

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.6302 of 2008  
and M.P.No.2 of 2008

G.Jayaraman

... Petitioner

Vs.

1. The Government of Tamil Nadu  
Represented by its Secretary  
Rural Development Department  
Fort St.George, Chennai - 9.

2. The Director of Rural Development  
Saidapet, Chennai - 15.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent herein in G.O.(D).No.347 Rural Development & Panchayatraj (E6) Department dated 26.06.2006 and quash the same and consequently, direct the respondents herein to sanction periodical increments from the year 1997 onwards and re-fix the petitioner's pay scales and confer all the benefits including the promotion with arrears of pay and pension with due regards to his seniority.

For Petitioner: Mr.R.S.Anandan  
For Mr.Anand and Suryas

For Respondents : M/s.P.Rajalakshmi  
Additional Government Pleader

ORDER

The Writ Petition has been filed to call for the records relating to the first respondent herein in G.O.(D). No.347 Rural Development & Panchayatraj (E6) Department dated 26.06.2006 and quash the same and consequently, direct the respondents herein to sanction periodical increments from the year 1997 onwards and re-fix the petitioner's pay scales and confer all the benefits including the promotion with arrears of pay and pension

with due regards to his seniority.

2. The brief facts of the case, as stated by the petitioner are as follows:

The petitioner joined the services as a Junior Assistant (LDC) in the year 1965 and thereafter, promoted as an Assistant (UDC) in the year 1968, and further, he was promoted as Deputy Block Development Officer in the year 1985 and as Block Development Officer in the year 1987. While working so, he was issued with a charge memo for the alleged irregularity committed during 1990-1991, by the Divisional Development Officer, which subsequently came to be cancelled by the District Collector, Coimbatore, and thereafter, the Collector himself had framed and issued a charge memo in the year 1992, the said charge memo was also cancelled by the 2nd respondent, the Director of Rural Development, and he himself issued a fresh charge memo on 24.11.1994. Thereafter, an enquiry officer was appointed and an enquiry was conducted. The enquiry officer held that some part of the charges are proved and some part of the charges are not pressed. Thereafter, the disciplinary authority, the 2nd respondent herein, passed a final order on the disciplinary proceedings after accepting the representation of the petitioner on the enquiry report holding that the charges are proved and awarded punishment of stoppage of increment with cumulative effect for 3 years, besides, ordering recovery of Rs.11,516/- by his Proceedings No.118972/93/DPC II -2 dated 03.09.1996.

3. As against the said award of punishment, the petitioner preferred an appeal before the 1st respondent, the Government of Tamilnadu, who in turn referred the matter to TNPSC, Tamilnadu Public Service Commission and after accepting the views of TNPSC, passed an order in G.O. (D).No.506 dated 19.11.1999 setting aside the punishment order and ordered that further action under Rule 9 of Tamilnadu Pension Rules, will be pursued at the Government level.

4. As against the said order, the petitioner submitted a representation to the 1st respondent, however, 1st respondent called for further representation from the petitioner on the descending note from the enquiry report, to which, the petitioner submitted an explanation and requested to drop further action. However, notwithstanding his explanation, 1st respondent issued show cause notice

dated 13.08.2001 and sought for explanation from the petitioner within 15 days on the proposed penalty of cut in pension of Rs.100/- for a period of 3 years, besides, recovery of Rs.20,000/- from DCRG towards loss caused to the Government for the proved charges. The petitioner submitted his explanation on 26.09.2001, stating that he has already retired from service on 31.12.1998 and prayed to exonerate him from the disciplinary action. However, no final order has been passed on the show cause notice, despite receiving the explanation as early as on 26.09.2001. Hence, the petitioner filed W.P.No.38438 of 2005, in which, this Court, by order dated 29.11.2005 directed the 1st respondent to pass an order on the show cause notice dated 13.08.2001 in accordance with law within a period of six weeks from the date of receipt of a copy of the order.

5. The respondent, on receipt of the said order, passed a final order on 26.06.2006 in G.O.(D).No.347 Rural Development and Panchayatraj (EG) Department, awarding a punishment of cut in pension of Rs.100/- for a period of 3 years to be effected from the pension payable, besides, recovery of Rs.20,000/- from the DCRG payable. As against the said order, the petitioner is before this Court, praying to set aside the order dated 26.06.2006 and seeking a direction to pay full pension, apart from other prayers.

