

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE D. KRISHNAKUMAR

W.P. No. 19273 of 2010
and M.P.No.1 of 2010

B. Kasi

... Petitioner

-Vs-

1. The Collector,
Thiruvannamalai,
Thiruvannamalai District.

2. The Commissioner,
Kalasapakkam Panchayat Union,
Kalasapakkam,
Thiruvannamalai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order of the first respondent in Na.Ka.No. 8463/2009/Sa.U.Thi-1 dated 23.03.2010 and quash the same insofar as it directs recovery of a sum of Rs.42,879/- from the retirement benefits of the petitioner and direct the respondents to regularize the period of suspension from 05.01.1994 to 25.04.2003 and the period of non employment from 26.04.2003 to 07.02.2009 as duty period and pay salary and all other allowances for the said period and direct the respondents to pay all retirement benefits to the petitioner.

For Petitioner : Mr. P. Rajendran

For Respondents : Mr. B. Anand for R1

Government Advocate

Mr. L.S.M. Hasan Fizal for R2

ORDER

The prayer sought for herein is for a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in Na.Ka.No. 8463/2009/Sa.U.Thi-1 dated 23.03.2010 and quash the same insofar

as it directs recovery of a sum of Rs.42,879/- from the retirement benefits of the petitioner and direct the respondents to regularize the period of suspension from 05.01.1994 to 25.04.2003 and the period of non employment from 26.04.2003 to 07.02.2009 as duty period and pay salary and all other allowances for the said period and direct the respondents to pay all retirement benefits to the petitioner.

2. It is the case of the petitioner that, he was working as a Noon Meal Organizer at Panchayat Union Elementary School, Kappalur Colony, Kalasapakkam Panchayat Union, Thiruvannamalai District. He was kept under suspension from 05.01.1994 and charge memo was issued on him by the District Collector / first respondent herein on 21.01.2003. The petitioner submitted his explanations to the charges on 17.02.2003. However without conducting any enquiry, the first respondent issued an order of removal from service in Na.Ka.Pa.Oo-1/7527/2003, dated 26.04.2003. Aggrieved by the said order of removal, the petitioner approached the Tamil Nadu Administrative Tribunal and filed an application in O.A. No. 1751 of 2003.

3. While the said Original Application was pending, the Commissioner / second respondent herein issued an order in Na.Ka.Va.Aa-1/2808/99, dated 27.12.2004 directing the petitioner to remit a sum of Rs.42,879/- (the alleged shortage as per the audit for the year 1993-1994) within three days, failing which, action would be taken to recover the amount through the Economic Offences Wing Police. Challenging the said order, the petitioner filed W.P. No. 584 of 2005 before this Court.

4. In the meanwhile, the above said O.A. No. 1751 of 2003 was transferred to this Court and re-numbered as W.P. No. 13577 of 2007, the petitioner attained the age of superannuation on 06.02.2009. On 13.11.2009, this Court passed final orders in the above said Writ Petitions, setting aside the said order of recovery and further set aside the order of removal from service passed by the first respondent with directions to give opportunity and pass fresh orders. Thereafter, the petitioner participated in the enquiry and the Enquiry Officer has not furnished the report to him till date.

5. Now, the first respondent has passed an impugned order in Na.Ka.No.8463/2009/Sa.U.Thi-1 dated 23.03.2010, permitting the petitioner to retire from service with effect from 06.02.2009. However, in the said order, a sum of Rs.42,879/- was ordered to be recovered from the petitioner and nothing was stated in the said order with regard to the regularization of

the period of suspension and the period of non-employment, caused due to the illegal order of removal from service dated 26.06.2003.

6. Heard Mr. P. Rajendran, learned counsel appearing for the petitioner, Mr. B. Anand, learned Government Advocate appearing for the first respondent and Mr. L.S.M. Hasan Fizal, learned counsel appearing for the second respondent.

7. The learned counsel appearing for the petitioner submitted that, the petitioner has made a request to the authority stating that he was not in a position to submit his explanations before the authority at the time of enquiry conducted by the Enquiry Officer and thereafter, the District Collector passed an order allowing the petitioner to retire from service on 06.02.2009. However, a sum of Rs.42,879/- was ordered to be recovered from the petitioner.

8. Mr. P. Rajendran, learned counsel appearing for the petitioner challenging the said portion of the order would mainly submit that the respondents have raised audit objection during the years 1991-1992, 1992-1993 and 1993-1994. The said audit objection copy was served to the petitioner belatedly in the year 2004. According to the petitioner, audit objection was made in the year 1994 and the first respondent has chosen to initiate discipline proceedings only in the year 2004 i.e., after a delay of ten years. Therefore, he prayed that the order passed by the first respondent should be set aside.

9. Mr. B. Anand, learned Government Advocate appearing for the first respondent submitted that, the District Collector has reasonably considered the request made by the petitioner and allowed the petitioner to retire from service. Therefore, he would submit that, the petitioner has to pay a sum of Rs.42,879/- as objected by the audit department.

10. Considering the aforesaid facts and circumstances of the case, it is seen that the petitioner has participated in the enquiry on 12.02.2010 and given his explanation to the enquiry report, but the said explanation given by the petitioner, has been rejected vide the impugned order dated 23.03.2010. In any event, there is no discussion or findings given by the first respondent in this regard. The first respondent, while considering the request of the petitioner, has stated that the request has been sympathetically considered and he has been allowed to retire from service with effect from 06.02.2009. Further, vide impugned order, the first respondent directed the second respondent to settle the terminal benefits of the

petitioner, however, deducting Rs. 42,879/- from the said benefits. It is surprising as to why such direction has been ordered without any finding to that effect, which in the considered opinion of this Court, is unsustainable as the authority has not done the exercise, in true letter and spirit, as directed by this Court, by order dated 13.11.2009. Therefore, the Writ Petition is allowed. The impugned order dated 23.03.2010 passed by the first respondent is quashed, insofar as recovery proceedings alone are concerned. The other directions passed by the first respondent, shall remain unchanged. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vji
To

1. The Collector,
Thiruvannamalai,
Thiruvannamalai District.
2. The Commissioner,
Kalasapakkam Panchayat Union,
Kalasapakkam,
Thiruvannamalai District.

+1cc to the Government Pleader SR.93391

W.P. No. 19273 of 2010

MR(CO)
CB(04/02/2020)

सत्यमेव जयते

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