IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

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The Honourable Mr. JUSTICE R. SURESH KUMAR

W.P.No.35115 OF 2013

V. Muniasamy ...Petitioner

versus

1. The Government of Tamil Nadu
Rep. by the Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai - 600 009.

2. The Assistant Director of Survey & Land Records,
Theni, Theni District. ...Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent herein in G.O.(2D) No.632 Revenue [Ser.2 (1)] Department dated 22.10.2013 and to quash the same and to consequently direct the respondents herein to reinstate the petitioner in service and to treat the entire period from 28.05.2009 till the date of reinstatement, as duty period, for all purposes and to grant the petitioner all consequential service and monetary benefits with due interest on the delayed payment of the monetary benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.A.Zakir Hussain,
Government Advocate

O R D E R

The prayer in the Writ Petition is for a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent herein in G.O.(2D) No.632 Revenue [Ser.2 (1)] Department dated 22.10.2013 and to quash the same and to consequently direct the respondents herein to reinstate the petitioner in service and to treat the entire period from

28.05.2009 till the date of reinstatement, as duty period, for all purposes and to grant the petitioner all consequential service and monetary benefits, with due interest on the delayed payment of the monetary benefits.

2. The petitioner was working as Sub Inspector of Survey at the respondent-Department. While he was working as Sub-Inspector of Survey, in the year 1995, the disciplinary proceedings were initiated against the petitioner and other Officials/Employees of the Department. Though the enquiry was conducted, according to the petitioner the same was not conducted in the manner known to law and at any rate, the punishment of compulsory retirement was imposed against the petitioner by the first respondent through the order dated 28.05.2009 in G.O.(2D).No.257 Revenue [Ser-2(1)] Department. Aggrieved by the said order of punishment, passed against him, the petitioner had already filed W.P.No.12976 of 2009 to assail the said order of punishment.

2.1. The Learned Judge of this Court after having considered the rival claims and merits of the issues, has ultimately concluded that the enquiry was not conducted as per the procedure in the manner known to law. The Learned Judge was pleased to set aside the order made in G.O.(2D) No.257, and remanded the matter to the respondent for having fresh enquiry and to pass a fresh order. The relevant portion of the order in the said writ petition reads thus:-

> 6. It is needles to state that the departmental enquiry is a quasi judicial proceedings and as such, the authority concerned should follow the procedure in a manner known to law and such procedure should be fair. It is pertinent to note as pointed out that the respondent has passed the impugned order, which is eminently clear that it is a non-speaking order, and as such, it is unsustainable in law. Accordingly, the impugned order in G.O.(2D).No.257, Revenue Ser.II(1) Department dated 28.05.2009 passed by the respondent is set aside and the matter is remanded to the respondent for fresh disposal in a manner known to law by giving an opportunity to the petitioner and dispose of the same within a period of twelve weeks from the date receipt of the copy of this order.
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> 7. At this stage, the learned counsel appearing for the petitioner submitted that the respondent may be directed to reinstate the petitioner in service and the same was strongly objected by the learned Government Advocate.

8. Considering the fact that in the event of reinstating the petitioner in service, no prejudice would be casued to the petitioner, this court while setting aside the impugned order passed by the respondent, also directs the respondent to reinstate the petitioner in service and to proceed with the enquiry.

3. As against the said order of the learned Single Judge, the first respondent had preferred an intra Court appeal, in W.A.No.775 of 2010. The said writ appeal was also decided and disposed by a Division Bench of this Court by judgment dated 23.03.2011. The Division Bench in their judgment has only clarified that the direction for reinstatement ordered by the learned Single Judge was only to enable the first respondent herein to keep the petitioner herein under suspension till the enquiry was completed. The Division Bench has confirmed the order passed by the learned Judge. The relevant portion of the order reads thus:-

5. We have considered the above submission. As far as the direction of the learned Single Judge for reinstatement is concerned, as has been rightly contended before us, the direction should only mean that unless the respondent is reinstated, the question of continuing the suspension which was in force at the time when the enquiry was conducted does not arise. Only for that purpose, the direction for reinstatement is available to the appellant herein and only in that way, one should understand the direction contained in the order passed in the writ petition. Accordingly, we only clarify that the direction for reinstatement ordered by the learned Single Judge is only to enable the appellant to keep the respondent under suspension till the enquiry is completed. Except the above clarification, we are not inclined to interfere with the order of the learned Single Judge. Accordingly the writ appeal is disposed of. No costs. The connected miscellaneous petitions are closed.