6. The second respondent filed a detailed counter, wherein, it has been submitted that the petitioner while working as a Block Development Officer, Pollachi (South), records of the Block were scrutinised and found that the forms and registers intended to the Village Panchayat were purchased to the tune of Rs.97,385/- without observing the statutory rules prescribed in Rule 84 of the Manual of Panchayat Administration. The petitioner is alleged to have acted in violation of the Rules, as he was working as a Commissioner of Panchayat Union, Pollachi South, encroached upon the powers and functions of the President of the Village Panchayat and acted as an extra Constitutional Authority, Pollachi. Charges were framed against him under Rule 17(a) of TNCS (D & A) Rules, by the Pollachi Divisional Development Officer on 10.09.1991, which was cancelled subsequently, by the District Collector, Coimbatore, and fresh charges under Rule 17(b) of TNCS (D & A) Rules, were framed against the petitioner, which was also served on the petitioner on 20.03.1992, to which, the petitioner submitted his explanation only on 13.07.1993. Thereafter, the Divisional Development Officer, Coimbatore,

was appointed as an enquiry authority and enquired into the charges framed against the petitioner.

7. The second respondent would further submit that the enquiry officer, by his letter dated nil-11-1995 submitted his enquiry report, which was forwarded to the 2nd respondent herein for appropriate orders. The enquiry report was communicated to the petitioner for submitting his further representation on 08.07.1996. On receipt of the said representation, the 2nd respondent herein, by its award dated 03.09.1996, awarded a punishment of stoppage of increment with cumulative effect for 3 years, besides, recovery of an amount of Rs.11,516/- from him being his 30% share of the loss of Rs.38,386/-.

8. The second respondent would also submit that the petitioner has preferred an appeal to the Government against the order passed by the 2nd respondent, during which period, the petitioner attained superannuation on 31.12.1998. By order dated 29.12.1998, the petitioner was allowed to retire without prejudice to the pending disciplinary case. Thereafter, for the appeal filed before the Government, the Government sought the view of TNPSC. However, the Government disagreed with the findings of the enquiry officer, but, did not record any reason for disagreement and imposed the stoppage of increment for 3 years with cumulative effect. Meanwhile, the petitioner attained the age of superannuation on 31.12.1998. When his increment was on 01.04.1997, from which date, he was left out with one year and eight months of service. Since the punishment could be imposed fully in the service period, the punishment order becomes defective and hence, TNPSC, advised the Government to set aside the order of punishment and to start denova proceedings from the stage where the defects have crept in. In accordance with their advise, the Government, by G.O.(D).No.506 R.D. (E6) Department dated 19.11.1999, directed to set aside the punishment orders passed by the 2nd respondent and ordered that further action under Rule 9 of Tamilnadu Pension Rules at the Government level. Thereafter, the Government, after independent examination of the case with connected records, have concluded that all the charges framed against the petitioner were held as proved and arrived at a provisional conclusion to impose punishment of cut in pension of Rs.100/- per month for a period of 3 years, besides, to recover a sum of Rs.20,000/- from the Death Cum Retirement Gratuity payable to him, by order dated 26.06.2006.

9. Moreover, the 2nd respondent would submit that all the codeliquent in this case were also awarded punishment sufficiently, besides, recoveries towards loss caused to the Government, hence, there is no ground in favour of petitioner, and prayed that the impugned order has to be sustained.

10. The learned counsel for the petitioner would contend that the disciplinary action was initiated in the year 1991, which was cancelled, and for the same set of charges, the District Collector issued fresh charge memo, which again was cancelled by the 2nd respondent herein and thereafter, the 2nd respondent issued fresh charge memo only in the month of November 1994. After the enquiry, final order came to be passed on 03.09.1996 by awarding punishment of stoppage of increment for 3 years with cumulative effect and also to recover a sum of Rs.11,516/-, which later on, in appeal came to be set aside by the Government, to conduct denova enquiry.

11. The learned counsel for the petitioner would further contend that once the Appellate authority set aside the order of punishment, the question of initiating further action under Rule 9 of Tamilnadu Pension Rules cannot be invoked and even if such enquiry is ordered, fresh enquiry to be ordered, but in this case, no fresh enquiry was conducted and even the respondents relied on the earlier enquiry report. The earlier report clearly dropped as far as causing loss to the Panchayat Union and in the absence of any material evidence to hold the charges proved, the order of punishment is perverse and cannot be sustained.

12. The learned counsel for the respondent would answer that the charges having been proved even after the denova enquiry, the respondent got it fit to impose deduction of Rs.100/- as cut in pension for a period 3 years, besides, the recovery of Rs.20,000/- which cannot be faulted as there are sufficient evidence and materials to show the loss committed by the petitioner and apart from that the codeliquents have also been awarded similar punishment and recovery had also been made sufficiently and hence, argued to sustain the order of punishment in favour of the respondents.

13. Heard rival submissions made by the learned counsel for the petitioner and learned counsel for the respondents, and perused the materials available on record.

