

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 03.07.2018****CORAM****THE HONOURABLE MR.JUSTICE M.DHANDAPANI****W.P.No.20959 of 2006****And****M.P.No.1 of 2006**

P.Selvaraj

... Petitioner

Vs.

1.The Block Development Officer (Ki.Voo),
Panchayat Union,
Olakkur at Saram,
Villupuram District.

2.The Chief Engineer (General),
Highways Department,
Chepauk, P.W.D. Campus,
Chennai – 600 005.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the issue of the impugned order in Lr.No.Na.Ka.B3/2699/ 2005 dated 19.05.2006 by the first respondent and quash the same and direct the respondents not to initiate any disciplinary proceedings for the shortage of steel of 3.784 mte. In Olakkur Panchayat Union alleged in the impugned order.

For Petitioner : Mr.N.Subramanian

For Respondents : Mr.A.Arumugam for R1

Mr.K.Ravikumar for R2

Additional Government Pleader

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the issuance of the impugned order in Lr.No.Na.Ka.B3/ 2699/ 2005 dated 19.05.2006 by the first respondent and to quash the same and direct the respondents not to initiate any disciplinary proceedings for the shortage of steel of 3.784 mte. in Olakkur Panchayat Union alleged in the impugned order.

2.It is the case of the petitioner that he retired from the services of the Highways Department as Assistant Engineer, 5th category of Tamil Nadu Highways Engineering Service, without reference to any pending charge on 30.06.2004. Whiles, the first respondent served the petitioner a letter dated 13.02.2006 alleging that he had been held responsible for the shortage of 3.784 mt. Steel costing Rs.1,51,360/- on double rate by an audit objection for the year 1996-1997. The petitioner was requested to appear before the State High Level Committee meeting on 23.02.2006.

3.It is the further case of the petitioner that he in turn sent a legal notice to the first respondent questioning the issuance of such a

letter for the occurrence that had happened eight years earlier to the date of his retirement by relying on Rule 9 (2) (b) of the Tamil Nadu Pension Rules, to which, the first respondent replied that the petitioner was informed about the same on 12.05.2004, i.e., before his retirement. The first respondent further claimed that he is entitled to initiate proceedings against the petitioner under the Tamil Nadu Government Servant Conduct Rules and also through Police. Thereafter, the first respondent passed the impugned order directing the petitioner to remit a sum of Rs.1,51,360/- towards the cost of the alleged shortage of 3.784 mte. steel at double the rate. Hence the petitioner has filed the present writ petition.

4.The learned counsel appearing for the petitioner would submit that the petitioner has retired from service on 30.06.2004, however, the impugned order came to be passed only on 19.05.2006. The learned counsel would further submit that though the petitioner had worked in the Olakkur Panchayat Union, he was transferred to Acchiruppakkam Panchayat Union on 10.04.1996 itself and immediately one Ramalingam took charge of the Olakkur Panchayat Union. The audit objection was made for the year 1996-1997. The academic year starts from 01.04.1996 and ends on 31.03.1997. At

the relevant point of time, the petitioner was not in service at the Olakkur Panchayat Union.

5.The learned counsel appearing for the petitioner would further submit that as per Rule 9 (2) (b) of the Tamil Nadu Pension Rules, departmental proceedings shall not be instituted against the retired Government servant in respect of any event which took place before four years, however, the impugned order was passed nearly after two years of the petitioner's retirement and after nearly ten years from the date of occurrence. Accordingly, he prayed for allowing the writ petition.

6.The learned counsel appearing for the first respondent would submit that he had sent a letter dated 16.04.2018 to the first respondent seeking necessary instructions and particulars of the case, however, the first respondent neither produced any documents nor gave any instructions. However, the learned counsel argued based on the materials available on record.

7.The learned Additional Government Pleader appearing for the second respondent would submit that though the petitioner was

relieved on 10.04.1996 from the Olakkur Panchayat Union, he has to hand over the entire materials to the incumbent namely, Ramalingam, but the petitioner did not hand over the materials. Hence audit objection was made for the year 1996-1997 and shortage of 3.784 mte. of steel was found and accordingly loss was calculated and the impugned order was passed. Accordingly, he prayed for the dismissal of the writ petition.

8.I have considered the rival submissions made on either side and perused the entire materials available on record.

9.Admittedly, the petitioner has served in the Olakkur Panchayat Union and he was transferred to Acchiruppakkam Panchayat Union on 10.04.1996 itself and immediately one Ramalingam has took charge of the Olakkur Panchayat Union. Subsequently, the petitioner has retired from service on 30.06.2004. Without retaining the petitioner in service as contemplated under Rule 56 (1) (c) of the Fundamental Rules, he was allowed to retire from service on 30.06.2004. Hence, instituting departmental proceedings against the petitioner after retirement is un-sustainable in law. That apart, as per Rule 9 (2) (b) of the Tamil Nadu Pension Rules, departmental proceedings shall not

be instituted against the retired Government servant in respect of any event which took place before four years.

10.The alleged loss occurred in the year 1996-1997. However, the Department instituted recovery proceedings only after his retirement, which is clearly in violation of Rule 9 (2) (b) of the Tamil Nadu Pension Rules. In view of the above, I am inclined to quash the impugned order.

11.Accordingly, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, the connected miscellaneous petition is also closed.

03.07.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No Internet: Yes/ No

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