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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.02.2018
CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)Nos.233 & 234 of 2018
and
C.M.P.(MD)Nos.1322 & 1323 of 2018

1. State represented by the Commissioner &
Secretary to Government of Tamil Nadu,
Department of Agriculture and Production,
Fort St., George, Chennai - 9.
2. The Commissioner of Agricultural Marketing
Government Estate, Guindy,
Chennai - 32. ... Appellants/Respondents
in Both Appeals

Vs.

R.Thayalan ... Respondent/Petitioner
in Both Appeals

PRAYER : Writ Appeals are filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.(MD)Nos.10407 of 2008
and 483 of 2009, dated 19.04.2013.

Prayer in WP(MD). 10407/ 2008 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certioraraified Mandamus, to call for the records from the 1st
respondent in Go (3D).No. 329 Agriculture (AA7) Department dated
26/10/2007, quash the same and direct the respondents to return the
sum of Rs. 3,600/- which was deducted from the pension of the
petitioner as punishment and Rs. 2,31,606/- which was deducted from
the retirement benefits of the petitiioiner to the petitioner.

Prayer in WP(MD). 483/ 2009 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ of
Certiorarified Mandamus, to call for the records from the 1st
respondent in GO (3d) No.311 (AA7) Department dated 17.10.2007 and
direct the 1st Respondent to grant suitable promotion to the
petitioner as Deputy Director of Agriculture with all financial
benefits.



For Appellants : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent : Mr.S.Vellaichamy
for Mr.M.V.Venkataseshan

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C O M M O N J U D G M E N T

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

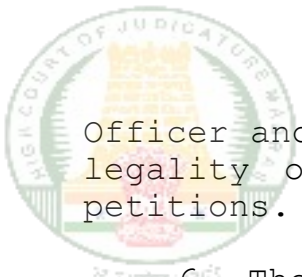
The official respondents in W.P.(MD).Nos.10407 of 2008 and 483 of 2009 are the appellants and aggrieved by the quashing of the impugned Government Orders, dated 17.10.2007 and 26.10.2007 respectively, came forward to file these writ appeals.

2. Facts leading to the filing of the writ appeals have been narrated in detail in the common impugned order, dated 19.04.2013, made in the said writ petitions and therefore, it is unnecessary to restate the facts once again, except to cull out the relevant material facts for the purpose of disposal of these writ appeals as under:

3. The petitioner was an Assistant Director of Agriculture and he worked as the Secretary of Tiruneveli Market Committee, Tiruneveli, for the period between 19.07.1997 and 18.07.2000. In the year 1999, 'Uzhavwar Santhai Scheme' was introduced by the Government of Tamil Nadu and during the tenure of the petitioner, 'Uzhavwar Santhai' came to be established in Tirunelveli and Tuticorin Districts, in 5 places.

4. The second appellant had issued the executive instructions based on the Government Order and the respondent/writ petitioner did not comply with the same in purchasing the weighing balances for these 'Uzhavar Santhai' and he has also misused the financial powers in making payment therein. Accordingly, a charge memo was issued to the respondent/writ petitioner framing four charges and the departmental enquiry was ordered. The Enquiry Officer found that out of four charges, first charge was not proved and rest of the charges were proved. Therefore, final orders were issued vide impugned G.O. (3d).No.329, Agriculture (AA.7) Department, dated 26.10.2007 and he was imposed the penalty of Rs.3,600/- to be recovered at the rate of Rs.300/- per month till such recovery and further recovery to the tune of Rs.2,31,606/- from his gratuity for misuse of power in purchasing weighing balances.

5. The respondent / writ petitioner was permitted to retire on 31.12.2000, without prejudice to the disciplinary proceedings pending. The official respondents/appellants had filed the counter affidavit and the disciplinary authority viz., the Government on going through the contents of the report, had found that due and fair opportunity had been provided to the respondent/writ petitioner and therefore, concurred with the findings recorded by the Enquiry



Officer and imposed the punishment, as stated above. Challenging the legality of both the orders, he came forward to file the writ petitions.

6. The learned Judge, having found that facts leading to the filing of those above writ petitions are common, took both the matters together and disposed of by the common order, dated 19.04.2013.

