IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.21457 of 2008

S.Jega Jeeva Dhas .. Petitioner

-vs-

1. The Government of Tamil Nadu
rep.by its Secretary to the Government
Revenue Department
Fort St.George
Chennai 600 009

2. District Collector
Thiruvannamalai District

3. The District Backward Class Officer
Thiruvannamalai District

4. The Tahsildar
Taluk Office, Cheyyar
Thiruvannamalai District

5. The Commissioner for
Disciplinary Proceedings
Vellore .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records connected with the orders passed by the first respondent in G.O.(2D) No.163, Revenue Department dated 9.4.2008 and quash the same and further direct the first respondent to reinstate the petitioner and permit him to retire on superannuation on 30.4.2005 and further direct to give all consequential pensionary benefits.

For Petitioner :: No appearance

For Respondents :: Mr.K.Ravikumar
Additional Government Pleader

ORDER

Mr.S.Jega Jeeva Dhas, having been aggrieved by the order of dismissal issued in G.O.(2D) No.163, Revenue [Ser.2(1)] Department dated 9.4.2008 by the Secretary to Government, has filed this writ petition to quash the same with a consequential direction to the first respondent to reinstate and permit him to retire from service on reaching the age of superannuation on 30.4.2005 and also with a further direction to the respondents to release the consequential pensionary benefits.

2. When the matter was taken up on 15.4.2019, no one appeared on behalf of the petitioner. The Court Officer placed before this Court the several complaints given by the petitioner to the Hon'ble Chief Justice and also to the Registrar General for listing of the matter for early disposal. A perusal of the letters dated 22.10.2017 and 30.10.2018 clearly show that the petitioner has been urging the Registry to list the matter for early disposal. Accordingly, when the matter was listed before this Court on 15.4.2019, no one appeared to represent the case of the petitioner. Since the petitioner in his letter dated 22.11.2017 has repeatedly stated that he is aged about 71 years and the Registry has not listed the matter for a long time, namely, for ten long years, this Court, giving a last opportunity to the petitioner's counsel, directed the Registry to list the matter today. Again, when the matter was taken up today at 11.30 A.M., no one appeared, except the learned Additional Government Pleader for the respondents.

3. Although this Court perused the documents filed by the petitioner and more importantly the impugned G.O.(2D) No.163, Revenue [Ser.2(1)] Department dated 9.4.2008 imposing the punishment of dismissal from service for the proven charges, it could be seen from the records that while the petitioner was serving as Office Superintendent in the office of the District Backward Class Officer, Thiruvannamalai District, the third respondent herein, he was posted as Additional Deputy Tahsildar in the Taluk Office, Cheyyar, Thiruvannamalai District. While he was serving in the office of the fourth respondent, he was placed under suspension on 29.4.2005, as he was to retire from service on reaching the age of superannuation on 30.4.2005, thereby he was not permitted to retire from service by an order passed under FR 56(1)(c) of the Fundamental Rules and was retained in service, since there were charges pending against him in T.D.P.Case No.3 of 2004 on the file of the Commissioner for Disciplinary Proceedings, Vellore. He was also charged in another case pending before the learned Chief Judicial Magistrate, Thiruvannamalai for certain offences under the Indian Penal Code read with Sections 13(2) and 13(1)(c), (d) of

the Prevention of Corruption Act, 1988 in Special Case No.4 of 2005.

4. Coming to the charge levelled against the petitioner, when the petitioner was employed as Office Superintendent during the period 1999-2000, he is alleged to have collected a sum of Rs.29,650/- from the Travelling Allowance claims of the subordinates, namely, Wardens of the Backward Classes hostels, towards small savings agent's commission in order to get the savings certificate numbers and out of the total collecion of Rs.29,650/-, the petitioner is alleged to have misappropriated a sum of Rs.12,325/-. Therefore, based on the recommendation of the Director of Vigilance and Anti-Corruption, an enquiry was ordered to be conducted by the Tribunal for Disciplinary Proceedings, Vellore. Accordingly, the Tribunal for Disciplinary Proceedings also initiated proceedings against the petitioner in T.D.P.Case No.3 of 2004 and finally, the Commissioner for Disciplinary Proceedings, Vellore has also sent a report to the Government on 27.1.2005. When the matter was pending, the petitioner also came to this Court with W.P.No.38219 of 2004 seeking for early completion of the disciplinary proceedings. This Court, considering the limited prayer, by order dated 29.12.2004, disposing of the writ petition, directed the respondents therein to complete the disciplinary proceedings within a period of eight weeks. However, in view of the voluminous documentary and oral evidence involved in the disciplinary proceedings initiated against the petitioner, the Government also filed W.P.M.P.No.35510 of 2005 seeking extension of time. But, in the meanwhile, the petitioner was to retire from service on reaching the age of superannuation on 30.4.2005. For the reason that a case was registered by the Directorate of Vigilance and Anti-Corruption, Chennai with regard to certain allegations against the petitioner pending with the Tribunal for Disciplinary Proceedings, he was placed under suspension with effect from 29.4.2005 and consequently he was not allowed to retire from service on 30.4.2005, but retained in service by an order passed under FR 56(1)(c) of the Fundamental Rules till the disposal of the charges pending against him in T.D.P.Case No.3 of 2004 before the Commissioner for Disciplinary Proceedings, Vellore. When the Commissioner for Disciplinary Proceedings submitted a final report after completion of the enquiry, the Government also called for further explanation from the petitioner in Letter No.4782/Ser.2 (1)/2005-7, Revenue dated 17.10.2005. On receipt of the same, the petitioner also submitted his explanation in his letter dated 2.11.2005. Thereafter, the Government examined the explanation of the delinquent officer and found that the same is not acceptable. Hence, the Government decided to accept the findings of the Tribunal for Disciplinary Proceedings holding the charges levelled against the petitioner as proved. Finally,

