



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.07.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABABU
AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY
W.A. (MD) Nos.1664 to 1666 of 2018

&

C.M.P. (MD) Nos.12238 to 12240 of 2018 & 2905 and 2906 of 2019

1.State of Tamil Nadu,
Rep. by Secretary to Government,
Public Works Department,
Fort St. George,
Chennai - 600 009.

2.The Engineer-in-Chief Water Resources
Department & Chief Engineer in General,
Public Works Department,
Chepauk, Chennai.

.. Appellants in all the W.As./
Respondents 1 & 3 in all W.Ps.

Vs.

C.Dhasaratharajan

.. 1st Respondent in W.A.
(MD)No.1664 of 2018/
Petitioner in W.P.(MD)No.
4466 of 2014

Er.Rajmohan

.. 1st Respondent in W.A.
(MD)No.1665 of 2018/
Petitioner in W.P.(MD)No.
18964 of 2016

Er.Gobi

.. 1st Respondent in W.A.
(MD)No.1666 of 2018/
Petitioner in W.P.(MD)No.
19049 of 2016

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

.. 2nd Respondent in all the W.As.

Prayer:- Writ Appeals are filed under Clause 15 of Letters Patent,
to set aside the common order dated 16.02.2018, passed in W.P.(MD)
Nos.4466 of 2014, 18964 and 19049 of 2016.

Prayer in WP(MD). 4466/ 2014 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorari or Mandamus or any other writ or direction in the nature
of writ, calling for the records relating with the impugned order of
the 1st respondent, dated 22.1.2014 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 retirements benefits by calculating petitioner s service, promotion and other service benefits.

Prayer in WP(MD). 18964/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating with the order of the 1st Respondent made in G.O.(D) No. 108, Public Works (E1) Department, dt.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 his service seniority from the year 2009. and with all attended benefits thereon.

Prayer in WP(MD). 19049/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Mandamus, calling for the records relating with the order of the 1st respondent made in G.O.(D) NO. 368, Public Works (E1) Department, dt. 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 his service seniority from the year 2009, with all attended benefits thereon.

For Appellants : Mr.VR.Shanmugnathan
in all the W.As. Special Government Pleader

For R1 : No Appearance
in W.A. (MD)No.1664/2019

For R1 : Mr.S.M.Anantha Murugan
in W.A. (MD)Nos.1665 &
1666/2019

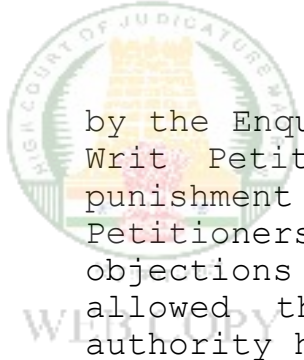
For R2 : Mr.D.Sivaraman
in all the W.As.

COMMON JUDGMENT

(Judgment of the Court was made by K.RAVICHANDRABAABU, J.)

These Writ Appeals are directed against the common order passed by the Writ Court in W.P.(MD)Nos.4466 of 2014, 18964 and 19049 of 2016, dated 16.02.2018.

2.The appellants are the respondents 1 and 3 before the Writ Court. Those Writ Petitions are filed by the respective Writ Petitioners, challenging the order of punishment of withholding of an amount referred in the respective orders of punishment imposed on each persons. The Writ Petitioners mainly urged that the disciplinary authority before deviating from the findings rendered



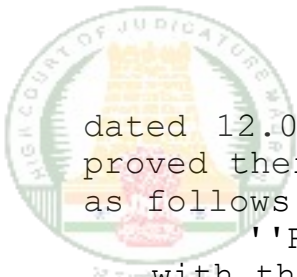
by the Enquiry Officer, has not given any notice of deviation to the Writ Petitioners. Therefore, it was urged that the order of punishment imposed on them is illegal, as the individual Writ Petitioners were deprived of their opportunity to place their objections effectively against such deviation. The Writ Court allowed the Writ Petitions by finding that the disciplinary authority has chosen to come to the conclusion that the charges were proved by differing with the findings rendered by the Enquiry Officer without putting the Writ Petitioners on notice. The Writ Court also has taken note of the fact that one another Writ Petition filed by the co-delinquent questioning the similar punishment ended against the Department, which was confirmed in the Writ Appeal as well. Therefore, the learned Judge pointed out that no purpose will be served in remitting the matter for fresh consideration.

3.Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the appellants, after inviting our attention to the proceedings dated 12.08.2010, issued by the Principal Secretary to Government, Public Works (E1) Department, submitted that the finding of the learned Judge as if no notice of deviation was given, is factually incorrect. He further submitted that on receipt of such notice, the Writ Petitioners have also given explanation and thus, the punishment imposed on them is just and proper and does not require any interference.

