

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.No.25616 of 2007 and
M.P.Nos.2 of 2007 and 1 of 2010

Dr.P.Balakrishnan

.. Petitioner

vs

1.The Government of Tamilnadu,
rep. by Secretary to Government,
Department of Higher Education,
Fort St. George,
Chennai-9.

2.Mr.Vishwanath Shegaonkar, I.A.S.,
(Enquiry Officer)
Managing Director,
Co-optex,
Pantheon Road, Egmore,
Chennai - 600 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the impugned order of the first respondent in Letter No.13192/11/98-46 dated 06.02.2007 and quash the same in so far as it directs the holding of a de novo enquiry and call for the records relating to the disciplinary proceedings initiated against petitioner pursuant to the charges-memorandum in Letter No.13192/11/98-10 dated 07.08.2000 issued by the first respondent and quash the same and direct the respondents to grant petitioner all retirement benefits, including full pension, gratuity, provident fund benefits, interest on belated payments and all other attendant benefits admissible to petitioner and payable to petitioner as per the rules, with effect from the date of petitioner's superannuation viz., 30.04.1998 together with interest thereon as admissible under the rules.

For Petitioner : Mr.R.Singaaravelan
for M/s.T.Meikandan

For Respondents : Mrs.M.E.Raniselvam
Addl. Govt. Pleader for R1

ORDER

This writ petition has been filed by the petitioner seeking a writ of certiorarified mandamus to call for the records relating to the impugned order of the first respondent in Letter No.13192/11/98-46, dated 06.02.2007 and quash the same in so far as it directs the holding of a de novo enquiry and call for the records relating to the disciplinary proceedings initiated against petitioner pursuant to the charges-memorandum in Letter No.13192/11/98-10, dated 07.08.2000 issued by the first respondent and quash the same and direct the respondents to grant petitioner all retirement benefits, including full pension, gratuity, provident fund benefits, interest on belated payments and all other attendant benefits admissible to petitioner and payable to petitioner as per the rules, with effect from the date of petitioner's superannuation viz., 30.04.1998 together with interest thereon as admissible under the rules.

2. The case of the petitioner is that he was initially appointed in the Higher Education Department as an Associate Lecturer and after holding various promotional posts, retired from service on 30.04.1998 as Director of Technical Education. Subsequent to the retirement, the petitioner was served with a charge memo dated 07.08.2000 alleging that he used TATA Sumo vehicle bearing registration No.TN-07G 1198 belonging to the Directorate of Technical Education for his unofficial trip; in view of accident of the said vehicle, the petitioner has caused pecuniary loss to the Government; the petitioner had misused the Government vehicle by taking his family members in it and he had not intimated in the log book about the details of the journey and also no approval was obtained for the trip nor intimated to the appropriate authority.

3. The petitioner has submitted his explanation to the charge memo. The second respondent was appointed as an Enquiry Officer and the Enquiry Officer has submitted his report. The petitioner submitted explanation to the findings of the Enquiry Officer on 04.11.2002 and 11.12.2002 respectively. The petitioner has also submitted a detailed explanation to the findings of the Enquiry Officer on 09.12.2004.

4. According to the petitioner, thereafter, there was no progress for a long while and in and by letter dated 01.03.2005, the first respondent called the petitioner to give reply to the punishment proposed to be given. The petitioner sent his reply on 10.03.2005 denying the charges and upon receipt of the reply, the respondents have not concluded the disciplinary proceedings. On 06.02.2007, the first respondent issued a proceeding stating that the Government have decided to conduct a de novo enquiry from the stage where the defect had crept in and set aside the show cause notice dated 01.03.2005. According to the petitioner, though nine years have elapsed, he was not granted full pensionary and retirement benefits and the petitioner has been put to irreparable, loss, hardship and prejudice.

5. Denying the averments in the writ petition, the first respondent filed counter stating that the de novo enquiry was conducted against the petitioner and the inquiry report was sent to the petitioner and since the petitioner has sent further representation, it is under examination of the Government. It is stated that the petitioner was sanctioned provisional pension of Rs.3834/- per month with effect from 01.05.1998. According to the first respondent, the petitioner was permitted to retire from service with effect from 30.04.1998 without prejudice to the contemplation of disciplinary proceedings against him. It is stated that pursuant to the advise given by the Tamil Nadu Public Service Commission, the Government has taken a decision to conduct a de novo enquiry from the stage where the defect had crept in the conduct of the disciplinary proceedings.

6. I heard Mr.R.Singaravelan, learned Senior Counsel for M/s.T.Meikandan, learned counsel appearing for the petitioner and Mrs.M.E.Raniselvam, learned Additional Government Pleader appearing for the first respondent and also perused the materials available on record.

