

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P. No.24611 of 2009
and M.P. No.1 of 2009

S.Mahendran

.. Petitioner

-vs-

1.State of Tamil Nadu,
rep. by its Secretary to Government,
Agriculture Department,
Secretariat, Chennai-9.

2.The Director of Agriculture,
Chepauk, Chennai-5.

3.The Joint Director of Agriculture,
Ariyalur, Ariyalur District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in G.O. (3D) No.134, Agriculture Department, dated 09.09.2009 and quash the same and direct the respondents to give upgraded promotion to the petitioner as Agricultural Officer from the date on which his juniors were given and confer all the consequential benefits.

For Petitioner :: Mr.P.Ganesan for
M/s.C.S.Associates

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

ORDER

The writ petition has been filed challenging the impugned G.O. (3D) No.134, Agriculture Department, dated 09.09.2009 and seeking a direction to the respondents to give upgraded promotion to the petitioner as Agricultural Officer from the date on which his juniors were given and confer all the consequential benefits.

2.Learned counsel appearing for the petitioner would submit that while the petitioner was working as Field Demonstration Officer in Oil Seeds in the office of the Assistant Director of Agriculture at Srirangam on 31.01.1986, issued with a charge memo dated 27.08.1996 for the occurrence took place during the year 1987-88 namely, after eight years, alleging that the petitioner while disbursing the agricultural appliances (sprayer) to ten small farmers, prepared forgery documents and misappropriated the disbursed amount which are to be paid to the borrower. Denying the charges framed against him, the petitioner immediately submitted his detailed explanation on 08.08.1997 stating that he has rightly identified the beneficiaries who cultivated the land in the village. Accepting the explanation offered by the petitioner, the Enquiry Officer, given a finding dated 06.02.1998 stating that all the charges have not been proved. As there was no response from the Disciplinary Authority for a long time, the petitioner was under the impression that accepting the finding of the Enquiry Officer, they have dropped the proceedings. However, when the upgraded promotion to the post of Agricultural Officer came up for consideration from among the existing Field Demonstration Officer, as per the orders issued by the Government in G.O. Ms.No.475, Agriculture Department dated 28.07.1993 and in G.O. Ms. No.361, Agriculture Department dated 30.06.1995, list was drawn and sent to the persons for special training. As the same has not been given to the petitioner, he made a representation to the third respondent. By communication dated 14.11.2003, the petitioner's representation was rejected on the ground that disciplinary proceedings are pending.

3.According to the learned counsel appearing for the petitioner, the respondents have issued Show Cause Notice to the petitioner on 14.03.2007 on the ground that the Enquiry Officer has not considered the evidence of two Village Administrative Officers i.e. Swaminathan and Kuzhanthaivel, who have given statement that the two beneficiaries are not residents of the village from where the lands are cultivated, for which they availed the concession and have given certificate that the two beneficiaries viz. Shanmugasundaram and Alagumuthu were residing in one place and the lands cultivated by them are located in the nearby village Pottuvelli and Rayampuram.

4.According to the learned counsel appearing for the petitioner, when the two beneficiaries have given statement before the Enquiry Officer that they have availed the concession of subsidy for purchasing sprayers, the respondents have relied upon the statements of the said Village Administrative Officers, without any basis. In this connection, one Krishnan was examined, who has categorically deposed that the said

Azhagumuthu cultivated his land as a tenant, which was affirmed by the Village Administrative Officer and the said Azhagumuthu himself has given a statement that he has received the agricultural appliance.

5. In the meanwhile, though the enquiry was completed in the year 1997 itself, since the respondents have not passed final orders, the petitioner approached this Court by way of filing W.P. No.20083 of 2007 challenging the charge memo on the ground of delay and seeking a direction to the respondents to give him upgradation as Assistant Agricultural Officer from the date when his juniors were given upgradation. This Court, by order dated 12.06.2007 in W.P. No.20083 of 2007, while disposing of the writ petition, directed the authorities to pass final orders within a period of two months. Despite the said order, the respondents did not pass final orders and therefore, the petitioner has approached this Court by way of filing W.P. No.29627 of 2007 challenging the charge memo and seeking the above direction. This Court, by order dated 20.10.2008 directed the first respondent to pass final orders pursuant to the charge memo issued to the petitioner on 27.08.1996 within a period of four weeks. Only after one year, the disciplinary authority, has issued the above impugned G.O. imposing the punishment of stoppage of increment for three months without cumulative effect and ordered recovery of Rs.723/- in single instalment. Challenging the same, the petitioner has come to this Court.

6. A detailed counter affidavit has been filed by the third respondent. Learned Additional Government Pleader appearing for the respondents would submit that the petitioner was rightly issued with the charge memo containing two allegations, namely, while disbursing the agricultural appliances (sprayer) to ten small farmers, prepared forgery documents and misappropriated the disbursed amount which are to be paid to the borrower. But, the Enquiry Officer has filed a report holding that the petitioner was not guilty of both charges. However, the disciplinary authority, doubting the veracity of the report of the enquiry officer, referring to the statements of two Village Administrative Officers, namely, Swaminathan and Kulandaivelu, who were examined as witnesses, stated that the beneficiaries, that too, two persons among them, are not residing in their village, has not accepted the report of the enquiry officer. Therefore, the impugned G.O. imposing the punishment needs no interference.