4.The learned counsel appearing for the first respondent/writ petitioners submitted that the deviation notice does not contain any reason as to why the Government wanted to deviate from the finding of the Enquiry Officer. Therefore, he submitted that the Writ Petitioners were reasonably prevented from making effective objection/representation as against the deviation notice.

5.Heard both sides.

6.It is seen that the Writ Petitioners in all these three cases as well as one more person were issued with similar set of charge memos alleging that they failed to verify whether the special repair works in the Primary Health Centers, carried out by the Building Division, Dindigul, had been executed as per the estimated quantity and specifications during the year 2005-2006 and that they failed to check whether the correct measurements had been recorded in ''M'' Books by their subordinates. It is seen that the Writ Petitioners and the other person have given their explanation to the charge memo and thereafter, an enquiry was conducted by appointing an Enquiry Officer. It is not in dispute that the Enquiry Officer filed a report stating that the charges levelled against the Writ Petitioners and the other person were not proved. However, the Government, through proceedings dated 12.08.2010, informed the Writ Petitioners that they want to hold all the charges as proved, which the Enquiry Officer held as not proved. Accordingly, the Government called upon the individual Writ Petitioners to give their further representation on the charges. The Annexure to the said notice



dated 12.08.2010 indicated the reasons for holding the charges as proved thereby disagreeing with the findings of the Enquiry Officer, as follows:-

''Reasons for holding the charges as proved disagreeing with the findings of the Inquiry Officer:-

Charge 1:-

The charge is based on the report of a team of Public Works Department Engineers. The explanation of the delinquent officer and the inquiry report are not acceptable. The charge is, therefore, held as proved.

Charge 2:-

For the same reasons stated in respect of charge 1, this charge is also held as proved.

Charge 3:-

Since the charges 1 and 2 have been held as proved, this charge is also held as proved.''

Based on the said reasonings, the Government wanted to differ.

7.We have given our careful consideration to the report submitted by the Enquiry Officer as well as the reasons given by the Government to differ with the findings of the Enquiry Officer. Except by saying that the charge is based on the report of a Team of Public Works Department Engineers, there is no other reason stated by the Government as to why they want to deviate from the findings of the Enquiry Officer or what are the facts and circumstances, which compelled the Government to deviate from that of the Enquiry Officer. Needless to say that framing the charges based on the report of the Public Works Department Engineers itself, cannot be the reason to deviate from the report of the Enquiry Officer, since only after framing those charges, the Enquiry Officer was appointed to enquire into the charges and to file a report. Therefore, the Government should state as to what are the reasons, which go contra to the findings rendered by the Enquiry Officer and ultimately, compel the Government to deviate from such report. In these cases, we find that no such reasoning is stated in the notice dated 12.08.2010. When the Government failed to give reasons for deviation, there is no point in saying that the delinquents have given their explanation and therefore, they are not prejudiced. Any amount of explanation given by the respective Writ Petitioners cannot be construed as an effective representation against the deviation notice containing no reasons. Moreover, it is stated in the representation given by the Writ Petitioners that they were not provided with copies of the report of a team of Executive Engineers. Even otherwise, as we find from the deviation notice that the same is not in order, that too without any reasons, we find that the punishment imposed based on such deviation, cannot be sustained. Apart from the above, it is also an admitted fact that the other co-delinquent, who was also issued with similar set of charges, approached this Court and became successful in his Writ Petition in W.P.(MD)No.597 of 2015, which was also confirmed in W.A.(MD)No.108 of 2017, dated 08.02.2017. Under such circumstances, we are of the view that the Writ Petitioners, against whom the same set of charges



framed, cannot be singled out to remit the matter back for fresh consideration. Therefore, we find that the order of the Writ Court in allowing the Writ Petitions, does not require interference. Accordingly, these Writ Appeals fail and the same are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

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

+1 CC to M/s.R.VELMURUGAN, Advocate (SR-72605[F] dated 02/07/2019)

+5 CC to M/s.S.M.ANANTHA MURUGAN, Advocate (SR-72644[F] dated 02/07/2019)

+1 CC to M/s.SPL GP (SR-72766[F] dated 02/07/2019)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-72837[F] dated 02/07/2019)

SMN2

COMMON JUDGMENT IN
W.A. (MD) Nos.1664 to 1666 of 2018
&
C.M.P. (MD) Nos.12238 to 12240 of 2018 &
2905 and 2906 of 2019
01.07.2019

KM/(10.07.2019) 5P 10C