

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HON'BLE MR. JUSTICE V. PARTHIBAN

W.P. No.4168 of 2012 & M.P. No.2 of 2012

Dr. T. Rajendran

Petitioner

vs.

- 1 The State of Tamil Nadu
represented by Secretary to Government
Animal Husbandry Dairying and
Fisheries Department
Secretariat
Chennai 600 009
 - 2 The Commissioner and Director of
Animal Husbandry Veterinary Services
Chennai 600 006
 - 3 Dr. C.A. Selvajakumar
Assistant Director of Animal Husbandry
Animal Disease Intelligence Unit
Salem (Enquiry Officer)
- Respondents

Writ Petition filed Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to (1) charge memo in Na.Ka.No.7872/L1/2005 dated 15.06.2006 of the second respondent, (2) Na.Ka.No.251/A/2010 dated 05.02.2011 of the third respondent (Revised Enquiry Report) and (3) Letter No.6187/AH1/2011-5, Animal Husbandry, Dairying and Fisheries (AH1) Department dated 23.09.2011 (show cause notice) issued by the first respondent and quash the same and to issue consequential directions to the respondents 1 and 2 to regularise the period of suspension of the petitioner from 13.08.2004 to 31.01.2010 as duty for all purposes and to grant consequential service and monetary benefits such as annual increments, promotion, fixation of pay, etc. withheld on account of pendency of the disciplinary and criminal proceedings.

For petitioner Mr. M. Ravi

For RR 1 & 2 Mr. T.M. Pappiah

Special Government Pleader

For R3

Mr. V. Murali

for M/s. A.S. Jayanthi

ORDER

The petitioner was working as Veterinary Assistant Surgeon under the second respondent. While so, he was issued with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Four charges, viz., (1) that he demanded a sum of Rs.2 lakhs and 20 sovereigns of gold jewellery from his wife, (2) that he was running a school called Rajendra Primary School at Tharamangalam, Salem District in his own name without obtaining permission of the Government, (3) that he was arrested in connection with a criminal complaint and he failed to report the same to the higher authorities about the arrest and (4) that he refused to receive the order of suspension when the office staff sought to serve the same on him on 28.01.2005, were levelled against him.

2 An enquiry was ordered into the aforesaid charges, whereupon, the petitioner gave a detailed explanation and also contested the case of the prosecution stating that the charges, as such, were liable to be interfered with.

3 According to the petitioner, on completion of the enquiry originally, the Enquiry Officer prepared a report holding that the charges were not proved; however, the Disciplinary Authority, the second respondent herein, sent back the Enquiry Officer's report to the Enquiry Officer directing him to re-visit the enquiry report and submit a report according to his wishes; the petitioner had obtained this information under the Right to Information Act, 2005.

4 Thereupon, seemingly, the Enquiry Officer re-submitted his report with the findings that the charges 3 and 4 were proved and charges 1 and 2 were not proved.

5 The petitioner had filed this writ petition at this stage, challenging the charge memo, revised enquiry report and the show cause notice, primarily on the ground that he would be subjected to great prejudice, if the Disciplinary Authority is allowed to take the disciplinary proceedings to its logical end.

6 Mr. M. Ravi, learned counsel for the petitioner would submit that the revised enquiry report was tailor-made to suit the wishes of the Disciplinary Authority, though there was no acceptable evidence available for holding charge nos.3 and 4 as proved; in any event, such a direction from the Disciplinary Authority to the Enquiry Officer to change the enquiry report is not envisaged in any Rules and such a direction is per se illegal and sans justification; therefore, the petitioner would not be able to get impartial justice at the hands of the Disciplinary Authority when the fact of the matter was that the

Disciplinary Authority coerced the Enquiry Officer to submit a revised enquiry report; in the said circumstances, the petitioner had to seek the intervention of this Court at the stage of submission of the revised enquiry report.

7 During the course of the arguments, this Court was informed that after the admission of the writ petition in February 2012, no further orders were passed in the disciplinary proceedings. According to the learned counsel for the petitioner, in view of the protracted disciplinary action initiated and pending against the petitioner, none of the service benefits which was otherwise permissible to the petitioner, was granted to him and the petitioner was unnecessarily made to suffer all these years. He would strenuously contend that if the Disciplinary Authority is allowed to pass final orders, it would be detrimental to the interest of the petitioner as the mindset of the Disciplinary Authority was very much disclosed when he directed the Enquiry Officer to revise his report by compelling him to hold the petitioner guilty of the charges; such action on the part of the Disciplinary Authority clearly discloses bias and the petitioner would not be able to get a fair treatment at the hands of the Disciplinary Authority and therefore, he was constrained to approach this Court at this stage.

8 The learned Special Government Pleader appearing for respondents 1 and 2 would submit that the writ petition, as such, is not maintainable, since at the stage of submission of the enquiry report itself, the petitioner has approached this Court not allowing the authority to pass final orders. According to the learned Special Government Pleader, it is always open to the petitioner to raise whatever objections as may be admissible to him assailing the disciplinary action initiated against him and the petitioner cannot be allowed to seek the intervention of this Court at this stage by preventing the authorities from passing final orders by taking the disciplinary action to its logical conclusion.

