

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.7774 of 2011
and
M.P.Nos.1 and 2 of 2011

A.Dhanapalan Mosi

... Petitioner

Vs

The Commissioner of Agriculture,
Production and Principal Secretary to
Government, Agriculture (AA2) Department,
Secretariat, Chennai - 600 009.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein in G.O.(3D) No.194, Agriculture (AA2) Department, dated 12.11.2010 imposing a punishment of cut in pension of Rs.500/- per month for five years and withholding of the entire DCRG amount of Rs.94,430/- and quash the same and consequently direct the respondent herein to re-pay the withheld amount with interest of 10% for the entire delayed period of payment of retirement benefits from 31.12.1992 till the date of actual payment.

For Petitioner	: Mr.Ravi Shanmugam
For Respondent	: Mr.J.Pothiraj, Special Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner. Mr.J.Pothiraj, learned Special Government Pleader appearing for the respondent.

2. The petitioner has approached this Court, seeking the following relief:-

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent herein in G.O.(3D) No.194, Agriculture (AA2) Department, dated 12.11.2010 imposing a punishment of cut in pension of Rs.500/- per month for five years and withholding of the entire DCRG amount of Rs.94,430/- and quash the same and consequently direct the respondent herein to re-pay the withheld amount with interest of 10% for the

entire delayed period of payment of retirement benefits from 31.12.1992 till the date of actual payment."

3. The case of the petitioner is as follows:-

The petitioner was originally appointed as Research Assistant in Agricultural Department, Government of Tamil Nadu, on 16.08.1956. He was promoted as Reader in 1970 and thereafter, as Joint Director of Agriculture (Research) in the year 1977. In 1988, he was further promoted as Additional Director of Agriculture (Research). While he was working as Additional Director, he was issued with the charge memo on 28.12.1992 under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules for certain acts of misconduct. However, the petitioner attained the age of superannuation immediately thereafter on 31.12.1992 and he was also permitted to retire from service without prejudice to the disciplinary proceedings initiated against him on the eve of his retirement.

4. The petitioner submitted his explanation in response to the charge memo, denying the charges by his representation dated 18.01.1993. The disciplinary action however was continued against the petitioner and the enquiry report was finally submitted belatedly on 11.01.1999, holding the charges proved. Thereafter, a further explanation was called from the petitioner on the enquiry report dated 08.12.1999. The petitioner submitted his explanation on 31.01.2000. Thereafter, nothing progressed for more than five years. On 17.08.2005, G.O.(3D) No.202 was passed, dropping further action against the co-delinquent of the petitioner one Mr.Jayaraman. In spite of the said G.O. as regards the petitioner was concerned, no action was taken by meting out similar treatment to the petitioner.

5. In the above said circumstances, the petitioner was constrained to approach this Court in W.P.No.13127 of 2007, seeking direction to pass final orders by the disciplinary authority in pursuance of the explanation offered by the petitioner to the enquiry report on 31.01.2000. Another writ petition was also filed by the petitioner in W.P.No.15186 of 2010, directing the respondent to drop all further action against the petitioner and to pay all attendant and monetary benefits. Both the writ petitions were clubbed together and common order was passed by the learned Judge of this Court on 06.08.2010. The operative portion of the order passed by the learned Judge in Paragraph No.7 is reproduced hereunder:-

"7. In view of the above, the writ petitions are disposed of directing the respondent to pass final orders on the charge memo issued in Letter No.67927/Agri.AA.II/92-6 dated 28.12.1992 and pursued by way of a show cause notice dated 08.12.1999 within a period of twelve weeks from the date of receipt of a copy of this order. If the

respondent is unable to pass final orders within the time stipulated, then the respondent is directed to drop further action and settle all arrears of terminal benefits within a further period of two months. No costs."

6. Ultimately, an order was passed in the disciplinary proceedings on 12.11.2010, imposing the penalty of cut in pension of Rs.500/- per month for five years and withholding of the DCRG amount of Rs.94,430/-. The said punishment is impugned in the present writ petition.

7. Upon notice, learned Special Government Pleader appearing for the respondent, entered appearance and filed a detailed counter affidavit.

8. The learned counsel for the petitioner would at the outset submit that the order impugned in the present writ petition suffers from illegality and the same is without justification, in view of the specific direction passed by the learned Judge of this Court on 06.08.2010. According to the learned counsel, this Court has directed the respondent to drop further action, in case the respondent was unable to pass final orders within a period of twelve weeks from the date of receipt of a copy of that order. According to the learned counsel, the Government received the order passed by this Court on 13.08.2010 and twelve weeks granted by this Court had expired on 05.11.2010.

