

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
W.A.No.1087 of 2014 against WP.No.27009 of 2007
and MP No.1 of 2014

1. The Government of Tamil Nadu
Rep. By the Secretary to the Government,

Health and Family Welfare Department,
Fort. St. George, Chennai 600 009.
2. The Director of Public Health
and Preventive Medicine,
Chennai 600 006. ... Appellants/Respondents

versus

1. S.Vasudevan
2. The Secretary
Tamil Nadu Public Service Commission,
Chennai 600 002. ... Respondents/Petitioner/
3rd Respondent

Appeal filed against the order passed by this Court dated 04.09.2013 passed in W.P.No.27009 of 2007.

WP.No.27009/07:

This writ petition is filed under Article 226 of the Consitution of India praying to issue a writ of certiorified Mandamus to call for the records relting to the impugned order of the 1st respondent in G.O.(D) No.1319, Health and Family Welfare(D2) Dept., dt 5.12.2006 confirming the earlier order of the 1st respondent in G.O.(D0 No.388, Health and Family Welfare (D2) Dept., dt 19.3.2003 and the order of the 2nd respondent in R.No.37783/63/DA/92/S2, dt 29.8.2001 and quash the said orders and direct the respondents to reinstate the petitioner in service with all attendant benefits including retirement w.e.f. 30.11.2000 with all retirement benefits.

For Appellants : Mr.V.Anandhamoorthy
Additional Government Pleader

For Respondents : Mr.P.Rajendran for R1
Ms. C.N.G.Niraimathi for R2

J U D G M E N T

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

Challenge in this intra Court Appeal is to the order of the learned Single Judge dated 04.09.2013 made in WP No.27009 of 2007, in and by which, the learned Single Judge set aside the order of the 1st respondent in G.O.(D).No.1319, Health and Family Welfare (D2) Department, dated 05.12.2006. Confirming the order of the 1st respondent in G.O.(D) No.388, Health and Family Welfare (D2) Department, dated 19.03.2003, which intturn confirmed the order of the 2nd respondent in Pro.R.No.37783/63/DA/92/S2 dated 29.08.2001 imposing a punishment of dismissal from service and directing the reinstatement of the petitioner in service with all attendant benefits including retirement benefits with effect from 30.11.2000.

2. The Writ Petition was filed by the 1st respondent challenging the above orders made in the disciplinary proceedings launched against him. The 1st respondent was appointed as a Health Assistant in Mannargudi Panchayat Union on 20.02.1963. He was promoted as Health Inspector on temporary basis on 10.11.1968 and upon a selection through the Tamil Nadu Public Service Commission on 09.04.1970. He continued as a Public Service candidate in the post of Health Inspector. He was moved to Selection Grade in the post of the Health Inspector and was promoted as Block Health Supervisor on 09.07.1999. He was due to retire on 30.11.2000, certain disciplinary proceedings were initiated against him in the year 1991 and charges were framed by the Commissioner for Disciplinary Proceedings, Madurai Region, Chennai in his proceedings dated 09.10.1991. The 1st respondent challenged the said charge memo in OA No.2468 of 1992, before the Tamil Nadu Administrative Tribunal, and had obtained stay of all further proceedings on 15.05.1992.

3. Since the disciplinary proceedings were pending, the petitioner/1st respondent herein was placed under suspension on 28.11.2000, two days prior to his superannuation. He was also not allowed to retire from service. The original application filed by the petitioner/1st respondent herein in OA No.2468 of 1992 on the file of the Tamil Nadu Administrative Tribunal came to be dismissed on 02.01.2001 with a direction to complete the disciplinary enquiry within a period of six months from the date of final orders of the Tribunal. The disciplinary proceedings were subsequently taken up by the Commissioner for Disciplinary Proceedings, Thanjavur, who concluded that the respondent is guilty of the charges and passed an order on 29.08.2001, imposing a penalty of removal from service.

4. The appeal filed by the 1st respondent herein challenging the said order was also dismissed by the Government on 19.03.2003. A Review Petition filed by the 1st respondent was also rejected on 15.12.2006. These orders were impugned in the Writ Petition.

5. The Writ Petition was resisted by the appellant contending that the misconducts committed are grave in nature, entailing the punishment of removal from service. It is also averred that the Public Service Commission which was consulted had also approved the action of the Government.

