



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.3668 of 2012

A.Chellamuthu

... Petitioner

vs.

1)Secretary to Government,
Home (Tr II-A) Department,
Secretariat,
Chennai.

2)The Deputy Transport Commissioner,
Tirunelveli.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order dated 13-10-2009 in G.O. (3D) No.53 passed by the 1st Respondent and quash the same and consequently direct the Respondents to allow the Petitioner to retire from service with all consequential benefits.

For Petitioner : Mr.S.Anwar Sameem

For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the Impugned Order dated 13-10-2009 in G.O.(3D) No.53 passed by the 1st Respondent and quash the same and consequently direct the Respondents to allow the Petitioner to retire from service with all consequential benefits.

2.The case of the petitioner is that he joined as Office Assistant in Transport Department in the year 1987 and had put in unblemished service of over 20 years. On 13.01.2004, while he was working in Kaliyakavilati Check Post, there was a vigilance raid and there was some cash seized from the premises, in which, he was also arrayed as accused along with one Rajendran who was the then Motor Vehicle Inspector. Subsequently, a charge memo vide proceedings in TDP No.5 of 2006 was issued against the petitioner framing two charges. Charge No.1 contained 10 sub charges and Charge No.2 contained 1 charge. While so, the petitioner reached the age of superannuation on 30.11.2007 and on the same day, an order of suspension and retaining him in service was issued. Thereafter, an enquiry was ordered and the enquiry officer after conclusion of the enquiry filed his report on 08.03.2007.

3.It is further submitted that, copy of the enquiry report was never furnished to the petitioner. As per the enquiry report, sub



charges 1, 3, 4, 8 and 10 of Charge No.1 and Charge No.2 were held as proved and the other charges were not proved. Since the 1st respondent wanted to differ from the enquiry report, he sought the explanation of the petitioner. The petitioner made representation dated 11.12.2007 seeking to furnish the report of the enquiry officer along with the materials relied by the enquiry officer. However, without furnishing the enquiry report, the 1st respondent bent upon to differ with the report of the enquiry officer and held that all the charges framed against the petitioner are proved and referred the matter to Tamilnadu Public Service Commission seeking suggestion for the dismissal of the petitioner from service. On 29.07.2009, the TNPSC recommended for the dismissal of the petitioner from service and accepting the recommendation of the TNPSC, the 1st respondent passed the impugned order dated 13.10.2009 dismissing the petitioner from service. Since the order of dismissal from service was passed by the Government, no appeal remedy was available to the petitioner and therefore, the dismissal order dated 13.10.2009 is impugned in the present writ petition.

4.Learned counsel for the petitioner would submit that without going into the validity of the charges, the punishment imposed on the petitioner may be quashed as excessive as the petitioner had put in 20 years of service and he has no adverse remarks earlier. The learned counsel would rely on a decision in W.P.No.23884 2009 dated 29.08.2017 and stated that the above writ petition was filed by another delinquent K.Rajendran, in and by which, the learned Judge in similar circumstances held that the quantum of penalty of removal from service shall be modified into one of compulsory retirement. Thus, he would submit that the case of the petitioner herein is similar as cited supra and therefore, urged upon this Court to modify the penalty into one of compulsory retirement which by itself is a major penalty as contemplated in the service rules. He would also submit that there need to be a parity in the matter of imposition of punishment and he would not venture into making any arguments on merits and demerits of the case since the entire proceedings are vitiated for non compliance of principles of natural justice by not supplying the enquiry report and the materials relied thereon to the petitioner. However, the learned counsel would confine his arguments only with regard to penalty of dismissal from service imposed on the petitioner.

5.The respondents filed a detailed counter affidavit. Learned Government Advocate would state that there are several instances where the petitioner was found to be implicated in charges for having received illegal gratification towards discharge of his official duties during the relevant period. In the said circumstances, the punishment imposed on the petitioner was proportionate to the gravity of the misconduct alleged against



him. Thus, he would pray for dismissal of the writ petition.

6. Heard both sides.

7. Perusal of the order made in W.P.No.23884/2009 dated 29.08.2017 shows that it is a writ petition filed by the co-delinquent who was also dismissed from service on the same set of charges along with the petitioner. He challenged the dismissal order in the above writ petition and the Principal Seat of this Court after hearing both sides, had passed the following order:-

'5. This Court has given its anxious consideration to the rival submissions of the learned counsel and also perused the materials and the pleadings placed on record. Since the writ petition was not argued on merits, the learned counsel appearing for the petitioner would confine his arguments only with regard to the quantum of penalty imposed on the petitioner. This Court has to see whether the petitioner's conduct warrants any interference in the quantum of penalty imposed on him. The order passed in W.P.No.4024 of 2005 dated 01.10.2007 by the learned Judge of this Court, has dealt with the similar issue by advertng to various decisions of the High Court and the Hon'ble Supreme Court of India and chosen to interfere with the quantum of penalty. Imposition of penalty of compulsory retirement is also one of the major penalties apart from the penalty of removal and dismissal from service. More over, in regard to the similarly placed employees, the same Transport Department has imposed the penalty of compulsory retirement. That being the case, the case of the present petitioner had to be viewed similarly in the matter of imposition of penalty. Since the petitioner had put in nearly 32 of years of service, the order of dismissal would wipe out his entire service period and as such the extreme punishment would not only affect him but also would affect his family members particularly when the petitioner had attained the age of superannuation in the year 2011 itself and spending his time in the evening of his life.

6. In the above circumstances, this Court by taking guidance from the order passed by the learned Judge of this Court dated 01.10.2007 in W.P.(MD) No.4024 of 2005, is inclined to modify the penalty imposed on the petitioner. Hence, the impugned order dated 13.10.2009 is set aside. The punishment of dismissal of service stands modified into one of compulsory retirement and the same shall take into effect on the petitioner from the date of his dismissal from service. The respondent is directed to pass consequential orders on the basis of



present modification of penalty, for sanctioning all monetary benefits, which are otherwise admissible to the petitioner, within a period of two months from the date of receipt of a copy of this order.

7.The writ petition is disposed of, with the above direction. No costs.'

8.In my considered opinion, the said order is squarely applicable to the present case. Therefore, the following the order made in W.P.No.23884/2009 dated 29.08.2017, this Court is inclined to modify the penalty imposed on the petitioner. Hence, the impugned order dated 13-10-2009 in G.O.(3D) No.53 passed by the 1st respondent, is set aside. The punishment of dismissal of service imposed on the petitioner stands modified into one of compulsory retirement and the same shall take effect on the petitioner from the date of his dismissal from service. The respondents are directed to pass consequential orders on the basis of present modification of penalty, for sanctioning all monetary benefits, which are otherwise admissible to the petitioner, within a period of two months from the date of receipt of a copy of this order.

9.The writ petition is disposed of, with the above direction. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

To

1)Secretary to Government,
Home (Tr II-A) Department,
Secretariat,
Chennai.

2)The Deputy Transport Commissioner,
Tirunelveli.

+1 CC to MR.B.PRASANNAVINOTH, Advocate (SR-105706[F] dated 18/12/2019)

ORDER MADE IN
W.P (MD)No.3668 of 2012
DATED : 16.12.2019

_KM/ (22.01.2020) 4P 4C

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