6. As the respondent is facing charges of the year 1995, the enquiry should be completed in an expeditious manner. Hence, the respondents are directed to pass orders on the charges by holding enquiry as directed by the learned Single Judge within a period of four months. We also make it clear that in view of the facts of this case viz., the charges are of the year 1995, the time limit fixed by this court should be strictly adhered by the appellants and for that purpose, the respondent shall also co-operate.

4. Even though the order of the learned Single Judge has been confirmed by the Division Bench, as stated supra, where a time bound direction was given to reinstate the petitioner and keep him under suspension, conduct an enquiry and pass final orders within a period of four months, the first respondent has issued an order in G.O.(2D) No.10, dated 09.01.2013, after two years of the order passed by the Division Bench, whereby the earlier G.O.(2D) No.257, dated 28.05.2009, imposing punishment of compulsory retirement has been withdrawn and the petitioner was reinstated for the purposes of placing him under suspension.

5. Consequently, the petitioner was placed under suspension by order, dated 10.04.2013. Further without conducting any enquiry, as directed by this Court, in its order passed by the learned Single Judge as well as the subsequent judgment of the Division Bench, the first respondent has passed the impugned order in G.O.(2D) No.632, dated 22.10.2013, whereby the charges framed against the petitioner, the explanation given by him and the findings of the enquiry officer, who had enquired earlier, alone were taken into account and once again the punishment of compulsory retirement has been imposed on the petitioner. Challenging the said order, the petitioner has filed the present writ petition.

6. Mr.M.Ravi, learned counsel appearing for the petitioner has, in fact, taken this Court to the entire subject proceedings, i.e. the earlier order of punishment given to the petitioner through G.O.(2D) No.257, dated 28.05.2009, order of the learned Single Judge in W.P.No.12976 of 2009, dated 16.07.2009, the order of the Division Bench of this Court in W.A.No.775 of 2010, dated 23.03.2011, the subsequent order made by the respondent in G.O.(2D) No.10, dated 09.01.2013 and also the order of suspension placing the petitioner once again under suspension by order dated 10.04.2013 as well as the present impugned order dated 22.10.2013 made in G.O.(2D) No.632 of the Revenue Department.

7. On a perusal of these proceedings, it is clear that the respondents especially the first respondent, in spite of the specific direction given by this Court, which has been further amplified by the Division Bench, has not taken care of those orders of this Court and straight away imposed the punishment of compulsory retirement without conducting any enquiry in the manner known to law. This shocking factor would entitle the petitioner to assail the said order, which is impugned herein, on the only ground of violation of the direction issued by this Court.

8. The learned counsel for the petitioner would also submit that even though time bound direction was given to complete all the exercise of conducting enquiry and passing the final order within the period of four months, recklessly the first respondent has taken their own time and passed firstly order withdrawing earlier order of punishment by issuance of G.O.(2D) No.10, dated 09.01.2013 after two years of passing of the judgment by the Division Bench and thereafter, the present impugned order has been passed on 22.10.2013, more than 2 ½ years of the judgment of the Division Bench. Even the delayed action is not in accordance with the direction issued by the Division Bench as stated supra and therefore the learned counsel for the petitioner would submit that the impugned order is liable to be quashed.

9. On the other hand, when this Court specifically questioned the wisdom of the first respondent in passing the present impugned order in G.O.(2D). No.632, dated 22.10.2013 of the Revenue Department in spite of the specific direction given by this Court, especially the direction issued by the Division Bench in the appeal filed in W.A.No.775 of 2010, dated 23.03.2011, the learned Government Advocate tried his level best to sustain the order of the first respondent, which is impugned herein. This Court is not satisfied with any of such explanations, which have been given by the learned Government Advocate, on behalf of the respondent as the records show that it is in violation of the orders of this Court.

10. This court has considered the said submissions made by the learned counsel appearing for both sides and also perused the afore mentioned materials placed before this Court.

11. The learned Single Judge in the order dated 16.07.2009 in W.P.No.12976 of 2009, in paragraph 6 has held that the original impugned order, which was assailed in the said writ petition i.e. G.O.(2D) No.257, was a non-speaking order and that the enquiry conducted by the first respondent also was not as per the procedure in a manner known to law and therefore, the learned Judge, after having set aside the order of punishment in G.O.(2D) No.257, remanded the matter to the respondents especially the first respondent for fresh consideration in a manner known to law by giving an opportunity to the petitioner.

12. Even against the said order of the learned Judge, the first respondent preferred an appeal in W.A.No.775 of 2010, wherein as extracted above, the Division Bench has, in unequivocal terms, has given a specific time bound direction to the first respondent that the enquiry should be completed in an expeditious manner and also directed to pass an order on the charges by holding an enquiry as directed by the learned Judge,

within a period of four months. The Bench, further specifically directed that since the charges are of the year 1995, the time limit fixed by the Court, should be strictly adhered to by the first respondent herein.

