

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19997 of 2006

and

W.M.P.No. 1 of 2006

E. Jayaraman

...Petitioner

Vs.

Tamil Nadu Maritime Board
Rep by the Chief Executive Officer,
112, Sir Thygaraya Road,
Vairam Complex, 2nd Floor,
Chennai-600 017.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari to call for the records of the respondent in proceedings dated 23.05.2006 in No.4364/E2/2004 and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.Sundar Narayan

For Respondent : Mr.R.Govindasamy
Special Government Pleader

O R D E R

The petition has been filed by the petitioner, challenging the proceedings in No.4364/E2/2004 dated 23.05.2006.

2.The brief facts of the case is that while the petitioner was in service, he was working as an Assistant Executive Engineer, in the Tamil Nadu Maritime Board. The work was executed under a lump sum contract agreement with a contractor and a wooden jetty was constructed at Mandapam for the Coast Guard between 28.05.1991 and 29.11.1991. The agreement also covered an observation period of six months from the last date of check measurement i.e. 28.11.1991. If any defects were noticed within the said period, the contractor was bound to rectify the same although the work had been measured and paid for. The said work were supervised, check measured and inspected by the petitioner, only then the amount payable to the contractor was released.

3.Although the jetty was meant for the use of the Coast Guard, the same was not immediately taken over by the Coast Guard and the jetty was used regularly from February 1992 onwards without taking over the same and without maintenance.

4.Thereafter, a memo was sent to the petitioner on 23.09.2003 in No.4364/PA-2/2003 wherein the memo stated that the respondent was proposed to hold an enquiry under 17(b) of the D & A Rules apart from recoveries of the loss to the value of Rs.5.5. lakhs for the alleged defective construction, dereliction of duty etc.,

5.The same was represented by the petitioner on 20.10.2003, wherein the petitioner pointed out that the memo has been issued to him for the work which had been completed more than 13 years ago and sought for copies of the documents, which were not supplied to him.

6.Subsequently, a charge memo was issued to the petitioner on 05.05.2004 in No.4364/PA-2/2003 under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules. It is pertinent to note that the charges 1 & 2 relate to causing financial loss to the Government by not executing the work according to the agreement.

7.An Enquiry Officer was appointed, enquiry held and enquiry was completed and a report was also submitted. The first charge that the inferior quality wood had been used was held to be not proved against the petitioner. As regards the second charge relating to not executing the work as per approved agreement thereby causing financial loss, the Enquiry Officer found that the construction of the wooden jetty had been completed on 29.11.1991 whereas the technical sub-committee had inspected the same on 07.06.2001. No complaints had been made previously. The Coast Guard has also used the jetty without any maintenance from February 1992. The charge was thus held to be not proved. The third charge also relating to defects in construction was also held to be not proved. Some minor defects had been noted and the Executive Engineer had addressed the contractor to rectify the same. The Coast Guard without taking over the jetty had started unauthorized use of the same. These two charges were held proved. The copy of the enquiry report was furnished to the petitioner and a detailed reply dated 18.05.2005 to the charges 4 & 5 which were held purportedly proved.

8.When the disciplinary proceedings were pending, the petitioner was issued the proceedings of the respondent dated 23.05.2006 in No.4364/E2/2004 directing recovery of a sum of Rs.1,65,786/- in 40 instalments of Rs.2,000/- from June 2006 and the balance Rs.85,786/- to be recovered from DCRG payable at the time of superannuation.

9.The learned Special Government Pleader, would submit that the petitioner had retired from the services on 28.02.2010 and further examination of the case, the respondent had proposed to effect a recovery of an amount and Rs.1,63,786/- had been withheld by the respondent / Tamil Nadu Maritime Board from DCRG at the time of retirement. Meanwhile the petitioner expired on 10.02.2015, no legal representatives have come forward to represent the estate of the petitioner.

10.In view of the same, the writ petition stands dismissed as abated. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To.

Tamil Nadu Maritime Board
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+ 1 cc to Mr. Government Pleader Sr.38286

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(CS-DR)
EU(03/07/2018)

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