7. It is seen that the petitioner was issued with a charge memo dated 27.08.1996 alleging that the petitioner while disbursing the agricultural appliances (sprayer) to ten small farmers, prepared forgery documents and misappropriated the disbursed amount which are to be paid to the borrower, for the

occurrence took place during the year 1987-88, namely, after eight years. Denying the charges framed against him, the petitioner submitted his detailed explanation on 08.08.1997 stating that he has rightly identified the beneficiaries who cultivated the land in the village. Accepting the explanation offered by the petitioner in the enquiry and the depositions made by other witnesses, the Enquiry Officer has given a finding dated 06.02.1998 stating that all the charges have not been proved. However, the Disciplinary Authority, differing from the findings of the Enquiry Officer, have issued Show Cause Notice dated 14.03.2007 stating that the Enquiry Officer has not considered the evidence of two Village Administrative Officers i.e. Swaminathan and Kuzhanthaivel, who have given statement that the two beneficiaries are not residents of the village from where the lands are cultivated, for which they availed the concession and have given certificate that the two beneficiaries viz. Shanmugasundaram and Alagumuthu were residing in one place and the lands cultivated by them are located in the nearby village Pottuvelli and Rayampuram.

8.It is also seen that one Krishnan was examined, who has categorically deposed that the said Azhagumuthu cultivated his land as a tenant, which was affirmed by the Village Administrative Officer and the said Azhagumuthu himself has given a statement that he received the agricultural appliance. When the two beneficiaries have given statement before the Enquiry Officer that they have availed the concession of subsidy for purchasing sprayers, it is not open to the respondents to rely upon the statements of the said Village Administrative Officers without any basis.

9.Since the respondents have not passed final orders, the petitioner approached this Court by way of filing W.P. No.20083 of 2007 challenging the charge memo on the ground of delay and seeking a direction to the respondents to give him upgradation as Assistant Agricultural Officer from the date on which his juniors were given upgradation and this Court, by order dated 12.06.2007 in W.P. No.20083 of 2007, while disposing of the same, directed the authorities to pass final orders within two months. Despite the said order, the respondents did not come forward to pass final orders and therefore, the petitioner again has approached this Court by way of filing W.P. No.29627 of 2007 challenging the charge memo and seeking the above direction. This Court, by order dated 20.10.2008 directed the first respondent to pass final orders pursuant to the charge memo issued to the petitioner on 27.08.1996 within a period of four weeks. In view of the pendency of the charge memo, the petitioner was repeatedly denied several promotions. Finally, when the Enquiry Officer, holding him not guilty, the disciplinary authority differed from the report of the enquiry

officer, relied upon the statements of the two Village Administrative Officers i.e. Swaminathan and Kuzhanthaivel, who have given statement that the two beneficiaries are not residents of the village from where the lands are cultivated, for which they availed the concession.

10. Admittedly, the petitioner's juniors were given promotion in the year 1995. In a similar circumstance, the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu vs. T.Ranganathan [(2010) 3 MLJ 265] has held that once a competent Court fixes an outer time limit to complete the enquiry and pass orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the order and it has been further held that when there is a default, it is open to the party to the proceedings to approach the very same Court seeking extension of time to comply with the order by stating sufficient reasons, failing which they cannot proceed further. Following the same, I have passed an order in W.P. No.37073 of 2016 dated 27.03.2018 (N.Sivalingam vs. The State of Tamil Nadu and another). The relevant portion is given as under:

"9. In yet another decision, when an identical issue came up before this Court in the decision dated 21.09.2011 passed in W.P. No.24489 of 2004 (M.P.Sundararajan (deceased) v. Secretary to Government), following the Division Bench judgment in T.Ranganathan case (cited supra) holding that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order, this Court finding that the direction passed by this Court has not been complied with within the outer time limit, has quashed the impugned proceedings."

11. In the light of the above, the unexplained delay of 23 long years taken by the disciplinary authority to complete the enquiry clearly shows that the petitioner was sufficiently punished by losing several avenues of promotion when his juniors were given promotion. In such circumstances, deprecating such a long delay in completing the enquiry by the disciplinary authority, the Hon'ble Apex Court in a decision in Appeal (Civil) No.4901 of 2005 (P.V.Mahadevan vs. M.D.Tamil Nadu Housing Board dated 08.08.2005) has held that the delay in completing the disciplinary proceedings would definitely cause not only prejudice to the delinquent but also to the Department. The relevant portion is given as under:

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher

government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefit shall be disbursed within three months from this date. No costs."

12. In view of the above, the impugned order is quashed and the writ petition is allowed. The respondents are directed to give the consequential benefits to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected M.P. is closed. No costs.

Vga

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.State of Tamil Nadu,
rep. by its Secretary to Government,
Agriculture Department,
Secretariat, Chennai-9.

2.The Director of Agriculture,
Chepauk, Chennai-5.

3.The Joint Director of Agriculture,
Ariyalur, Ariyalur District.

+1cc to M/s.C.S.Associates, Advocate, SR.No.36081
+1cc to the Govt.Pleader, Vide Sr.No.37082

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and M.P. No.1 of 2009

Kak(02/07/2019)



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