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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.02.2017

CORAM:

**THE HONOURABLE MR. JUSTICE R. SUBBIAH**  
**and**  
**THE HONOURABLE MRS. JUSTICE J. NISHA BANU**

W.A. (MD) No. 108 of 2017  
and  
C.M.P. (MD) No. 1092 of 2017

1. State of Tamil Nadu,  
rep. by Secretary to Government,  
Public Works Department,  
Fort St. George,  
Chennai - 600 009.
2. The Engineer-in-Chief,  
Water Resources Department &  
Chief Engineer General,  
Public Works Department,  
Chepauk, Chennai. .. Appellants/Respondents 1 & 3

**Vs.**

1. P. Ramachandran .. 1<sup>st</sup> respondent/Petitioner
2. The Secretary,  
Tamil Nadu Public Service Commission,  
Frazer Bridge Road,  
Chennai - 600 003. .. 2<sup>nd</sup> respondent/2<sup>nd</sup> respondent

Writ Appeal has been filed under Clause 15 of the Letters Patent, against the order dated 30.06.2016, made in W.P. (MD) No. 597 of 2015 by a learned Single Judge of this Court.

**Prayer in WP (MD) .597/2015 :**

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, calling for the records relating with the order of the 1st Respondent made in G.O. (D) No. 369, Public Works (E1) Department dated 29.12.2014 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to promote the petitioner as accordance with the petitioner's service seniority from the year 2009 and with all attended benefits thereon.



For appellant : Mr.V.R.Shanmuganathan,  
Special Government Pleader

For 1<sup>st</sup> respondent : Mr.R.Suriya Narayanan

For 2nd respondent : Mr.K.K.Senthil

### **JUDGMENT**

**(Judgment of the Court was delivered by R.SUBBIAH, J.)**

This appeal has been filed by the State as against the order dated 30.06.2016 passed in W.P(MD).No.597 of 2016 whereby and whereunder a learned Single Judge has quashed the impugned order imposing punishment under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the first respondent.

2.The brief facts which are necessary to decide this writ appeal are as follows;

(a) The first respondent herein joined as an Assistant Engineer in Tamil Nadu Public Works Department on 10.10.1983 through TNPSC and was then promoted as Assistant Executive Engineer in the year 2001. While so, on 10.09.2009, the second appellant issued a charge memo alleging three charges against the first respondent. The first charge is that he has failed to verify whether the special repair works had been executed as per estimated quantity and also failed to check whether the correct measurement had been recorded in M.Book by the Section Officers and thus, violated Article 294(d) of the Tamil Nadu Financial Code Volume No.I. The second charge is that he had failed to check whether the special repair works to various PHC has been carried out during 2005-06 as per the specification and quantity of estimate and failed to verify the measurement recorded in M Books with the quantity executed and thus failed to watch whether the entire cost of the bill amounting to Rs.41,54,386/- has been actually spent to its entirety and failed to safeguard the interest of the Government in violation of the provisions contained under Article 4 of the Tamil Nadu Financial Code Volume No.I. The third charge is that he has failed to safeguard the interest of the Government and maintain absolute integrity and devotion to duty as warranted under Rule 20 of the Tamil Nadu Government Servant Conduct Rules, 1973.

(b) The first respondent submitted his explanation for the charges on 12.10.2009. Not being satisfied with the same, the departmental proceedings was initiated against the first respondent by appointing an enquiry Officer. After enquiry, the enquiry Officer has held that no charges were proved against the first respondent. Even then, the first appellant has called for



explanation from the first respondent in respect of the enquiry report, for which the first respondent has submitted his reply on 02.09.2010. Since there was delay in issuing the final order, the first respondent has filed a writ petition in W.P.No.19391 of 2014 and the same is still pending. While so, the first appellant, vide order dated 28.12.2014, imposed a punishment of withholding of the first respondent's increments for two years with cumulative effect, besides recovery of Rs.3,23,695/- from his salary in 25 monthly installments at the rate of Rs.11,695/- in the first month and Rs.13,000/- in the subsequent 24 months. Challenging the said order, the first respondent herein has filed the writ petition.

(c)A learned Single Judge of this Court, after hearing both sides, has allowed the writ petition on the ground that the disciplinary authority has not assigned any reason for differing with the finding of the Enquiry Officer. Aggrieved over the same, the State has filed this appeal

3.When the matter was taken up for consideration, the learned Special Government Pleader appearing for the appellants submitted that the learned Single Judge had mainly set aside the impugned order only on a reasoning that the disciplinary authority has not assigned any reason for differing with the finding of the Enquiry Officer. Under such circumstances, the learned Single Judge ought to have remitted the matter back to the disciplinary authority to pass fresh order after setting aside the impugned order. Thus, he prayed to remit the matter back to the file of the first appellant for passing fresh order.

4.We are not inclined to accept the above submission made by the learned Special Government Pleader appearing for the appellants, because the charge memo was issued on 10.09.2009 for the incident which took place during 2005-2006. The Enquiry Officer submitted his report on 09.06.2010. The first appellant passed the impugned order, without assigning any reason for differing with the view of the Enquiry Officer, on 29.12.2014. Now, almost seven years have passed from the date of initiation of the proceedings.

5. At this juncture, we are of the view, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in **P.V.Mahadevan vs. M.D., Tamil Nadu Housing Board**, reported in **AIR 2006 SC 2007**, wherein the Hon'ble Supreme Court has held as follows;

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further in the departmental proceedings at this distance of time will be very prejudicial to the appellant.



Keeping a higher Government Official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

6. The above dictum laid down by the Hon'ble Supreme Court is squarely applicable to the facts of this case as, in this case also now almost seven years have passed from the date of initiation of the proceedings. The mental agony and sufferings of the first respondent due to such delay would be much more than the punishment. More over, we are of the opinion that allowing the appellants to proceed further with the departmental proceedings at this length of time will be highly prejudicial to the first respondent. Thus, we do not find any infirmity or illegality in the order passed by the learned Single Judge.

7. In the result, this writ appeal fails and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

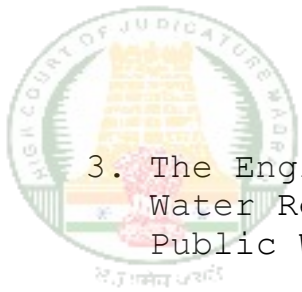
Sd/  
Assistant Registrar(T & P)

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Sub Assistant Registrar

To

1. The Secretary, Tamil Nadu Public Service Commission,  
Frazer Bridge Road, Chennai - 600 003.
2. The Secretary to Government, State of Tamil Nadu,  
Public Works Department, Fort St. George, Chennai - 600 009.



3. The Engineer-in-Chief,  
Water Resources Department & Chief Engineer General,  
Public Works Department, Chepauk, Chennai.

+1cc to M/s.R.Suriya Narayanan, Advocate, in SR No.7265.

+1cc to M/s.K.K.Senthil, Advocate, in SR No.7169.

+1cc to Special Government Pleader in SR.No.7498.

Judgment made in  
Writ Appeal (MD) No.108 of 2017  
08.02.2017

gcg

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