



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).Nos.353, 354 of 2018

and

C.M.P.(MD) Nos.2167 and 2168 of 2018

and

Cont. P.(MD) No.1918 of 2017

1.The State of Tamil Nadu
rep. By the Principal Secretary to
Government,
Animal Husbandry, Dairying and
Fisheries Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Animal Husbandry and
Veterinary Services,
Chennai - 600 006.

... Appellants/Respondents in
both appeals

Vs.

Dr.P.Ramar

... Respondent in
both appeals

PRAYER in both writ appeals: These appeals are filed under Clause 15 of the Letters Patent, to set aside the orders dated 29.09.2016 and passed in W.P.(MD)No.8676 of 2008 and 8001 of 2010 respectively.

Prayer in WP(MD). 8676/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to impugned order vide G.O.(D).No. 224, animal Husbandry Dairying and Fisheries(AH1) department dated 01/07/2008 passed by the 1st respondent .

Prayer in WP(MD). 8001/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the 2nd respondent to include the petitioners name in the promotion panel prepared by the Department for 2009 and promote the petitioner placing his name above his immediate junior.



For Appellants : Mr.V.R.Shanmuganathan, Spl.G.P.

For Respondent : Mr.Niranjan S.Kumar

Cont.P(MD)No.1918 of 2017:-

Dr.P.Ramar ... Petitioner
Vs.

1.Dr.Gopal,
The State of Tamil Nadu
rep. by the Secretary to
Government,
Animal Husbandry, Dairying and
Fisheries Department,
Fort St. George,
Chennai - 600 009.

2.Senthil Kumar,
Commissioner, The Director of Animal Husbandry and
Veterinary Services,
DMS Campus,
Chennai - 600 006. ... Contemnors/Respondents

Prayer in Contempt Petition : Contempt petition is filed under Section 11 of Contempt of Court Act, to punish the respondent for committing contempt of court by their wilful, deliberate and disobedience of the order passed by this Court in W.P.(MD) No.8001 of 2010 dated 29.09.2016.

Prayer in WP(MD). 8001/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF MANDAMUS directing the 2nd respondent to include the petitioners name in the promotion panel prepared by the Department for 2009 and promote the petitioner placing his name above his immediate junior.

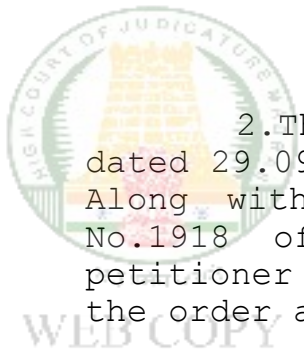
For Petitioner : Mr.Niranjan S.Kumar

For Respondent : Mr.V.R.Shanmuganathan, Spl.G.P.

COMMON JUDGMENT

(Judgment of this Court was delivered by T.S.SIVAGNANAM, J.)

Heard Mr.V.R.Shanmuganathan, learned counsel for the appellants and Mr.Niranjan S.Kumar, learned counsel for the respondent/writ petitioner.



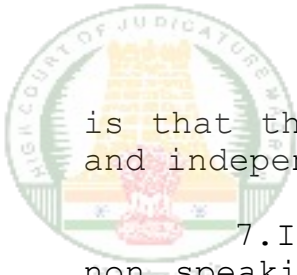
2. These writ appeals are directed against the common order dated 29.09.2016 made in W.P.(MD) Nos.8676 of 2008 and 8001 of 2010. Along with these writ appeals, Contempt Petition in Cont.P(MD) No.1918 of 2017 has been tagged, wherein the respondent/writ petitioner had alleged that the appellants have not complied with the order and direction passed in the writ petitions.

3. The short question which falls for consideration in the writ petitions is as to whether the order of punishment passed against the petitioner in G.O.(D) No.224, Animal Husbandry, Dairying and Fisheries (AH-I) Department, dated 01.07.2008 imposing a punishment of stoppage of increment for a period of one year without cumulative effect is just and proper. The Writ Court held that the order of punishment is not sustainable for certain reasons assigned in the order. Consequently, the writ petition filed by the petitioner seeking inclusion of his name in the promotion panel for 2009 was allowed.

