

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2018

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THE HONOURABLE MR. JUSTICE T.RAJA

W.P. No.2914 of 2018
and W.M.P.Nos.3580 and 3581 of 2018

R.Jayakumar,
S/o.T.Ramanujam,
Assistant Engineer [Agri Engg.],
District Water Shed Development Agency,
Cuddalore [on deputation]. .. Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Agricultural Production
Commissioner and Principal Secretary
to Government,
Agriculture Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Chief Engineer [Agricultural Engineering],
No.487, Anna Salai, Nandhanam,
Chennai - 600 035.
- 3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Ramanathapuram,
Coimbatore - 641 045. .. Respondents

PRAYER : Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned charge memo issued by the third respondent in T.D.P.Case No.16/2011 in Roc.No.330/2011/A2 dated 18.05.2011 and to quash the same in so far as the petitioner is concerned and consequently directing the respondents 1 and 2 to include the name of the petitioner in the panel for promotion to the post of Assistant Executive Engineer with consequential promotion and other service benefits.

For Petitioner : Mr.G.Sankaran
For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned Charge Memo issued by The Commissioner, Tribunal for Disciplinary Proceedings, Ramanathapuram, Coimbatore in T.D.P.Case No.16/2011 in Roc.No.330/2011/A2 dated 18.05.2011.

2. The learned counsel appearing for the petitioner assailing the way in which the Tribunal for Disciplinary Proceedings is going with dead slow in not completing the enquiry pleaded that when the petitioner was issued with Charge Memo way back on 18.05.2011, the Tribunal for Disciplinary Proceedings has not completed the enquiry even after lapse of 7 long years clearly shows that the petitioner during the period of 7 long years made to lose all the avenues of promotion that itself more than sufficient punishment and this impugned Charge Memo is liable to go.

3. Adding further, the learned counsel appearing for the petitioner drawing the notice of this Court the guidelines issued for completing both the Departmental Proceedings and also the Tribunal for Disciplinary Proceedings issued in Letter [Ms] No.1118/Per-IV/87 dated 22.12.1987 indicated that the time limit has been given to the Tribunal to complete the enquiry for Disciplinary Proceedings referred by the Directorate of Vigilance and Anti-Corruption in one year and another 4 months has been given to the Government to pass final orders on receipt of the report of the Tribunal. For better appreciation, the relevant portion of the said guidelines is given as under;

2. Disciplinary cases arising out of Directorate of Vigilance and Anti Corruption

(i)	To complete the investigation by Directorate of Vigilance and Anti-Corruption and to send a report to Government through Vigilance Commission.	One year
(ii)	To complete the enquiry by the Tribunal and to send its findings to the Departments of Secretariat.	One year
(ii i)	To pass final orders by the Government / Heads of Department on receipt of the report of the Tribunal	Four months

4. The learned counsel appearing for the petitioner submitted that since the Tribunal for Disciplinary Proceedings given to adhere the time limit prescribed, a direction may be issued to the petitioner for promotion. He has also referred to a judgment of the Hon'ble Apex Court in STATE OF PUNJAB AND OTHERS vs. CHAMAN LAL GOYAL reported in [(1995) 2 SCC 570].

5. Now, the ratio laid down by the Hon'ble Apex Court in the aforementioned judgment, 23 years ago, in my considered opinion, has to be seen along with new Act, namely, Tamil Nadu Government Servants [Conditions of Service] Act, 2016. Section 7[1] read with Schedule-XI, Part-A, Clause II, is extracted hereunder;

"II. Consideration of members for inclusion in the approved lists:-

(1) In cases where enquiry (except Tribunal for Disciplinary Proceedings enquiry) including preliminary or detailed enquiry by the appropriate Investigating Authority is pending against a member of service and no specific charges have been framed, promotion or appointment of such member of service shall be considered on the basis of the merit revealed through Annual Confidential Reports, Record Sheets and Punishments imposed. In cases where specific charges have been framed or charge sheet has been filed in criminal case against a member of service, promotion or appointment of such member of service shall be deferred till such proceedings are concluded. On exoneration or acquittal from the charges, a member of service shall be considered for promotion or appointment with retrospective effect from the date on which his immediate junior was promoted, if he is otherwise qualified for such promotion.

(2) If the disciplinary proceedings under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules pending against a member of service are merely stayed by a Court, his case shall be deferred till the judicial proceedings are concluded, unless a contrary order is passed by the Court and it is decided not to challenge the same. If the Court quashes the charge memo, then the name of the member of service concerned shall be considered for inclusion in the approved list for promotion or for appointment, if he is otherwise qualified.

