



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
04.09.2019	18.09.2019

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CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) No.896 of 2019

Dr.S.Murugan (Died)
1.Ramalakshmi
2.Dr.Lalitha Murugan
3.Dr.Ramya

... Appellants/Legal heirs
of deceased petition

[Cause title accepted vide Court
order dated 26.08.2019 in C.M.P.
(MD) No.7502 of 2019 in W.A.(MD) SR
No.57044 of 2019]

-VS-

1.The Government of Tamilnadu
represented by Secretary
Animal Husbandry Department
Fort. St.George, Chennai

2.The Director of Animal Husbandry
DPH Campus, Teynampet
Annasalai, Chennai-6

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set
aside the order, dated 24.06.2019, passed in W.P.(MD) No.19237 of
2014, on the file of this Court.

Prayer in WP(MD) . 19237/ 2014 :

Petition filed under Article 226 of the Constitution of
India, praying for issuance of Writ of Certiorarified Mandamus
calling for the records of the 1st respondent in G.O.(D)NO.16 dated
27.1.2009 and quash the same and further direct the respondents
restore the regular promotions to which the petitioner entitle to
with the consequential financial benefits.



For Appellant : Mr.T.S.R.Venkataramana
For Respondents : Mr.A.K.Baskara Pandian
Special Government Pleader

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J U D G M E N T

T.S.SIVAGNANAM, J.,

The legal heirs of the writ petitioner are the appellants in this writ appeal. The writ petition was filed by Dr.S.Murugan, since deceased, praying for issuance of a writ of certiorarified mandamus to quash G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009 and to direct the respondents to restore the regular promotions to which the writ petitioner was entitled to along with the consequential financial benefits.

2. The facts leading to the filing of the writ petition are culled out as follows:

2.1. The writ petitioner, a graduate in Veterinary Science and qualified Veterinary Surgeon, joined the services of the Government on 17.06.1974 as Veterinary Assistant Surgeon and retired from service on 30.04.2007. The writ petitioner was implicated in a charge proceedings framed by the Commissioner for Disciplinary Proceedings, Tirunelveli, along with three others, on the allegation of irregularities committed in the purchase of 10% Siddha & Ayurvedic Medicines for Tirunelveli Region during 2001-2002, by proceedings dated 21.10.2003. The Commissioner for Disciplinary Proceedings, after a full-fledged enquiry, held the charge as not proved against the writ petitioner. The Government did not agree with the findings of the Commissioner for Disciplinary Proceedings and proposed to deviate from the findings alleging that the writ petitioner along with others failed to maintain absolute integrity and devotion to duty and conducted themselves in a manner unbecoming of a member of the service and violated Rule 20 of the Tamilnadu Government Servants Conduct Rules, 1973.

2.2. During March, 2002, the writ petitioner submitted a reply and denied the allegations. The reason assigned by the Government for deviating from the findings of the Commissioner for Disciplinary Proceedings is by stating that the Committee, which was constituted by the Government to go into the allegations, had found that all the officials, including the writ petitioner, are equally responsible for the irregularity, which occurred in the



purchase of medicines and hence, the Government does not agree with the findings of the Commissioner for Disciplinary Proceedings. The explanation given by the writ petitioner was noted and the Government by G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009, imposed the punishment of pension cut of Rs.50/- per month for a period of one year. In the said Government Order, it has been stated that when an opportunity was given to the writ petitioner on the provisional conclusion arrived at with regard to the punishment proposed, the writ petitioner expressed his willingness to undergo the punishment. Accordingly, the punishment proposed, vide proceedings dated 18.08.2008, was confirmed and G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009, was issued.

2.3. After receipt of the Government Order imposing punishment, the writ petitioner submitted a representation, on 18.07.2014, to the Secretary to Government, pointing out that there is no reason assigned by the Government to differ from the findings of the Commissioner for Disciplinary Proceedings, who had, after a full-fledged enquiry, held the charges not proved as against the writ petitioner. Further, it was stated that the writ petitioner was due for retirement on 30.04.2007 and a condition was imposed on him that unless and until he gives consent for the punishment being imposed, he would not be permitted to retire from service. Therefore, having been left with no other option, the writ petitioner had to give a letter agreeing for the punishment to be imposed. It was stated that the said letter cannot be put against the writ petitioner as it was not given with his full consent and it was obtained under threat and coercion. The writ petitioner challenged the order of punishment by filing the writ petition.

