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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.02.2018

CORAM:

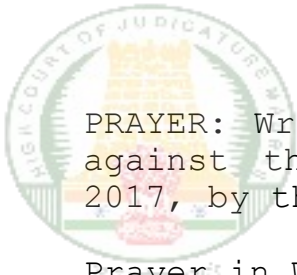
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

W.A (MD) No.6 of 2018
and
C.M.P (MD) No.89 of 2018

- 1.The State of Tamilnadu,
Represented by its
Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.
- 2.The Commissioner of Rural Development
and Panchayat Raj,
Panagal Mazhigai,
Saidapet,
Chennai-15.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003.
- 4.The District Collector,
Madurai District, Madurai.
- 5.The District Collector,
Pudukkottai District,
Pudukkottai.
- 6.The Commissioner,
Panchayat Union,
Thirupparangundram @ Thirunagar,
Madurai - 625 006.
- 7.The Commissioner,
West Panchayat Union,
Madurai North Taluk,
Madurai- 625 002.

.. Appellants/Respondents

Vs.



PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 12.09.2017 passed in W.P(MD)No.16022 of 2017, by the learned Single Judge.

Prayer in WP(MD)No.16022/217:-

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Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 1st Respondent to pass appropriate orders on the show cause notice proposing punishment in Letter No.29258/E2/1997-21 dated 27.08.2009 Letter No.22795/E2/2000-15 dated 27.08.2009 and Letter No.45389/E2/2001-15 dated 27.08.2009 within a specified time frame that may be stipulated by this Honble Court.

For Appellants 1 to 3 : Mr.V.R.Shanmuganathan
Special Government Pleader

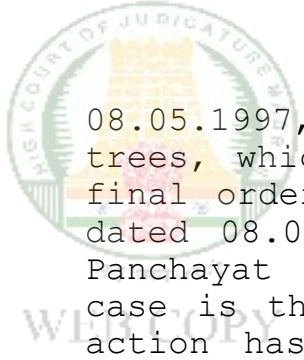
For Respondent : Mr.K.Ponnaiah
for M/s. Ajmal Associates

J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the appellants 1 to 3 and Mr.K.Ponnaiah, learned counsel appearing for the respondent/writ petitioner.

2. The earlier writ petition had been filed by the respondent praying for a direction to direct the first appellant to pass appropriate orders on the Show Cause Notice proposing punishment in three proceedings, all dated 27.08.2009. Though such a prayer was made by the writ petitioner, the Writ Court has quashed the Disciplinary Proceedings against the petitioner and directed the disbursing of pension to the writ petitioner. The State is on appeal against the said order. As rightly pointed out by the learned Special Government Pleader, the Writ Court exceeded the relief sought for by the respondent/writ petitioner, especially, when the relief sought for by the respondent/writ petitioner was only to pass appropriate orders on the Show Cause Notice. The respondent/writ petitioner was faced with five Charge Proceedings. The first Charge Proceeding is dated 03.10.1996 pertains to an incident, which is said to have occurred in the year 1991-1992 with regard to the certain allegations of mal-practice in repairing the official Jeep. The Charge Memo was issued in the year 1996, the delay of more than four years remains un-explained. The disciplinary authority had taken their own time to hold that the charges are proved. Though second Show Cause Notice was issued on 29.10.2009, no final orders have been passed till date. The second Charge Proceeding is dated



08.05.1997, for the allegation regarding cutting down of Babool trees, which is said to have occurred in the year 1999, till date final orders are yet to be passed. The third Charge Proceeding is dated 08.01.2003, pertaining to the purchase of uniforms for the Panchayat Assistants. The respondent's/writ petitioner's specific case is that similarly placed persons, who faced similar charges, action has been dropped and in this regard the learned counsel appearing for the respondent/writ petitioner has produced the following Government Orders:

"1.G.O.2(D).No.104 Rural Development (E2) Department, dated 30.04.1997.

2.G.O.2(D).No.105 Rural Development (E2) Department, dated 30.04.1997.

3. G.O.2(D).No.126 Rural Development (E2) Department, dated 04.03.2004.

4. G.O.2(D).No.126 Rural Development (E2) Department, dated 09.07.2004.

5. G.O.2(D).No.236 Rural Development (E2) Department, dated 27.04.2007."

3. So far, the fourth Charge, dated 08.05.1997, already final orders have been passed in G.O.Ms.No.54, dated 28.01.2015 and in the fifth charge, dated 22.05.1997, final orders have been passed in G.O.Ms.No.53 dated 28.01.2015. Under normal circumstances, we would have allowed the appeal filed by the State and set aside the order passed in the Writ Petition, as the prayer sought for in the writ petition was only to pass final orders and the Court could not have quashed the entire Disciplinary Proceedings. However, considering the fact that the respondent/writ petitioner is aged about 80 years and though attained the age of superannuation on 31.05.1997 and permitted to retire without prejudice to the Departmental Proceedings, is till date yet to receive his full retirement benefits. Therefore, we propose to make a small departure in the present matter, which cannot be treated as a precedent.