6. The learned Single Judge, who heard the Writ Petition allowed the Writ Petition on the ground that the principles of natural justice stood violated, the report of the Public Service Commission was not furnished to the 1st respondent viz. the delinquent officer, the learned Single Judge while accepting the contention observed that in the usual course, the matter should have been remitted to the Authorities for fresh consideration after furnishing the copies of the opinion of the Tamil Nadu Public Service Commission to the delinquent official, viz. the 1st respondent. But, the learned Single Judge deviated from the usual course and quashed the punishment and directed reinstatement of the employee considering the fact that the delinquencies complained had taken place during the years 1984-1991 and no useful purpose could be served by remitting the matter. It is against the orders of the learned Single Judge allowing the Writ Petition, the Government has come up on appeal.

7. We have heard Mr.V.Anandamoorthy, learned Additional Government Pleader appearing for the appellants and Mr.P.Rajendran, learned counsel appearing for the 1st respondent and Ms.C.N.G.Niraimathi, learned Standing Counsel for the 2nd respondent/TNPSC.

8. Mr.V.Anandamoorthy, learned Additional Government Pleader appearing for the appellants would contend that the opinion of the TNPSC is only advisory in nature and the copy of the same need not be furnished by the delinquent official. He would further submit that the Commissioner for Disciplinary Proceedings, which is Quasi Judicial Body had conducted the enquiry and had found the 1st respondent guilty of all the charges. Since the charges related to corrupt practices adopted by the 1st respondent the punishment of removal from service is justified.

9. Per contra, Mr.P.Rajendran, learned counsel appearing

for the 1st respondent would contend that even assuming that the copy of the opinion of the Public Service Commission need not be furnished to the delinquent official. The Government as the Appellate Authority should have considered the evidence on record and passed the speaking order in the Appeal filed by the delinquent official. Taking us through the order of the Secretary to Government, in G.O.NO.388, Health & Family Welfare (D2) Department dated 19.03.2003, Mr.P.Rajendran would contend that the order does not reflect consideration of the evidence on record.

10. It merely reproduces the opinion of the Tamil Nadu Public Service Commission and affirms the order of punishment imposed by the Disciplinary Authority. We have gone through the order of the Appellate Authority. We find ourselves in agreement to the submission of Mr.P.Rajendran, insofar as it relates to the order of the Appellate Authority. The order of the Appellant Authority only reproduces the charges and the opinion of the Tamil Nadu Public Service Commission, after such reproduction, the Government has observed as follows:-

"4. The Government examined the case carefully with connected records in the light of the views offered by the Tamil Nadu Public Service Commission. The Government have decided to accept the advice of the Commission and to dismiss the appeal preferred by Thiru S.Vasudevan, formerly Selection Grade Health Inspector, Primary Health Centre, Budalur as devoid of merits. The Government accordingly do and hereby direct that the appeal of Thiru.S.Vasudevan, formerly Selection Grade Health Inspector, Primary Health Centre, Budalur be dismissed as devoid of merits."

11. The merits of the matter have not been examined. The Government as an Appellate Authority is bound to examine the evidence on record and record its conclusions on the merits of the matter. It cannot shrug its responsibility by stating that it has decided to accept the advice of the Commission and confirm the dismissal of the employee. The duty of the Appellate Authority to go into facts, consider the evidence and arrive at its own conclusion becomes all the more necessary, in view of the fact that this Court exercising the power of Judicial Review under Article 226 of the Constitution of India cannot reappraise the evidence. The opportunity of an Appeal is given to a delinquent employee only to enable reappraisal of the evidence by another Authority. By disposing of the appeal in cryptic manner as aforesaid, the Government cannot make the remedy of the Appeal an empty formality.

12. Therefore, we are of the considered opinion that the

order of the Appellate Authority cannot be sustained. As observed by the learned Single Judge while disposing of the Writ Petition, we should have in the normal course set aside the order of the Appellate Authority and remitted the matter for reconsideration. We do not think that such remital will be of any use, considering the passage of time, more so, when the 1st respondent, the delinquent official, has attained the age of superannuation even in the year 2000 and 17 years has gone by since he attained the age of superannuation. We are therefore of the considered opinion that it will futile to remit the matter to the Appellate Authority once again with a direction to reconsider the matter afresh which would only further delayed the proceedings.