4. The respondent/writ petitioner was a member of a Purchase Committee constituted by the Animal Husbandry department for purchase of medicines. The Committee was headed by a Chairman and it had four members. One of the member was the respondent/writ petitioner. The matter was referred to the Tribunal for disciplinary proceedings, in which prosecution led evidence in support of the charges framed against the writ petitioner and the Chairman of the Purchase Committee.

5. The Tribunal for disciplinary proceedings, upon considering the evidence placed before it, held that there is no material to connect the respondent/writ petitioner with the alleged charges of not following the tender procedure in the matter of purchase of medicines. Accordingly, the charge against the writ petitioner was held to be not proved and a report to the said effect was submitted to the Government. However, the Government did not accept the report submitted by the Tribunal for disciplinary proceedings, they decided to deviate from the findings and a letter to the said effect was issued on 05.09.2007, giving liberty to the writ petitioner to raise objections. The writ petitioner submitted his further explanation dated 12.10.2007 pursuant to which the impugned order of punishment in G.O.(D) No.224 dated 01.07.2008 was passed.

6. Firstly, we may observe that though the impugned order in the writ petitions appears to be an elaborate and reasoned order, we find that the discussion is only in para 3 of the order and the remaining paragraphs pertain to the charge, explanation of the delinquent officer, finding of the Tribunal for disciplinary proceedings and reason for deviation. The writ petitioner, in his elaborate explanation dated 12.10.2007, stated as to how the prosecution failed to establish the charge and there was no evidence to connect the writ petitioner with the alleged charge. Though such plea was raised in the explanation dated 12.10.2007, the first appellant has not considered the same and all that has been stated



is that the Government has perused the connected records carefully and independently and held that the charges 1 to 3 are proved.

7. In our view, the order of punishment dated 01.07.2008 is a non-speaking order and devoid of reasons. The Writ Court, while examining the correctness of the order, took note of the factual position and in particular, the evidence of P.W.7, who was examined before the Tribunal and held that there was no evidence to connect the respondent/writ petitioner with the alleged charges and were held to be not proved. Furthermore, we note that though the proceedings were initiated against three other committee members and charges were enquired by the Tribunal for disciplinary proceedings, the Government thought fit not to proceed further against them. Thus, we are of the considered view that the order passed by the Government dated 01.07.2008 imposing the minor punishment on the writ petitioner is not sustainable as it is devoid of reasons and none of the objection raised by the respondent/writ petitioner have been considered.

8. For the above reasons, we are not inclined to entertain the appeal filed by the petitioner as against the order made in W.P.(MD) No.8676 of 2010.

9. The other writ petition filed by the petitioner in W.P.(MD) No.8001 of 2010 was for a direction to the appellants to include his name in the promotion panel for the year 2009. It has to be seen as to whether on the crucial date, there was currency of punishment and recently i.e. in 2017, the Act has been amended imposing a check period and it is not clear as to whether the said check period would be applicable in cases of minor penalty or whether such amendment could be applied retrospectively.

10. Therefore, we modify the order in W.P.(MD) No.8001 of 2010, by directing the appellants to consider the case of the respondent/writ petitioner for further promotion in accordance with law.

11. By way of implementation of the punishment, increments payable to the petitioner were stopped for a period of one year without cumulative effect and as we have held that the order imposing the punishment is not sustainable, the increments which were stopped for one year shall be re-credited to the petitioner's salary account within a period of four weeks from the date of receipt of a copy of this judgment.

12. The respondent/writ petitioner's case shall be considered for promotion, in accordance with law, within a period of four weeks from the date of receipt of a copy of this judgment.

13. Accordingly, writ appeal in W.A.(MD) No.353 of 2018 is disposed of and W.A.(MD) No.354 of 2018 is partly allowed with the



above direction. In the light of the above order passed in these writ appeals, the contempt petition is closed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

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/True Copy/

Sd/-
Assistant Registrar(CSI)

Sub-Assistant Registrar

To

1.The Principal Secretary to
Government,
Animal Husbandry, Dairying and
Fisheries Department,
Fort St. George,
Chennai - 600 009.

2.The Director of Animal Husbandry and
Veterinary Services,
Chennai - 600 006.

+One cc to M/s.Nirajan S.Kumar, Advocate, SR.No.54824

+One cc to The Special Government Pleader, SR.No.55083

Arul

RL/5C/5P/KKR/SAR1/27/3/2018

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