquiry and the consequential final orders passed.

11. More over, the respondent's attitude in not considering the petitioner's explanation dated 26.10.2010 within a period of six months, as directed by this Court in W.P.No.24529 of 2010 without seeking for extension of time, is in contempt and there is no explanation justifying the delay. Whenever, the Court fixes an outer time limit to complete the enquiry and pass final orders, the respondent is bound to strictly adhere to the time granted to comply with the said order. It is needless to point out that the respondent should have approached this Court seeking for extension of time by giving sufficient reasons for non-compliance, which was not done in the present case.

12. A Division Bench of this Court in the decision in the case of State of T.N. v. T.Ranganathan reported in (2010) 3 MLJ 625, had an occasion to consider similar laches and relevant portion of the said order is extracted hereunder:

"23. We are conscious of the fact that there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency, it is for the Department to point out the non-co-operation on the part of the delinquent officer in finalising the proceeding and the hardships faced by the department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence, the Department is bound to comply with the



directions issued by the Tribunal in O.A.No.1535 of 2003."

13. Learned counsel for the petitioner would also submit that while passing the impugned order of punishment, the respondent had relied upon the views of Tamil Nadu Public Service Commission and without annexing a copy of the TNPSC recommendations, the impugned order was passed and hence, the order is liable to be set aside. It is true that whenever the respondent imposes of punishment based on the recommendations of TNPSC views, it is bounden duty that the copy of such recommendations be served on the petitioner to enable him to redress his grievance in a higher forum, since the punishment was imposed based on the TNPSC's recommendation, which decision was taken behind the petitioner's back.

14. Before concluding the present order, I am of the view that all is not well in the conduct of the respondent in handling the present disciplinary proceedings. It is brought to the notice of this Court that P.W.72 who had deposed in the disciplinary proceedings before the TDP, was subsequently levelled with charges that he had given false statement in the present disciplinary proceedings initiated against the petitioner herein by stating that the petitioner had acted within his duties and responsibilities and that the petitioner had not committed any misconduct. Based on the charges against P.W.72, an enquiry was conducted and in the enquiry, the charges were held to be not proved. On the said report, the Government in G.O. (3D) No.197 Agriculture Department dated 10.10.2014 had dropped the charges against P.W.72. Thus, the evidence let in by P.W.72 before the TDP in the petitioner's case, is further strengthened in view of the findings in the enquiry conducted against P.W.72 in this regard and the consequential dropping of the charges.

15. For all the foregoing reasons, the impugned order of the respondent dated 27.08.2013 is quashed. Consequently, the petitioner shall be entitled for all the service and monetary benefits which might have been withheld owing to the punishment imposed on the petitioner on 27.08.2013. The petitioner shall also be entitled for any promotion that he should have been deprived of owing to the currency of the disciplinary proceedings/punishment. Since the petitioner herein had already attained the age of superannuation and has retired, the respondent herein shall pass appropriate orders in accordance with the findings given herein and refix the petitioner's pensionary benefits and disburse all the arrears of pay, by passing appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.



16. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To

The Agricultural Production Commissioner
and Secretary to Government,
Agricultural Department,
Fort St. George, Chennai - 9.

+1 cc to Mr.G.Ilamurugu, Advocate Sr.NO. 26113

+1 cc to Spl.Government Pleader Sr.NO. 26168

W.P.No.28664 of 2013

SKM(CO)
A.SK(29/04/2022)