13. At the same time, in view of the fact that the delinquencies that have been held to be proved are serious in nature, we do not propose to allow the 1st respondent to go scot free. He was suspended only two days prior to his retirement, therefore, he rendered service up to the date of his retirement. Considering the overall circumstances, we are of the view that a lesser punishment would meet ends of justice.

14. We therefore modify the punishment from that of dismissal from service to that of compulsory retirement so that the delinquent employee, who should have retired in the normal course in the 2000 atleast he gets his retirement benefits.

15. In view of the foregoing reasons, the Writ Appeal is partly allowed. The order of the learned Single Judge is set aside and the punishment of dismissal from service is modified into one of compulsory retirement. The appellants are directed to work out the retirement benefits of the 1st respondent and pay the same within a period of eight (8) weeks from the date of receipt of a copy of this order. Needless to point out that the delinquent employee, viz. the 1st respondent would be entitled to all monetary benefits that he is entitled to as if he had been compulsorily retired from service. However in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

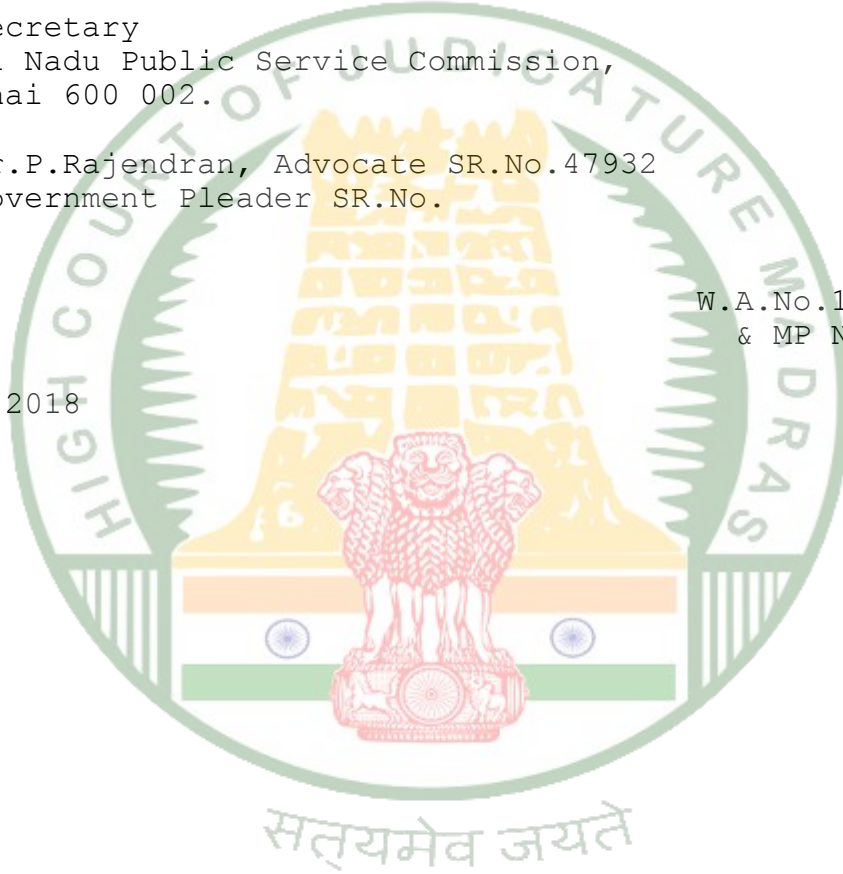
To

- 1 The Secretary to the Government,
Government of Tamil Nadu
Health and Family Welfare Department,
Fort. St. George, Chennai 600 009.
2. The Director of Public Health
and Preventive Medicine,
Chennai 600 006.
3. The Secretary
Tamil Nadu Public Service Commission,
Chennai 600 002.

+1cc to Mr.P.Rajendran, Advocate SR.No.47932
+1cc to Government Pleader SR.No.

W.A.No.1087 of 2014
& MP No.1 of 2014

RJ(CO)
SMI/10.08.2018



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