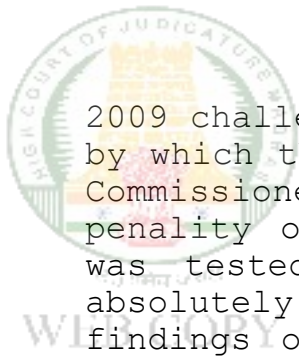
2.4. Apart from contending that the Government Order was vitiated on account of non-application of mind, it was contended that the writ petitioner is only a subordinate officer under the Joint Director; he had obeyed the orders of the Joint Director; he has not caused any loss to the Government and he has no power to draw a bill or any financial power to sanction purchase orders. The writ petitioner referred to an order passed by the learned Single Judge of this Court in W.P.No.2213 of 2009, filed by Dr.R.Sukumaran, who was also a co-delinquent along with the writ petitioner and the said writ petition was allowed, by order dated 21.10.2010 and the punishment was set aside. On these grounds, the writ petitioner sought for setting aside the order of punishment.



2.5. The writ petition was filed in November, 2014 and the same was pending. However, no counter affidavit was filed by the respondents. On 28.04.2017, the writ petitioner died and the appellants, who are the legal heirs of the deceased writ petitioner, filed a miscellaneous petition to substitute them in the place of the deceased writ petitioner. It appears that the petition to substitute the legal heirs was not tagged with the writ petition and when the main writ petition was heard finally on 24.06.2019, the learned Single Judge recorded the submission of the learned Government Advocate that the writ petitioner passed away and subsequently, the terminal and pensionary benefits due to the deceased employee, were settled in favour of his legal heirs and the wife of the deceased employee / second appellant is also receiving family pension. Therefore, the learned Single Judge opined that no further adjudication is required in respect of the grounds set out in the writ petition and accordingly, the writ petition was closed. Challenging the said order, the present writ appeal was filed by the legal heirs of the deceased writ petitioner. As the appellants were not brought on record in the place of the deceased writ petitioner, the appellants filed C.M.P.No.7502 of 2019 in this appeal, which was ordered on 26.08.2019 and their names were substituted in the place of the deceased writ petitioner and this is how the legal heirs of the deceased writ petitioner are shown as the appellants in this appeal.

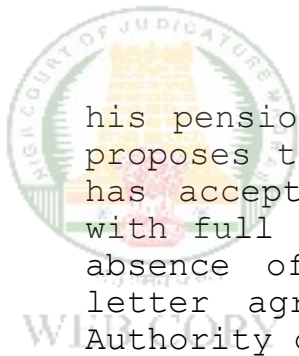
3. We have elaborately heard Mr.T.S.R.Venkataramana, learned counsel appearing for the appellants and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents and with consent on either side, the appeal is taken up for final disposal.

4. In our considered view, the correctness of the impugned Government Order in G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009, was required to be adjudicated, regardless the fact that the pensionary benefits were settled as the deceased writ petitioner had challenged the correctness of the punishment imposed on him. The payment of retirement benefits to the deceased employee and the payment of family pension to his spouse will in noway make the challenge to the impugned Government Order as infructuous. Having come to such a conclusion, we now straightaway proceed to consider the correctness of G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009. We need not labour much to consider the correctness of the said Government Order, since one of the co-delinquent Dr.R.Sukumaran filed a writ petition in W.P.No.2213 of



2009 challenging the proceedings of the Government dated 27.05.2005, by which the Government proposed to differ from the findings of the Commissioner for Disciplinary Proceedings and proposed to impose penalty on Dr.R.Sukumaran. The correctness of the said proposal was tested by the Writ Court and it was found that there is absolutely no reason relied on by the Government to differ from the findings of the Commissioner for Disciplinary Proceedings and the show-cause notice issued to Dr.R.Sukumaran did not record any tentative reason for disagreement. After referring to the decision of the Honourable Supreme Court, more particularly, the decision in **Lav Nigam v. Chairman and MD, ITI Limited and another**, reported in **2006 (9) SCC 440** as well as the decision in the case of **P.V.Mahadevan v. MD.Tamil Nadu Housing Board**, reported in **2005 (6) SCC 636**, the Writ Court allowed the writ petition and quashed the show-cause notice issued by the Government proposing to differ from the findings of the Commissioner for Disciplinary Proceedings. The said order is stated to have attained finality as the Government did not file any appeal against the said order. The reasons assigned by the Writ Court would fully apply to the case of the present writ petitioner as well.