4. As pointed out earlier, so far as the two Charge Memos, dated 08.05.1997 and 22.05.1997, they have culminated in orders of punishment in G.O.Ms.No.53 and 54 dated 21.08.2015. Therefore, those orders which have not been put to challenge before this Court cannot be quashed. Hence, the writ petitioner is at liberty to challenge G.O.Ms.Nos.53 and 54, dated 28.01.2015, before the appropriate forum.

5. The Charge Memo, dated 03.10.1996 pertains to certain procedural irregularities with regard to the maintenance of the official jeep, the incident is said to have occurred in the year 1991. Though the Charge proceedings were issued in the year 1996, the charges were held proved in the year 1999, for 10 long years,



nothing happened and only in the year 2009, provisional conclusion has been arrived to impose a punishment of cut in pension. As observed by the Writ Court, the prolongation of Departmental Proceedings itself is a punishment for the writ petitioner and we feel that it would suffice and accordingly, we quash the Disciplinary Proceedings initiated pursuant to DRD Proceedings No.139088/92/VC/1-1, dated 03.10.1996.

6. So far as the Charge Memo dated 08.05.1996 is concerned, we find that the charge pertains to cutting of Babool trees, which were planted in the year 1987-1988 under the Social Forestry Scheme and were sold illegally. The learned counsel appearing for the respondent would submit that the assessment made by the Forest Department regarding financial loss is not correct and even if it is so, the present proposal of the Government to impose a cut in pension at the rate of Rs.500/- per month, for a period of two years from the eligible pension is excessive as the amount is double the amount of the alleged financial loss. In our considered view, the Charge against the petitioner is quite serious, in the sense that 10 Lorry loads of Babool fuel sticks were cut, which was planted under the Social Forestry Scheme and sold illegally. Therefore, we are not inclined to interfere with the Charge Memo, dated 08.05.1997 in DRD No.120232/92 VC/1-1. Accordingly, we direct the appellants to pass final orders as proposed and give liberty to the writ petitioner to challenge the same before the appropriate forum.

7. So far as the third Charge Memo dated 08.01.2003 in Government Letter No.45389/E2/2001-08 is concerned, similarly placed persons namely, the Executive Officers of other Panchayat Unions were also proceeded against with the same set of charges, that is, regarding the purchase of uniforms of Panchayat Assistants and the Government has dropped those proceedings by passing various Government Orders dated 30.04.1997, 28.10.2003, 04.03.2004, 09.07.2004 and 27.04.2007. Thus, the writ petitioner alone should not be single out and the benefit, which the Government extended to the other similarly placed persons should accrued in favour of the writ petitioner also. For the above reasons, the Charge Memo, dated 08.07.2003 is quashed.

8. In the result, the Writ Appeal is partly allowed on the following terms. No costs. Consequently, connected Miscellaneous Petition is closed.

"(i) the Charge Memo, dated 03.10.1996 in DRD Proceedings No. 139088/92/VC/1-1, is quashed.

(ii) the Charge Memo, dated 08.01.2003 in Government Letter No.45389/E2/2001-08 is quashed.

(iii) since the two Charge Memos, dated 08.05.1997 and 22.05.1997 having culminated in orders of punishment, vide, G.O.Ms.Nos.53 and 54, dated 21.08.2015, this Court is not inclined to interfere



with the same and the respondent/writ petitioner is granted liberty to challenge G.O.Ms.Nos.53 and 54, dated 28.01.2015, before the appropriate forum.

(iv) the Charge Memo in DRD No.12023/1/92 VC/1-1, dated 08.05.1996 is concerned, we find that the charge pertains to cutting of Babool trees, which were planted in the year 1987-1988, under the Social Forestry Scheme and were sold illegally. We are not inclined to interfere with the Charge Memo, dated 08.05.1997 in DRD No.12023/1/92 VC/1-1. Accordingly, we direct the appellants to pass final orders and give liberty to the respondent/writ petitioner to challenge the same before the appropriate forum, if the respondent/writ petitioner is aggrieved by such order."

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

+One cc to M/s.Ajmal Associates, Advocate, SR.No.49616

PJL

RL/2C/2P/SKN/RSK/SAR4/9/3/2018

JUDGMENT MADE IN

W.A(MD)No. 6 of 2018

19.02.2018