13. When the Division Bench of this Court has given a clear direction to the first respondent to conduct an enquiry and to complete the process of enquiry within stipulated period of four months, there can be no deviation from the said direction issued by this Court except to follow the same. As the first respondent has accepted the order of this Court, as concluded by the Division Bench order, he cannot have any different method of disposal of the issue in the manner unknown to law.

14. Even though an expeditious action was expected from the first respondent and also a time bound direction given, whereby, he was directed to complete the entire exercise, the first respondent, very belatedly, after two years, of the direction of this Court i.e. only on 09.01.2013 in G.O.(2D) No.10, Revenue Department an order was passed. In the operative portion of the G.O. it has been stated that, after careful examination of the above High Court, decided to cancel G.O.(2D) No.257, dated 28.05.2009. The relevant portion of the order is extracted herein for better appreciation.

> The Government after careful examination of the above High Court have decided to cancel G.O. (2D) No.257, Revenue (Ser 2(1)) Department, dated 28.05.2009 since the same has been quashed by the Hon'ble High Court and to reinstate the delinquent Thiru.V.Muniasamy, formerly Sub-Inspector of Survey to keep the individual in service, but under suspension until final orders in the disciplinary case are issued.

15. In this regard as has been rightly pointed out, when once the very G.O.(2D) No.257 imposing punishment of compulsory retirement of the petitioner has been quashed by this Court, as confirmed by the Division Bench, the question of canceling the G.O. does arise. Nevertheless, the first respondent in the said G.O.(2D) No.10, has stated that the Government has decided to cancel the G.O.(2D) No.257.

16. Be that as it may, even the said order in G.O. (2D) No.10 was issued belatedly i.e. nearly after two years from the date of order of the Division Bench. Subsequently, the petitioner was placed under suspension by order dated 10.04.2013. Thereafter, as directed by this Court the first respondent or other respondent should have conducted a fresh enquiry based on the charges framed against the petitioner. And based on the enquiry report to be submitted by the enquiry

officer, a fresh order could have been passed. However, what has been done by the first respondent, as reflected in the present impugned order dated 22.10.2013, is nothing but reproduction of the charges and the explanation given by the petitioner/delinquent and also the findings of the enquiry officer, who conducted the enquiry initially.

17. Under what basis, in spite of the orders having been passed by this Court, the first respondent issued such an order, is not known and this Court is afraid that if this kind of attitude is shown by the Head of the Department of the Government, it is not only unfortunate but also despicable. Though this Court wishes to impose cost on the first respondent, who passed such an order, which is impugned herein, completely violating the direction issued by this Court, this Court refrains from imposing such cost, as that imposition may cause further trouble to the petitioner.

18. Therefore, in the given facts and circumstances of the case this Court has no hesitation to hold that the impugned order is absolutely unjustifiable and unlawful and hence it is liable to be quashed.

19. In the result, the impugned order is quashed and the writ petition is allowed.

20. The chance of conducting a fresh enquiry though given by this Court as early as in 2009 itself, which had been once again reiterated by the Division Bench in the year 2011 itself, that opportunity has not been utilized by the first respondent. Therefore no useful purpose would be served in directing to conduct a further enquiry at this length of time.

21. As confirmed by the counsel for the petitioner, the petitioner has already attained the age of superannuation on 31.08.2014.

22. Hence the respondents are directed to treat the period of non-duty of the petitioner as the duty period for all purposes of service benefits in accordance with the Service Rules and accordingly, the order to that effect shall be passed. So far as the back wages are concerned from the date of suspension till the date of superannuation, he would not get the full salary. However in view of the facts and circumstances of this case, this Court feels that at least 50% of the salary for the said period shall be paid to the petitioner after deducting the subsistence allowance, if any paid to him. Since the impugned order has been quashed the first respondent is directed to treat the petitioner's suspension period or removal

period till the superannuation as duty period and all other service benefits shall also be calculated notionally and accordingly be granted such benefits. The aforesaid directions shall be complied with by the respondents within a period of two months from the date of receipt of copy of this order.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
   Government of Tamilnadu,
   Revenue Department,
   Secretariat, Chennai - 600 009.

2. The Assistant Director of Survey & Land Records,
   Theni, Theni District.

+1cc to Mr.M.Ravi, Advocate, S.R.No.18183

+1cc to the Government Pleader, S.R.No.18704

W.P.No.35115 of 2013

rsi(co)
rmp(02/05/17)