14. The core point to be considered in this case is whether the respondents have justified in conducting denova enquiry and imposing the punishment of cut in pension of Rs.100/- for 3 years and recovery of Rs.20,000/- from the petitioner DCRG.

15. On perusal of the impugned order dated 26.06.2006, it could be seen that there is no justification or valid reason stated in the impugned order as to how they come to the conclusion for awarding such punishment when the same authority has set aside the earlier punishment imposed on the petitioner.

16. It could be seen from the records that the enquiry officer, having held the enquiry with regard to 4 charges, had come to the conclusion that 3 charges were partially proved and the other charge need not be pressed against the petitioner. However, the disciplinary authority, in line with the enquiry officer's decision, taking into consideration of the enquiry report, ordered recovery of Rs.11,516/-, being 30% of the loss of Rs.38,386/- to be recovered from the petitioner in 12 installments, at the rate of Rs.1000/-, apart from, imposing a penalty of stoppage of increment with cumulative effect for 3 years.

17. On an appeal filed by the petitioner as against the order dated 03.09.1996, the Appellate Authority referred the appeal to the Tamilnadu Public Service Commission for its view under the regulation, who has opined as follows:-

"According to Part-II, Chapter - IV of Hand Book on disciplinary procedure, if the disciplinary authority disagrees with the findings of the enquiry officer, on any article of charges, it will while recording his own findings also record the reasons for disagreement. In this case, the Director of Rural Development has not recorded his reasons for the disagreement with the Enquiry Officer's findings in the final order. Further, in respect of Thiru G.Jayaraman, the punishment of stoppage of increment for three years with cumulative effect had been imposed on 03.09.1996. His date of superannuation was 31.12.1998. His increment due was 01.04.1997. His service left

behind after the increment due date was only 1 year and 8 months. The punishment imposed on the appellant could not be imposed fully in his service period. As such the punishment order is defective. The above defects vitiates the disciplinary action taken against the appellant. Hence, the Commission advises the Government to set aside the punishment orders and to start denova proceedings from the stage where the defects had crept in."

18. The Appellate Authority, by its final order dated 19.11.1999, by accepting the view of Tamilnadu Public Service Commission, has directed to set aside the punishment order passed by the 2nd respondent dated 03.09.1996 and ordered that further action under Rule 9 of Tamilnadu Pension Rules, to be pursued at the Government level. Thereafter, a show cause notice was issued on 13.08.2001, asking the petitioner to give a reply to the proposed penalty of cut in pension of Rs.100/- for a period from 3 years from the pension payable to the petitioner, besides, recovery of Rs.20,000/- from the petitioner DCRG towards the loss caused to the Government.

19. It could be seen that after receiving the petitioner's reply dated 26.09.2001, the impugned order dated 26.06.2006 came to be passed. It is clear from the records that for the same set of core charges, the department has already conducted enquiry.

20. Apart from this, it is categorically clear that even though the 1st respondent had set aside the order passed by the 2nd respondent as early as on 19.11.1999, final order came to be passed only on 26.06.2006, that too, when the petitioner has approached this Court by filing W.P.No.38438 of 2005 seeking a direction to the 1st respondent to dispose of the appeal. Only in compliance to the order passed by this Court in the above Writ Petition, the respondent has passed the final order dated 26.06.2006, as such it is categorically clear that for the proceedings initiated as early as 1994 for the alleged instance that took place during 1991, the final order came to be passed belatedly on 26.06.2006, that too, after the petitioner retired from service on 31.12.1998 on attaining the age of superannuation.

21. It could be seen from the records that for the very same set of charges, which was already found proved, the 2nd respondent thought it fit to impose the punishment of recovery of Rs.11,516/- and stoppage of increment for 3 years with cumulative effect. However, the 1st respondent had chosen to impose cut in pension of Rs.100 for 3 years and recovery of Rs.20,000 from the Death Cum Retirement Gratuity benefit of the petitioner. There is no justification or valid reason stated in the impugned order or in the counter as to why, for the same set of charges, earlier imposed punishment was subsequently modified into higher quantum of punishment against the petitioner.

22. Under the above facts and circumstances, this Court is of the view that the impugned order has to be set aside for the reasons stated supra. Hence, this Court is of the view that to meet the ends of justice, it would be appropriate to direct the respondents to recover Rs.11,516/- alone from the petitioner's DCRG and not to recover any other money, and further, direct the respondents to pay the petitioner the arrears of pension, which he is entitled to within a period of 12 weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Secretary,  
Government of Tamil Nadu,  
Rural Development Department  
Fort St.George, Chennai - 9.

2. The Director of Rural Development  
Saidapet, Chennai - 15.

+1 CC TO GOVERNMENT PLEADER SR.NO. 89926

W.P.No.6302 of 2008  
and M.P.No.2 of 2008

A.SK(25/03/2019)