5. We have carefully perused the impugned Government Order in G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009 and we find that there is absolutely no reason assigned by the Government for differing from the view of the Commissioner for Disciplinary Proceedings. The elementary principle in service jurisprudence is that when the Disciplinary Authority differs with the view taken by the Enquiry Officer, he is bound to give a notice setting out his tentative conclusion to the delinquent employee and only after hearing the delinquent employee, the Disciplinary Authority can arrive at a final finding of guilt. The final finding of the guilt should be a reasoned order showing clear application of mind. If we peruse the impugned Government Order, the discussion is supposedly in Paragraph No.4 and there is absolutely no reason assigned by the Government as to why the findings of the Commissioner for Disciplinary Proceedings are erroneous and as to why the Government was satisfied that it proposes to differ with the findings of the Enquiry Officer and as to how the explanation offered by the writ petitioner was not tenable. In the absence of adherence to these basic principles, the only conclusion that can be arrived at is to hold that the impugned Government Order in G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009, is unsustainable in law. In Paragraph No.4 of the impugned Government Order, it has been stated that the writ petitioner expressed his willingness for the punishment to be imposed. The writ petitioner, at the earliest point of time, submitted a representation stating that the letter given by him agreeing for the punishment to be imposed was not on his own volition, but, due to coercion by stating that unless the same is given, he will not be permitted to retire from service and



his pensionary benefits will not be sanctioned. If the Government proposes to hold a person guilty on the ground that the delinquent has accepted the guilt, the acceptance should be unequivocal and with full consent and knowledge of the delinquent employee. In the absence of these basic requirements, even assuming there was a letter agreeing for punishment to be imposed, the Disciplinary Authority cannot act on such a letter.

6. Let us take a case like that of the writ petitioner, who on the verge of retirement was not permitted to retire and charge proceedings were initiated during 2003. The enquiry was referred to the Commissioner for Disciplinary Proceedings, who rendered his findings on 26.03.2004. After four long years, the Government issued a notice on 18.06.2008 proposing to differ from the findings of the Commissioner for Disciplinary Proceedings. As mentioned earlier, the show-cause notice does not assign any reason as to why the conclusion arrived at by the Commissioner for Disciplinary Proceedings is not agreeable to the Government. Ultimately, a provisional punishment was arrived at and communicated to the writ petitioner on 18.08.2008. Considering the state of mind the writ petitioner would have been, he was pushed to submit a letter agreeing to the punishment of pension cut of Rs.50/- per month for a period of one year. Thus, considering the chain of events, we are of the clear view that the letter obtained from the writ petitioner was not voluntary, but under the extenuating circumstances and could not have been the basis for imposition of the punishment.

7. One more flaw in the impugned Government Order is that the Government had held that the charges are proved. We find there is absolutely no independent reason assigned by the Government as to why the charges are proved. Reasons are required to be furnished in the instant case, because the Commissioner for Disciplinary Proceedings held the charges are not proved, after examination of the witnesses and perusal of the documents. Thus, the Government should have adequate material to justify its action in differing with the findings of the Commissioner for Disciplinary Proceedings. In the absence of the same, it has to be held that the conclusion of the Government that the charges were proved is wholly erroneous and perverse.

8. Mr.T.S.R.Venkataramana, learned counsel appearing for the appellants, referred to the decision of the Division Bench of the High Court of Delhi at New Delhi in **S.K.Mathur vs. The President Secretariat**, dated 03.03.2014 in W.P.(C) No.8417 of 2011. This decision has been relied on to support his argument that there is no limitation for seeking proper pay fixation of an employee. As according to the learned counsel for the appellant, the impugned Government Order has to be set aside and consequently, all benefits i.e. service and financial benefits should flow to the deceased writ petitioner. In the preceding paragraphs, we have held that the



impugned Government Order is wholly erroneous and once the impugned Government is quashed, it goes without saying that there is no allegation against the deceased writ petitioner and he should be reckoned as a regularly retired Government employee and should be extended all service, financial and pensionary benefits.

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9. For all the above reasons, the writ appeal is allowed and the order, dated 24.06.2019, passed in W.P.(MD) No.19237 of 2014, is set aside and G.O.(D) No.16, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 27.01.2009, is quashed. The respondents are directed to notionally extend the appropriate service benefits to the deceased writ petitioner, which would have been extended to him if he had not been involved in the charge proceedings. After extending such benefits notionally, the corresponding financial benefits should be computed and paid to the second appellant Dr.Lalitha Murugan, spouse of the deceased writ petitioner, who shall receive the same for and on behalf of all the legal heirs of the deceased writ petitioner. Consequently, the family pension shall be recomputed based on the revised retirement benefits that would become payable to the deceased writ petitioner pursuant to this Judgment and paid to the second appellant Mrs.Lalitha Murugan. The above directions be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary,
Government of Tamilnadu,
Animal Husbandry Department,
Fort. St.George, Chennai.

2.The Director of Animal Husbandry,
DPH Campus, Teynampet,
Annasalai, Chennai-6.

+1 CC to Mr.T.S.R. VENKAT RAMANA, Advocate (SR-87375[F] dated 18/09/2019)

JUDGMENT IN
W.A. (MD) No.896 of 2019
18.09.2019

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MK (27.09.2019) 7P 4C

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