7. The following charges were levelled against the petitioner:

- (i) Tata Sumo vehicle bearing registration No.TN-07 G 1198 belonging to the Directorate of Technical Education was used by the petitioner for an unofficial trip to Bargur under the guise of inspection of the Government Engineering College, Bargur.
- (ii) In view of the accident that occurred on 13.4.1998, the vehicle was damaged, which resulted in pecuniary loss to the Government to the tune of Rs.2,65,015.55.
- (iii) Misused the Government vehicle by taking his family members in it.
- (iv) Not indicated in the log book about the details of the journey, viz., date, time,

purpose etc.
(v) No approval was obtained for the said trip, nor any intimation has been sent to the appropriate authority.

8. Admittedly, the petitioner retired from service on 30.04.1998 as Director of Technical Education. After lapse of almost two and half years, the petitioner was served with a charge memo dated 07.08.2000 containing five charges. A reading of the charges would show that the same were relate to a particular date i.e., 13.04.1998.

9. Being Head of the Department, the petitioner used Tata Sumo bearing registration No.TN-07-G-1198. Further, only the petitioner could decide on the emergency or otherwise of conducting an inspection of the Government Engineering College, Bargur.

10. According to the petitioner, in the interest of the Department, he had decided to conduct the inspection based on his own assessment that the trip was urgent.

11. On the other hand, the first respondent contends that Tata Sumo vehicle bearing registration No.TN-07-G-1198 belonging to the Directorate of Technical Education was used by the petitioner for his unofficial trip to Bargur. To prove that the petitioner took the vehicle for his unofficial trip, the first respondent has not produced any record. In the absence of any rebuttal evidence, it is to be presumed that being the Head of Department, the petitioner took the vehicle to Bargur in his official capacity. Therefore, it cannot be said that the trip to Bargur under the guise of an inspection of the Government Engineering College is unofficial.

12. For undertaking visits within the State of Tamil Nadu, permission of the Government is not necessary for the Heads of Department. Being a head, the discretion on the urgency to conduct an inspection by the petitioner cannot be questioned.

13. Since the Additional Director is subordinate to the Director, there is no question of the Director taking permission from the Additional Director. The first respondent has failed to prove that the visit to the Engineering College, Bargur is personal visit of the petitioner. On the other hand, the visit is only for official purpose. Just because the wife of the petitioner accompanied him during return journey, the trip cannot be held as unofficial.

14. It appears that the vehicle met with an accident in the wee hours of 13.04.1998, near Kancheepuram and the petitioner and his wife were unconscious. It also appears that the vehicle

was left in the custody of Bakthvatsalam Polytechnic, Kancheepuram from 13.04.1998 till the date on which, it was brought to the campus of the Directorate of Technical Education. Only after a lapse of 9 months after the accident, the vehicle was inspected by the Automobile Engineer of the Government. During the period of nearly 9 months the vehicle was exposed to open sky i.e., sunlight, rain, dust and wind. When the vehicle was parked in an open place in the campus of Bakthavatsalam Polytechnic, there is every chance of stealing parts of the vehicle.

15. It is to be noted that if really, the first respondent was interested in repairing the vehicle to avoid much loss to the Government, he could have taken speedy steps for inspection and repair of the vehicle. But the first respondent has failed to do so.

16. As rightly submitted by the learned Senior Counsel appearing for the petitioner, keeping the vehicle in sunlight, rain, dust and wind increased the expenditure for the repairs of the vehicle, for which, it is not appropriate to fix responsibility/burden on the petitioner, who is a retired officer. The petitioner has also taken efforts by way of addressing a letter to the Government to carry out repairs at his cost. Since the said request has not been complied with by the Government, the petitioner was not responsible for the expenditure incurred for repair of the vehicle. It is admitted that the vehicle has been purchased by the Anna University for its use, which itself prove that the vehicle was not condemned.

17. It appears that during the fag end of i.e., just a fortnight period to go for retirement, the petitioner had met with an accident, while returning from Bargur. According to the petitioner, he was accompanied by his ailing wife in the vehicle for medical assistance. Along with them, children and grand children were also travelled. In the accident, petitioner's wife, children and grand children sustained grievous injuries. The petitioner lost his wife consequent to the injuries sustained by her in the said accident.

18. According to the petitioner since there were public holidays from 08.04.1998 to 12.04.1998, no official driver was available on the date of the journey on 12.04.1998. Nothing prevented the petitioner from driving the vehicle on his own. Immediately, after the accident, the petitioner was admitted in the hospital and he was taken treatment as inpatient. Since it was a sudden visit and the petitioner himself drove the vehicle, there is no question of entering the visit in the log book.

