



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) Nos.4466 of 2014, 18964 & 19049 of 2016
and
W.M.P. (MD). No.1 of 2015

C.Dhasaratharajan ..Petitioner in W.P.(MD)No.4466 of 2014
Er.Rajmohan ..Petitioner in W.P.(MD)No.18964 of 2016
Er.G.Gobi ..Petitioner in W.P.(MD)No.19049 of 2016

Vs.

1.State of Tamil Nadu represented
by Secretary to Government,
Public Works Department,
Fort St.George, Chennai.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai - 600 003.

3.The Engineer in Chief Water
Resources Department &
Chief Engineer General,
Public Works Department,
Cheapuk, Chennai. ..Respondents in all the Writ Petitions

PRAYER in W.P.(MD)No.4466 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating with the impugned order of the first respondent, dated 22.01.2014 made in G.O.(D).No.29, Public Works (E1) Department and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to disburse the retirement benefits by calculating petitioner's service, promotion and other service benefits.

PRAYER in W.P.(MD)No.18964 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating with the order of the first respondent, made in G.O.(D).No.108, Public Works (E1) Department, dated 30.04.2014 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to promote the petitioner as accordance with the service seniority from the

year 2009 and with all attended benefits thereon.

PRAYER in W.P.(MD)No.19049 of 2016: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating with the order of the first respondent, made in G.O.(D).No.368, Public Works (E1) Department, dated 29.12.2014 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to promote the petitioner as accordance with the service seniority from the year 2009 and with all attended benefits thereon.

For petitioner : Mr.R.Surianarayanan in all the WPs

For respondents : Mr.K.K.Senthil
Special Government Pleader
(in all Writ Petitions)

C O M M O N O R D E R

Heard the learned Counsel for the petitioner in all the writ petitions and the learned Special Government Pleader appearing for the respondents in all the writ petitions.

2. The petitioner in W.P.(MD).No. 4466 of 2014 is a retired employee of Public Works Department. The other two petitioners are till in service. All the three along with four other employees were issued with charge memo, dated 10.09.2009. With regard to the allegation that there was a deficiency in the matter of carrying out maintenance and repair works at Primary Health Centre. In this regard enquiry was conducted. The Enquiry Officer submitted a report to the effect that the charges framed against the delinquent employers were not proved. The report was submitted to the Government. The Government by letter dated 12.08.2010 called upon the petitioners to make their further representation. But while so doing, the Government clearly stated that the charges which the enquiry officer held as not proved were held as proved by the Government. Of course the reasons were set out for deviating from the findings of the enquiry officer. Thereafter, the petitioners offered their explanations and the impugned orders imposing penalty on the petitioners were passed.

3. The learned counsel appearing for the petitioners contended that the impugned orders will have to be quashed for two reasons. Firstly, the Government before deviating from the findings of the enquiry officer did not put the petitioners on notice. Secondly, action was dropped as against two of the co-delinquent while another obtained relief from this Court in W.P.(MD).No.597 of 2016.

4. The learned Additional Government Pleader appearing for the respondents wanted this Court to dismiss the writ petition by reiterating the stand taken in the counter affidavit.



5. As rightly contended by the learned Counsel for the petitioners, the Hon'ble Supreme Court in the decision reported in 1988 7 SCC 84 - Punjab National Bank and others vs. Kunj Behari Misra held that the employer must put the delinquent employee on notice before taking a decision to differ with the findings of the disciplinary authorities which were in favour of the delinquent employee. In this case without putting the petitioners on notice, the Government chose to come to a conclusion that the charges were proved by differing with the findings rendered by the enquiry officer. Therefore, on this sole ground impugned orders deserve to be quashed.

6. Now the question is whether this Court has to remit the matter to the file of the Government. This Court is of the view that quietus can be given for more reasons than one. Firstly, the cause of action dates back to the year 2006. Secondly, questioning the order passed in favour of the co-delinquent Ramachandran in W.P. (MD).No.597 of 2016 the Government was preferred writ appeal, but the same was dismissed. Therefore, no purpose will be served in remitting these three cases alone to the file of the respondent for the fresh consideration. It is also to be noted that one of the writ petitioners namely Shri.C.Dhasaratharajan has since retired from service. For all these reasons this Court is of the view that remand will not serve any purpose.

7. These Writ Petitions stand allowed accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary to Government, Public Works Department,
Fort St. George, Chennai.
2. The Secretary, Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai - 600 003.
3. The Engineer in Chief Water Resources Department &
Chief Engineer General, Public Works Department,
Cheapuk, Chennai.

+3CC to Mr.R.Suriyanarayanan, Advocate, SR.No. 49499,49500,49501
+1CC to the Special Government Pleader SR.No.49565, 49566,49567
+1CC to Mr.K.K.Senthil, Advocate, SR.No. 49428

ORDER MADE IN
W.P. (MD) Nos.4466 of 2014,
18964 & 19049 of 2016
16.02.2018