

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 1639 of 2013

A. Soundarapandian

..Petitioner

Vs

1. Government of Tamil Nadu
rep. by Secretary to Government
Finance (T&A) Department,
Secretariat, Chennai -600009.

2.The Commissioner of Treasuries & Accounts,
Chennai - 600015

3.The Director of School Education,
Chennai - 600006.

4. The Treasury Officer,
District Treasury,
Villupuram.

5.The Chief Education Officer,
Tiruvannamalai District.

6.The Head Master,
Government Higher Secondary School,
Vedanatham, Tiruvannamalai District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent relating to the order in G.O. Ms. No. 286, Finance (T & A.1) Department, dated 27.07.2012 (communicate on 07.12.2012) and quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.J.Ramesh,AGP

O R D E R

The prayer sought for in the Writ Petition is to call for the records of the first respondent relating to the order in G.O. Ms. No. 286, Finance (T & A.1) Department, dated 27.07.2012 and quash the same.

2. Brief facts of the case:

The writ petitioner was initially appointed as Junior Assistant in Villupuram District Treasury Unit through TNPSC on 15.09.1997 and he served till 31.05.2001. Subsequently, he was recruited as B.T Assistant through Teachers Recruitment Board and he joined in the said post on 15.11.2000 after resigning his earlier post, which was accepted by his Department vide proceedings in Pro.Na.Ka.No. 16845/2000/AA1, dated 14.11.2000. After lapse of two years, the 1st respondent had initiated disciplinary proceedings against petitioner under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules and issued Charge Memo in Govt. Lr.No. 76577/T&A.1/2001-12, Finance (T & A.1) Department dated 18.10.2002 in respect of certain alleged lapses on his part while he was serving as Junior Assistant in Villupuram District Treasury from 15.09.1997 to 31.05.2000. The said proceedings were ended in imposing punishment of the stoppage of increment for two years with cumulative effect. Challenging the same, the present writ petition is filed.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the documents available on record.

4. According to the petitioner, the writ petitioner had resigned his earlier post in Treasury Department, Villupuram on 14.11.2000 and the said resignation was accepted by the respondent and thereafter he joined in other department. Charges were framed against the petitioner in the year 2002 by the 1st respondent i.e after a lapse of two years, which is clearly without any jurisdiction.

5. The learned counsel further submitted that the charges were framed against the petitioner for the alleged lapses on the part of the petitioner while he was serving in his earlier department between 15.09.1997 and 31.05.2000. The department initiated proceedings on 18.10.2002 and concluded enquiry on 28.07.2005. The petitioner has submitted his further representation dated 15.10.2005, the 1st respondent had passed impugned order dated 27.07.2012 after seven years. Over all, there is a delay of 13 years in passing final orders.

6. It is further submitted by the learned counsel for the petitioner no materials were placed against the petitioner to

prove the loss occurred to the Government as alleged by the respondent. Therefore, the impugned order passed by the 1st respondent is contrary and illegal and the same is liable to be quashed.

7. Per contra, the learned Additional Government Pleader has submitted that due to the lapses in the official work of writ petitioner while discharging his duty as Tapal Clerk, loss of Rs.6,81,267/- caused to the Government Exchequer, hence action has been taken under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The 1st respondent framed charges against the writ petitioner and 7 others for the irregularities committed by them. Based on the enquiry report, the respondent has imposed punishment of recovery for the loss sustained to the Government on the aforesaid eight delinquent officers. Challenging the said order one Munirathnam filed W.P.No. 24833 of 2013 and one Kalyani also filed writ petition before this Court. Since the delinquents namely G.Sugumaran and C. Vasantha died, the proceedings against them were abated. Insofar as other persons are concerned, recovery order was given effect.

8. The learned Additional Government Pleader further submitted that in view of the proven charges, the disciplinary authority comes to the conclusion that the petitioner herein is also collectively responsible for loss of Government money to the tune of Rs.6,81,267/-. Therefore, the impugned order of punishment is not illegal.

9. On perusal of records, in the enquiry report, the enquiry officer while holding charges proved, had observed that the petitioner had not committed the lapses with dishonest motive may be his personal feeling which need not be considered carefully. Subsequent to the report of the enquiry officer, the disciplinary authority with the consent of the Tamil Nadu Public Service Commission, had passed the impugned order for stoppage of increment for two years with cumulative effect and recovery of sum of Rs.68,127 (10% of total loss of Rs.6,81,267/-) from the petitioner.

10. It is seen that the petitioner served in the 4rd respondent department between 15.09.1997 and 31.05.2001 and he had submitted his resignation to the 4th respondent and joined in the Education Department/6th respondent School w.e.f. 15.11.2000 vide proceedings in Na.Ka. No. 16845/2000/AA1, dated 14.11.2000. Therefore, it is clear that the 4th respondent had accepted the resignation of the petitioner and allowed him to join in the 6th respondent school, as there were no disciplinary proceeding pending against the petitioner at that relevant point of time. Hence the first contention of the petitioner is accepted and sustainable.

11. Further, the Charge memo was served to the petitioner on 18.10.2002 and the enquiry was concluded on 28.07.2005. Thereafter, final orders came to be passed by the 1st respondent by means of punishment on 27.07.2012 after a period of more than 10 years.

12. The order passed by this Court challenging the aforesaid order of punishment filed by a similarly placed person namely L.Munirathnam in W.P. No.24833 of 2012 is placed before this Court, wherein, this Court by order dated 10.07.2017, by relying upon the Judgment of the Hon'ble Supreme Court reported in (2005) 6 SCC 636 in the case of P.V.Mahadevan Vs. The Managing Director, Tamil Nadu Housing Board quashed the impugned order dated 27.07.2012 on the ground that the disciplinary action, which was initiated and completed with an inordinate delay of 13 years cannot be countenanced both in law and on facts and further observed that the petitioner therein is entitled to all consequential benefits. The relevant portion of the order of this Court is extracted below;

"7. Upon consideration of the pleadings and the records and also the submissions of the counsels appearing for the parties, this Court is of the view that the disciplinary action, which was initiated and completed with an inordinate delay of 13 years cannot be countenanced both in law and on facts and therefore, the same is liable to be quashed. Even otherwise, the evidence which forms basis of the finding against the petitioner is too feeble and weak in order to sustain the charges against the petitioner.

8. In such view of the matter, both on ground of delay and also on merits, the charges framed and the subsequent disciplinary action which culminated in the impugned order dated 27.07.2012 are hereby quashed and the writ petition stands allowed. It is made clear that the petitioner is entitled to all consequential benefits. No costs. Consequently, connected Miscellaneous Petition is closed."

13. Since the issue involved in the present case is covered by the aforesaid decision of this Court on the ground of inordinate delay and laches, this Court with no hesitation, followed the aforesaid order in the present case and accordingly, quashed the impugned order passed by the 1st respondent dated 27.07.2012.

14. In the result, the writ petition is allowed. It is made clear that the petitioner is entitled to all consequential benefits. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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Finance (T&A) Department,
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+1cc to the Government Pleader, Sr.No. No.4341 of 2020.

W.P.No. 1639 of 2013

SR(CO)
vsi-2(26/05/2020)

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