7. The learned Judge, on going through the impugned orders and other materials, found that none of the points raised by the respondent/ writ petitioner, in response to the finding recorded by the Enquiry Officer, have been discussed and there is no material to show that the financial loss had occurred on account of the purchases effected. The learned Judge further found that the disciplinary authority proceeded based on the Letter dated 16.08.2007, wherein the respondent / writ petitioner had admitted his guilt, but factually found that there is no categorical admission and rather the respondent / writ petitioner had made certain allegations against Thiru.Soundarapandian, Superintendent and Thiru. C.V.Sankar, Former Commissioner and on account of the fact that he has to perform marriage of his daughter, accepted the provisional conclusion and prayed for retirement benefits.

8. The learned Judge, observed that it cannot be construed as a candid admission based on which punishment could not have imposed. The learned Judge, also found that the contents of the impugned orders would exhibit total non- application of mind on the part of the disciplinary authority and as far as the recovery order is concerned, the learned Judge also found that the only allegation against the petitioner is that he did not supervise properly regarding the renewal of insurance policy and therefore, the learned Judge, recording the said reasons, vide impugned common order dated 19.04.2013, had allowed both the writ petitions and quashed the impugned Government Orders and challenging the legality of the same, the present writ appeals are filed.

9. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the appellants / official respondents in the writ petitions would submit that since the learned judge had quashed the impugned orders duly on technical ground, the matter ought to have been remanded to the disciplinary authority for fresh consideration and this Court, in exercise of the jurisdiction under Article 226 of the Constitution of India, may not interfere with the findings recorded by the disciplinary authority or interfere with the quantum of punishment and prays for setting aside the impugned common order passed in the writ petitions.

10. Per contra, Mr.S.Vellaichamy, learned counsel appearing for the respondent / writ petitioner would submit that the respondent/writ petitioner is now aged about 75 years and on account of the fact that though the petitioner had attained the age of



superannuation on 31.12.2000, he was permitted to retire without prejudice to the disciplinary authorities, vide order dated 25.07.2007 and the learned Judge, on a thorough consideration of entire materials, has reached the conclusion to quash the impugned orders and prays for dismissal of the writ appeals.

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11. This Court has considered the rival submissions and also perused the materials placed before it.

12. A perusal of the impugned orders passed by the Administrative Department viz., the Secretary to Government, Agricultural Department would disclose that the explanations offered by the respondent / writ petitioner and the findings recorded by the disciplinary authority have not been considered. In Paragraph 5 of the impugned G.O.(3d).No.329, Agriculture (AA.7) Department, dated 26.10.2007, the disciplinary authority merely went on by the findings recorded by the Enquiry Officer and not even applied his mind to the explanation offered by the respondent / writ petitioner.

13. The Administrative Department vide G.O.(3d) No.311 (AA7) Department, dated 17.10.2007, similarly went on by the Letter of the respondent / writ petitioner, dated 15.08.2007 as to his admission. It is the specific stand of the respondent / writ petitioner that he has to perform the marriage of his daughter and accepted the provisional conclusion and prayed for sanction of retirement benefits and also he has admitted his guilt.

14. The learned Judge, on going through the impugned orders, has carefully found that the explanation offered by the respondent / writ petitioner to the contents of the enquiry report have not been considered and the learned Judge, found that the acceptance of the provisional conclusion cannot be termed as admission of guilt and reached the conclusion to quash both the impugned orders.

15. It is to be remembered at this juncture that any proceedings affecting the civil right of a Government servant has to be conducted properly and therefore, there must be a due and proper application of mind to the contents of the enquiry report based on which, the disciplinary authority is expected to reach their conclusions, after taking into consideration the enquiry report as well as the explanation offered by the delinquent. However, in the case on hand, the said mandate cast upon the disciplinary authority have not been adhered to.

16. It is also pertinent to point out at this juncture that the respondent / writ petitioner is now aged about 75 years and even for the sake of argument, if this Court accepts the arguments of the learned Special Government Pleader appearing for the appellants/ official respondents for the purpose of remanding the matter, this Court, in the light of the advanced age coupled with the fact that the respondent / writ petitioner is without retiral benefit for a quite long time, is also not inclined to interfere with the impugned order.



17. In the result, both the writ appeals are dismissed and the common order dated 19.04.2013 is confirmed. No costs. Consequently, the connected Miscellaneous Petitions are dismissed.

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Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Department of Agriculture and Production,
Fort St., George, Chennai - 9.
2. The Commissioner of Agricultural Marketing
Government Estate, Guindy,
Chennai - 32.

+3cc to M/S.M.V.Venkataseshan, Advocate SR.No. 51536

W.A. (MD) Nos. 233 & 234 of 2018
27.02.2018

akv

JM/SKN RSK/SAR 4/09.04.2018/5P/6C