9 This Court has considered the rival submissions, perused the materials and pleadings placed on record.

10 At the outset, it has to be seen that the petitioner has virtually rushed to this Court without waiting for final orders to be passed in the matter on the basis of certain apprehension expressed by him, which may or may not be valid and such apprehension, unless it is established on the final orders to be passed in the disciplinary action, cannot be entertained by this Court. Even otherwise, no prejudice will be caused to the right of the petitioner, if any final order is passed, since it is always open to him to raise all legitimate objections

against the action of the Disciplinary Authority to the Appellate Authority, inasmuch as statutory appeal is very much available under the Service Regulations.

11 Instead of waiting for the final orders to be passed, the petitioner has unnecessarily invoked the jurisdiction of this Court during the course of the disciplinary action as an attempt to prevent the authority from passing final orders in the matter. Such a course of action adopted by the petitioner is per se preposterous, unjust and cannot be countenanced, both in law and on facts.

12 Under no circumstance, can this Court interfere at this stage merely on the basis of certain apprehensions expressed by the petitioner in regard to the correctness of the action to be taken by the Disciplinary Authority. The grounds raised in the writ petition are premised only on the apprehension that the petitioner would not get justice if final orders are passed in the matter.

13 The learned counsel for the petitioner also attempted to draw the attention of this Court to the evidence which was let in in the departmental enquiry to establish the fact that the petitioner was innocent. However, this Court refused to be drawn into factual controversies while exercising its jurisdiction under Article 226 of the Constitution of India.

14 Be that as it may, as rightly pointed out by the learned Special Government Pleader, it is always open to the petitioner to raise such contentions, as he may think fit, before the Disciplinary Authority and the Appellate Authority and point out all the infirmities in the enquiry report. Even if the action of the Enquiry Officer in revising his report is impermissible in law, the same can also be pointed out before the Disciplinary Authority and Appellate Authority. Thus, when an effective statutory remedy is available for redressing the grievance of the petitioner, it is not open to him to circumvent such efficacious remedy and tap the door of this Court invoking Article 226 of the Constitution of India.

15 In the light of the above narrative and discussion, this Court finds no merit in the writ petition and therefore, this writ petition stands dismissed. The respondents 1 and 2 are directed to pass final orders after affording an opportunity to the petitioner to make his submissions to the enquiry report. The official respondents are further directed to consider all the legal objections to be put forth by the petitioner in this regard and pass a well considered order. The Disciplinary

Authority is directed to comply with the aforesaid direction within a period of eight weeks from the date of receipt of a copy of this order. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

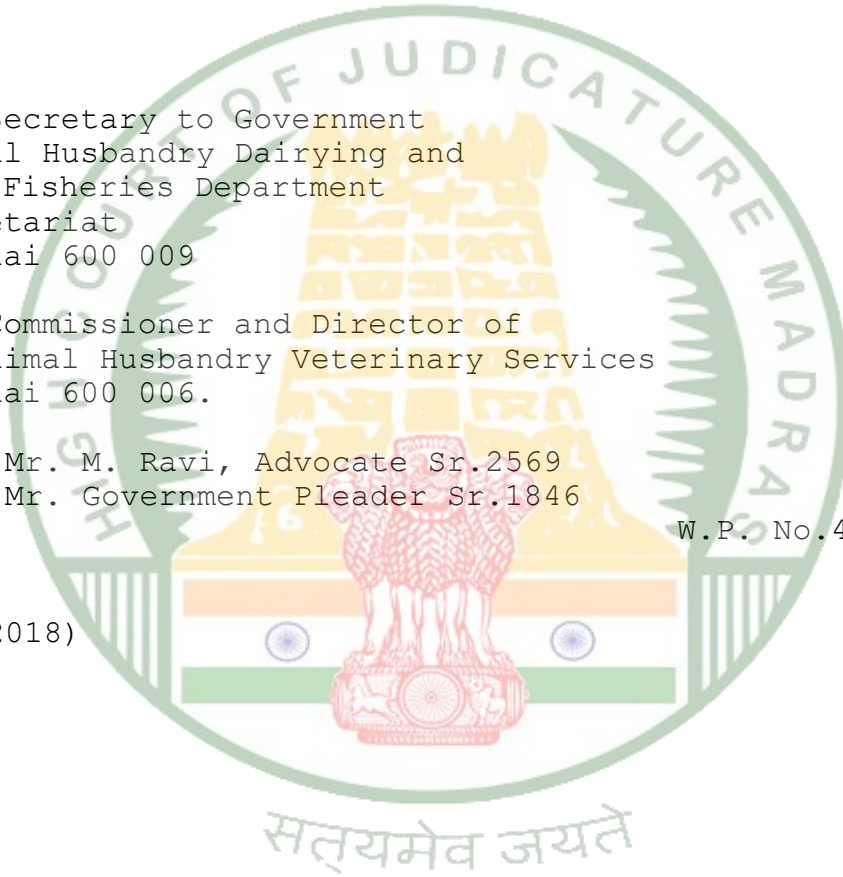
cad
To

- 1 The Secretary to Government
Animal Husbandry Dairying and
Fisheries Department
Secretariat
Chennai 600 009
- 2 The Commissioner and Director of
Animal Husbandry Veterinary Services
Chennai 600 006.

+ 1 cc to Mr. M. Ravi, Advocate Sr.2569
+ 1 cc to Mr. Government Pleader Sr.1846

W.P. No.4168 of 2012

KS(CO)
EU(17/02/2018)



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