9. In the said circumstances, the disciplinary action ought to have been dropped in compliance with the orders passed by this Court. However, without complying with the specific direction passed by this Court, the impugned order was passed on 12.11.2010. Therefore, the same cannot be countenanced both in law and on facts. According to the learned counsel for the petitioner, the order copy was served on the petitioner only on 30.12.2010 and a contempt Petition No.360 of 2011 was filed by the petitioner holding the act of the respondent for passing orders as being contemptuous. However, the same was closed by this Court on 23.03.2011 with liberty to challenge the impugned order and therefore, the petitioner is challenging the same in the present writ petition.

10. The learned counsel for the petitioner would draw the attention of this Court to Paragraph No.8 of the counter affidavit filed by the respondent, in which, it is admitted that the twelve weeks time granted by this Court expired on 05.11.2010 and the disciplinary action ought to have been dropped on 06.11.2010. The only explanation which was offered by the Government was that the views of the Vigilance Commission and the Tamil Nadu Public Service Commission had to be obtained and the time limit granted by this Court i.e., twelve weeks was not sufficient and therefore, there was short

delay in passing the final orders. The contents of Paragraph No.8 of the counter affidavit is extracted below:-

"8. As regards the averments made in the paragraphs 12 and 13, the decision of this Hon'ble High Court was received by the respondent on 13.08.2010. The time granted by the Hon'ble High Court was 12 weeks and it expires on 05.11.2010. The High Court had directed to drop action if final orders were not passed within the period of 12 weeks. The respondent ought to have dropped further action on 06.11.2010, but, due to the active consideration of the Government, it is submitted that the views of other advisory Department, Vigilance Commission are to be obtained. The Views of the Tamil Nadu Public Service Commission had also been obtained under regulation 18(1)(b)(11) of the Tamil Nadu Public Service Commission regulation 1954. Hence, it is submitted that time limit granted by the Hon'ble High Court was not sufficient to pass final orders on the Disciplinary proceedings against the petitioner. Hence, the delay occurred in issuing the final orders on 12.11.2010. The delay is due to the reasons referred above and it is neither willful nor wanton."

11. This Court having considered the rival submissions of the learned counsel appearing on both sides and having perused the materials and pleadings placed on record, is of the considered view that in the teeth of the specific direction passed by the learned Judge of this Court dated 06.08.2010, in the aforesaid writ petitions, it was not open to the Government to contend that the time limit stipulated in the order was not sufficient. The respondent ought to have moved this Court for extension of time, in case, they had any legitimate difficulty in passing final orders in the disciplinary proceedings initiated against the petitioner.

12. Having failed to approach this Court seeking extension of time, it is not open to the respondent to contend that the time limit granted by this Court was not sufficient and short delay occurred while passing the impugned order which is to be condoned, if the argument of the learned Special Government Pleader appearing for the respondent is to be accepted by this Court. Then, it would only amount to reviewing the order passed by the learned Judge of this Court in the earlier proceedings dated 06.08.2010. If this Court has to vary the order passed by the other learned Judge of this Court, that would set a wrong precedent and would render positive direction passed by this Court as meaningless. Once a positive direction has been issued by this Court, directing the respondent to act in a particular manner, the same has to be complied with strictly. There cannot be even a slightest departure from such compliance. In such view of the matter, the delay cannot be condoned, since the direction passed by

this Court in the earlier proceedings is very specific and any slightest delay becomes non-condonable.

13. As the direction itself is to drop further action, in case, the authority is unable to pass orders within the time stipulated, the direction passed by the learned Judge of this Court has become final and no amount of pleading can dilute the direction passed by this Court on 06.08.2010. In view of the clear admission of the respondent that there was a delay in implementing the direction, howsoever, the span of delay is concerned, yet, as per the directions of this Court that the action cannot be sustained after 05.11.2010. Though on behalf of the learned Special Government Pleader, a valiant attempt has been made to impress upon this Court that the authorities have considered twelve weeks as three months and passed orders on 12.11.2010, such argument appears to be per se preposterous and unacceptable, since the learned Judge has specifically mentioned as the period of twelve weeks in the order.

14. For the above said reasons, this Court is clearly of the view that the petitioner has made out a case for grant of relief. Hence, the impugned order in G.O.(3D) No.194, Agriculture (AA2) Department, dated 12.11.2010, is hereby quashed. Consequently, the respondent is directed to repay the withheld amount from DCRG payable to the petitioner and any other terminal benefits as admissible to the petitioner with interest at the rate of 10% from 01.01.1993, till the date of realisation. The respondent is directed to comply with this direction within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gsk

To

The Commissioner of Agriculture,
Production and Principal Secretary to
Government, Agriculture (AA2) Department,
Secretariat, Chennai - 600 009.

+1cc to Mr.Ravi Shanmugam, Advocate SR.No.35996

NRI(CO)

sM:28.6.2018

W.P.No.7774 of 2011