for the proven charges, the Government decided to impose the punishment under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the petitioner. For this purpose, the Government also referred the matter to the Tamil Nadu Public Service Commission seeking its views in letter No.4782/Ser.2(1)/05-30 dated 6.9.2007. The Tamil Nadu Public Service Commission, after careful examination of the matter with reference to the enquiry report and the petitioner's representations dated 8.12.2004, 28.11.2006, 21.12.2006, 10.9.2007 and 19.11.2007, in its letter No.585/D.C.D-B2/2007-1 dated 19.12.2007 made it clear that the Commission finds no reason to deviate from the findings of the Tribunal for Disciplinary Proceedings. The Commission has also expressed that as the misconduct committed by the delinquent officer is of grave nature, he deserves the highest punishment, namely, dismissal from service. Based on the views expressed by the Tamil Nadu Public Service Commission, the first respondent has passed a final order in G.O.(2D) No.163, Revenue [Ser.2(1)] Department dated 9.4.2008 dismissing the petitioner from service for the irregularities committed by him. Challenging the same, the petitioner has come to this Court.

5. In the affidavit filed in support of the writ petition, the petitioner has stated that when allegations were made against the petitioner and also against one another Assistant Accounts Officer, charges were framed against the petitioner and Mr.R.K.Palaniappan, formerly District Backward Class Officer, Thiruvannamalai. But, surprisingly, the investigating agency of the Vigilance and Anti-Corruption Department, Vellore completely spared Mr.Gubendra Babu, the then Assistant Accounts Officer by not even interrogating him in the investigation. But he was cited as one of the witnesses. Again challenging the impugned order, it is also averred that the offence charged against the petitioner is with regard to the contravention of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. Even a close look at the charge shows that no act of corruption or act involving criminal intent of any nature has been involved. Therefore, if the irregularity does not involve corruption, the matter need not be referred to the Vigilance and Anti-Corruption and can be disposed of departmentally. The further averment of the petitioner shows that he is alleged to have violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules. However, the initiation of disciplinary action has to be taken under Rule 17(a) or 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules only. While so, the proper procedure in issuing the charge memo in the format as prescribed in G.O.Ms.No.124/B/ARC/(P&AR) Department dated 27.2.96 as per Appendix VIII of CCA Rules is not followed. The petitioner also, while challenging the charge of misappropriation of Rs.12,325/-, has denied the collection of any amount directly. Moreover, he

has further pleaded that he had not kept any such amount in his custody. Therefore, the question of misappropriating the same does not arise. On this basis, he has further challenged the findings of the Tribunal for Disciplinary Proceedings on the alleged misappropriated amount as vague, since such a finding has been given without actually verifying the records. It is also claimed that when the petitioner has no role to pay in the alleged misconduct, the said aspect has been completely overlooked by both the Tribunal for Disciplinary Proceedings and the Tamil Nadu Public Service Commission. Therefore, the major punishment of dismissal from service imposed against the petitioner is disproportionate to the charges. Hence, the impugned Government Order is liable to be quashed.

6. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents, supporting the impugned order, argued that when the petitioner was employed as Office Superintendent in the office of the District Backward Classes and Minorities Welfare Department, Thiruvannamalai during the year 1999-2000, he had collected a sum of Rs.29,650/- from the travelling allowance claims of his subordinates, namely, Wardens of Backward Class hostels towards the small savings agent's commission. Out of the total collection of Rs.29,650/-, the petitioner had misappropriated a sum of Rs.12,325/-. Therefore, an enquiry was ordered to be conducted, based on the detailed recommendation made by the Director of Vigilance and Anti-Corruption, by the Tribunal for Disciplinary Proceedings, Vellore. Finally, after the completion of enquiry in T.D.P.Case No.3 of 2004, the Commissioner for Disciplinary Proceedings, Vellore sent a report to the Government. While the report was under examination, the petitioner came to this Court seeking a writ of mandamus directing the respondents to complete the enquiry proceedings expeditiously. In the meanwhile, the petitioner was to reach the age of superannuation on 30.4.2005. Therefore, on 29.4.2005, he was not allowed to retire from service on reaching the age of superannuation and also retained in service by an order passed under FR 56(1)(c) of the Fundamental Rules till the disposal of the charges pending against him. However, when the Tribunal for Disciplinary Proceedings gave its finding, the Government also called for explanation from the petitioner in letter No.4782/Ser.2(1)/2005-7, Revenue dated 17.10.2005. On receipt of the same, the petitioner also submitted his explanation in his letter dated 2.11.2005. Thereafter, the Government also, carefully examining the explanation of the delinquent officer, found that the further explanation offered by the petitioner is not acceptable. Hence, the Government decided to accept the findings of the Commissioner for Disciplinary Proceedings and held the charges are proved. Consequently, the Government also decided to impose the

punishment under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. But before that, the Government also referred the matter to the Tamil Nadu Public Service Commission. Accordingly, the Tamil Nadu Public Service Commission, after carefully considering the matter, came to the conclusion that the Commission finds no reason to deviate from the findings of the Tribunal for Disciplinary Proceedings. Since the Commission also expressed its view that the misconduct committed by the delinquent officer is of grave nature, for which he deserves the highest punishment of dismissal from service, the first respondent has passed the impugned order dismissing the petitioner from service for the irregularities committed by him. Adding further, the learned Additional Government Pleader for the respondents submitted that when there is no complaint made by the petitioner with regard to the procedure followed by the department for obtaining the views from the Tribunal for Disciplinary Proceedings, Vellore with regard to the charges levelled against him, it is not open to the petitioner to say that the punishment imposed on him is wholly disproportionate or unjustified.

7. This Court also finds substance on the submissions made by the learned Additional Government Pleader for the respondents. When the petitioner was serving as Office Superintendent in the office of the third respondent, he had indulged in certain dealings and collected Rs.29,650/- from the travelling allowance claims, namely, Wardens of Backward Classes hostels, towards small savings agent's commission in order to get the saving certificate numbers. Out of the total collection of Rs.29,650/-, the petitioner has misappropriated a sum of Rs.12,325/-. Therefore, a case was registered by the Director of Vigilance and Anti-Corruption with regard to the said allegation and finally the Commissioner for Disciplinary Proceedings, Vellore was entrusted with the enquiry into the allegation of misappropriation made by the petitioner. The Tribunal for Disciplinary Proceedings, Vellore took up the case in T.D.P.Case No.3 of 2004 and submitted its report to the Government. On receipt of the said report, the Government also called for explanation from the petitioner in letter No.4782/Ser.2(1)/2005-7, Revenue dated 17.10.2005. The Government, on receipt of the explanation from the petitioner, finding that the said explanation is not acceptable, decided to accept the findings of the Tribunal for Disciplinary Proceedings holding the charges as proved. When the Tribunal for Disciplinary Proceedings, after examining the charges framed against the petitioner, found him guilty, the Government also, before imposing the punishment under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, obtained the views of the Tamil Nadu Public Service Commission. It is useful to refer to the relevant portion of the views expressed by the

Tamil Nadu Public Service Commission, as follows:-

> "the Commission finds no reason to deviate from the findings of the Tribunal for Disciplinary Proceedings. Hence, the misconduct committed by the delinquent officer is of grave nature for which he deserves highest punishment (i.e.) dismissal from service. The Commission, therefore, advises the Government to go ahead with their decision of imposing the punishment of Dismissal from service prescribed under Rule 8(viii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against the delinquent officer and to issue orders accordingly."

8. In the light of the views expressed by the Tamil Nadu Public Service Commission holding that the misconduct committed by the petitioner is of grave nature, for which he deserves the highest punishment of dismissal from service, the first respondent, by the impugned Government Order, has imposed the punishment of dismissal from service on the petitioner for the irregularities committed by him. Therefore, this Court finds no merits whatsoever in the writ petition. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
   Revenue Department
   Fort St.George
   Chennai 600 009

2. The District Collector
   Thiruvannamalai District

3. The District Backward Class Officer
   Thiruvannamalai District

4. The Tahsildar
   Taluk Office, Cheyyar
   Thiruvannamalai District

5. The Commissioner for
Disciplinary Proceedings
Vellore

+1 cc to The Government Pleader, Sr.No. 38806

W.P.No.21457 of 2008

CSL/29.05.2019