(3) The name of a member of service shall not be considered for inclusion in the approved list, if any enquiry is pending against him in the Tribunal for Disciplinary Proceedings."

6. Since the aforementioned Act has come into force makes it clear that the name of a member of service shall not be considered for inclusion in the approved list, if any enquiry is pending against him in the Tribunal for Disciplinary Proceedings, the aforementioned old judgment is clearly distinguishable and cannot be made applicable to the case of the petitioner.

7. Now, coming to the pendency of the enquiry by the Tribunal for Disciplinary Proceedings, this Court taking note of the time limit prescribed by the Government Letter [Ms] No.1118/Per-IV/87 dated 22.12.1987 giving one year to complete the enquiry by the Tribunal and send its findings to the Departments of Secretariat and four months to the Government to pass order and that the petitioner has lost his avenues of promotion in the last 7 years taken from 18.05.2011 during which time the petitioner has also lost several avenues of promotion which could also be considered as sufficient punishment, this Court directs the third respondent / The Commissioner, Tribunal for Disciplinary Proceedings, Ramanathapuram, Coimbatore, to complete the enquiry and to send its findings to the first respondent, namely, Agriculture Department, Secretariat, within a period of three months from the date of receipt of a copy of this order. On receipt of the report of the Tribunal, the first respondent is directed to pass final orders, on merits and in accordance with law, within a period of one month thereafter.

8. With this direction, the Writ Petition stands disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Agricultural Production
Commissioner and Principal Secretary
to Government,
Government of Tamil Nadu,
Agriculture Department,
Secretariat,
Fort St.George, Chennai - 600 009.

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2.The Chief Engineer [Agricultural Engineering],
No.487, Anna Salai,
Nandhanam,
Chennai - 600 035.

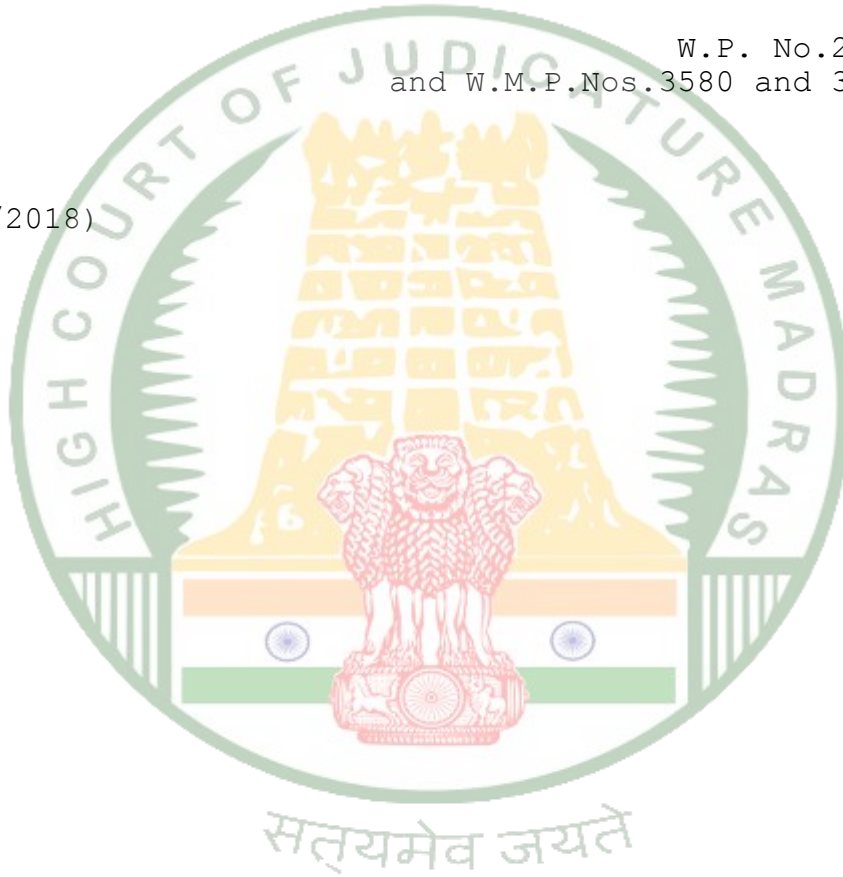
3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Ramanathapuram,
Coimbatore - 641 045.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.20288

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NRI (CO)

RRK (13/04/2018)



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