

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.10482 of 2011

and

M.P.No.1 of 2012

A.P.Jayaprakash

.. Petitioner

Vs.

The Principal Secretary to Government,
Public Works (E1) Department,
Secretariat, Chennai - 9.

.. Respondent

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 pertaining to the order of the respondent herein passed in G.O.(D) No.114 Public Works (E1) Department dated 13.04.2009 imposing a punishment of withholding of increment for a period of six months without cumulative effect and the order passed by the respondent herein in his Letter No.7421/A1/2010-2 dated 24.06.2010 and the order passed in Letter No.23306/A1/2010-3 dated 01.11.2010 and quash the same and consequently direct the respondent herein to promote the petitioner notionally as Special Chief Engineer with effect from 30.06.2010 from the date of promotion of immediate juniors and direct the respondent herein to revise the petitioner's pensionary benefits with all service and monetary benefits.

For Petitioner .. Mr.Ravi Shanmugam

For Respondents... Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records pertaining to the order of the respondent herein passed in G.O.(D) No.114 Public Works (E1) Department dated 13.04.2009 imposing a punishment of withholding of increment for a period of six months without cumulative effect and the order passed by the respondent herein in his Letter No.7421/A1/2010-2 dated 24.06.2010 and the order passed in Letter No.23306/A1/2010-3 dated 01.11.2010 and quash the same and consequently direct the respondent herein to promote the petitioner notionally as Special Chief Engineer with effect from 30.06.2010 from the date of promotion of immediate juniors and direct the respondent herein to revise the petitioner's pensionary benefits with all service and monetary benefits.

2.The case of the petitioner is that he was directly recruited as Assistant Engineer through the Tamil Nadu Public Service Commission in 1978. Thereafter, he was promoted as Assistant Executive Engineer in 1996 and as Executive Engineer in 2004 and in 2008, he was further promoted to the post of Superintending Engineer. After attaining the age of superannuation, the petitioner retired from service on 31.12.2010.

3.While he was working as Executive Engineer, one Shanmugam Junior Draughting Engineer (JDO) was convicted by the Special Judge, Krishnagiri in a criminal case. The said Shanmugam filed an appeal before this Court and this Court has suspended the sentence of imprisonment. In view of the conviction of the said Shanmugam (JDO), the petitioner, who was the disciplinary authority at that time, as he was acting as Superintending Engineer incharge, imposed the punishment of reduction in rank in seniority for a period of three years vide order dated 10.07.2006. However, the said order came to be set aside by the Chief Engineer on 21.12.2006 and a de novo enquiry was initiated against the said Shanmugam (JDO). In the light of the order passed by the petitioner against the said Shanmugam (JDO), show cause notice was issued to the petitioner on 21.12.2006 calling for his explanation for allowing Shanmugam (JDO) in service. In the meanwhile, the said Shanmugam (JDO) approached this Court in W.P.No.1454 of 2007 and obtained an interim order staying the disciplinary proceedings initiated against him by the Chief Engineer.

4.While matter stood thus, the petitioner submitted his explanation on 22.10.2007 to the show cause notice dated 21.12.2006 that he had originally passed orders against Shanmugam (JDO) on the basis of humanitarian consideration and there cannot be any motive attributed to him for passing such

order. However, notwithstanding the explanation, charge sheet was issued under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner on 02.06.2008, for which, the petitioner submitted an explanation on 24.10.2008 stating that he had acted well within the jurisdiction of the office in which he was holding. However, inspite of the explanation offered by the petitioner vide G.O. (D) No.114 Public Works (E1) Department dated 13.04.2009, the petitioner was imposed with the punishment of withholding of increment for a period six months without cumulative effect vide proceedings dated 13.04.2009, which proceedings is impugned in the present writ petition. In the meanwhile, the petitioner was also due for promotion in June 2010 and a representation was also submitted by him on 14.06.2010, claiming promotion as Special Chief engineer. However, the said representation was rejected on 24.06.2010 because of the currency of punishment. While so, on 30.06.2010, some of the petitioner's juniors came to be promoted as Chief Engineer and Special Chief Engineer as the case may be. In the said circumstances, when the petitioner further made a request for promotion, the same was rejected on 01.11.2010.

5. In the criminal appeal filed in CrI.A.No.521 of 2005 by the said Shanmugam (JDO), conviction was set aside and the writ petition filed by him in W.P.No.1454 of 2007 was allowed by this Court on 18.04.2011. This Court, in the said writ petition, set aside the order passed by the Chief Engineer dated 21.12.2006, which was actually a show cause notice. In fact, from the writ proceedings, it could be seen that thereafter the said Shanmugam (JDO) himself had consented to the punishment imposed i.e. reduction of seniority status for three years.

6. In the light of the above facts and circumstances of the case, Mr. Ravi Shanmugam, learned counsel appearing for the petitioner would strenuously contend that the punishment imposed by the petitioner on the said Shanmugam (JDO) has been confirmed by this Court in the writ proceedings initiated by the said Shanmugam (JDO) and therefore, the basis on which the disciplinary action initiated against the petitioner by issuing charge sheet under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules cannot sustain in the eye of law. Learned counsel appearing for the petitioner would also rely on the judgment of the Supreme Court in *Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others* ((1997) 7 SCC 409). He would particularly draw the Court's attention to paragraphs 42 and 43 of the judgment, which read as under:

42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis

for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43.If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

7.In view of the settled legal position and also the order passed by this Court in W.P.No.1454 of 2007 dated 23.04.2011, the entire premise on which the disciplinary action initiated against the petitioner has to fail.

8.Upon notice, Mr.T.M.Pappiah, learned Special Government Pleader entered appearance on behalf of the respondent and submitted that the petitioner, having imposed penalty on the said Shanmugam (JDO) which was not commensurate with the conviction rendered by the criminal Court, is not entitled to the relief prayed for in the writ petition.

9.This Court considered the rival submissions of the learned counsels appearing for the parties both on legal and factual basis and is of the firm view that the impugned orders cannot

be countenanced both in law and on facts particularly in the light of the order passed by this Court in W.P.No.1454 of 2007 dated 23.04.2011 and also the law laid down by the Supreme Court in the aforesaid judgment cited by the learned counsel for the petitioner. In the said circumstances, this Court has no hesitation in allowing the writ petition.

10. Accordingly, the impugned orders dated 24.06.2010 and 01.11.2010 are set aside and the respondents are directed to consider the claim of the petitioner for promotion to the post of Chief Engineer or Special Chief Engineer as the case may be from the date on which his juniors were promoted, if he was otherwise eligible in all other respects. The consequential direction has to be complied with by the respondents within a period of two months from the date of receipt of a copy of this order. With these directions, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mmi

To

The Principal Secretary to Government,
Public Works (E1) Department,
Secretariat, Chennai - 9.

+1 cc to Mr.Ravishanmugam Advocate sr 59241
+1 cc to the Government Pleader sr 59915

W.P.No.10482 of 2011

scd(co)
aa08/09/2017

WEB COPY