19. According to the first respondent, normally Heads of Department inform their programme to the Government before

leaving the Headquarters, for which there is no quarrel. But there is no hard and fast rule that the official being Head of Department must inform his/her programme to the Government before leaving Headquarters. If it is surprise visit, how the question of prior intimation would arise. The petitioner himself admitted that since it is a sudden visit, he has not informed the Government about his programme, which itself should not constitute that he miserably failed to inform the Government.

20. As far as prior approval of the trip or any intimation was sent to the appropriate authority by the petitioner is concerned, as rightly argued by the learned Senior Counsel for the petitioner, the visit to the site of Government Engineering College, Bargur was a sudden visit. According to the petitioner, there is no need to obtain prior approval of the Government for the tours undertaken within the State of Tamil Nadu. The said position is not denied and disproved by the first respondent. The petitioner has explained the urgency to visit the site as follows - "as there was a review meeting of the Minister of Education, he wanted to visit the site to brief the Minister properly about the progress of the work as lot of funds were sanctioned by the Government for construction of the building". The reasoning for urgency to visit the site pleaded by the petitioner appears to be believable.

21. The first respondent contended that the detailed enquiry initiated against the petitioner was pending and he was permitted to retire from service with effect from 30.04.1998. It is to be noted that no disciplinary proceedings were initiated prior to the date of the retirement. The disciplinary proceedings were initiated only long after the retirement from service, which itself shows total violation of the provisions contained in FR-56 and also provisions contained in Rule 9 of the Tamil Nadu Pension Rules.

22. Admittedly, no reasons have been given for the inordinate delay in initiating the disciplinary proceedings. Therefore, the inordinate and unexplained delay vitiates the entire proceedings.

23. That apart, it is to be noted that but for the confession of the petitioner that he used the vehicle which met with an accident, there is no iota of evidence adduced on behalf of the respondent authorities to prove that the petitioner was involved in such act. Therefore, the mere confession cannot be a basis for proving the guilt of a delinquent. The said view is fortified by a decision of the Supreme Court in *Roop Singh Negi v. Punjab National Bank and others*, (2009) 2 SCC 570.

24. By a letter dated 06.02.2007, the first respondent set aside the show cause notice dated 01.03.2005, however has

directed holding of de novo enquiry. On a perusal of the letter dated 06.02.2007, I find that no reasons have been given for directing to hold de novo enquiry.

25. As stated supra, the petitioner attained the age of superannuation in April 1998 and was permitted to retire from service with effect from 30.04.1998 without prejudice to the contemplation of disciplinary proceedings against him. Only after a lapse of almost of two and half years, the first respondent issued the charge memo. After holding the enquiry, the Enquiry Officer submitted his findings on 11.10.2002. Despite the receipt of explanation submitted by the petitioner, there was no progress for a long time and all of a sudden, on 01.03.2005, the first respondent called the petitioner to give his reply to the punishment proposed to be given, for which, the petitioner has submitted his reply on 10.03.2005 denying the charges and asked the first respondent not to impose any punishment.

26. After a lapse of nearly two years, the first respondent issued a letter dated 06.02.2007 stating that the Government decided to conduct a de novo enquiry from the stage where the defect had crept in. Admittedly, the first respondent has not pointed out and/or stated the defect crept in the enquiry. The aforesaid approach of the first respondent clearly shows that the petitioner was dragged for nearly 20 years under the guise of disciplinary proceedings and for all these years, he has not received the retirement benefits, including full pension.

27. It is to be mentioned that despite interim direction given in M.P.No.2 of 2007 on 28.08.2007, directing the respondents to grant the entire pensionary and retirement benefits payable to the petitioner pending disposal of the writ petition, the same has not been granted. But the first respondent filed M.P.No.1 of 2010 to vacate the interim direction dated 28.08.2007 given in M.P.No.2 of 2007 and the same is also pending adjudication, which was also pending for the past eight years. Nothing has been shown by the first respondent to justify that pursuant to the interim direction, amounts have been paid to the petitioner. Therefore, this Court finds that the retirement benefits due to the petitioner have not been settled till date.

28. For the foregoing reasons, the writ petition is allowed and the impugned orders are set aside. The first respondent is directed to grant the petitioner all retirement benefits, including full pension, gratuity, provident fund benefits, with interest at the rate of 9% on belated payments and all other attendant benefits admissible and payable to him as per the

Rules with effect from 30.04.1998, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, M.P.Nos.2 of 2007 and 1 of 2010 are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Secretary to Government,
Government of Tamilnadu,
Department of Higher Education,
Fort St. George, Chennai-9.

+1cc to Mr.I.Abraham, Advocate sr.no.66864
+1cc t Government Pleader, sr.no.66820

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