

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.19123 OF 2010

K.Jeevanandam

... Petitioner

vs.

1. The Secretary to Government,
Finance (Local Fund) Department,
Fort St. George, Chennai - 9.

2. The Director of Local Fund Audit,
IV Floor, 'Kuralagam',
Chennai - 108.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records of the 1st Respondent in connection with the impugned order passed by him in GO (2D) No.24, Finance (Local Fund) Department dated 17.03.2008, and quash the same.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel for Mr.M.Muthappan

For Respondents : Mr.K.Magesh,
Special Government Pleader

O R D E R

Petitioner has come up with this Writ Petition seeking to quash the impugned order dated 17.03.2008 passed by the 1st Respondent in G.O. (2D) No.24, Finance (Local Fund) Department, dated 17.03.2008.

2. According to the Petitioner, it is not correct on the part of the Respondents to deprive consideration of his case for promotion, even after the punishment period is over.

3. Today, when the matter is taken up for hearing, it is represented by the learned Special Government Pleader appearing for the Respondents that, the issue is covered by an order dated 16.04.2008 passed by this Court in W.P.No.10648 of 2008, whereby, punishment imposed on similarly placed persons, was set

aside. Relevant portion of the said order reads as under:

"9. Pursuant to the order passed by this Court, the impugned order was passed on 17.03.2008 with a total delay of about 12 years in initiating the disciplinary proceedings. As contended by the learned senior counsel for the petitioner, absolutely, no reason has been assigned in the impugned order for the said delay. A reading of the impugned order would show that it was passed in a casual and mechanical manner with non-application of mind. Now, the petitioner is at the verge of retirement. Had the order been passed immediately after submitting the enquiry report, the petitioner would have got this chance of promotion even if there was any minor punishment subsequently. Now, at this juncture, if the impugned order is implemented, it would cause great prejudice to the petitioner.

14. Taking into consideration the facts and circumstances of the case and the principles laid down in the above decisions, I am of the opinion that when there was an inordinate delay of more than 11 years in finalizing the disciplinary proceedings against the petitioner and the same was not convincingly explained by the respondents and having regard to the fact that petitioner was seriously prejudiced and he is at the verge of retirement, the impugned order is liable to be quashed. Moreover, on the merits also, I find that the punishment of stoppage of increment for a period of one year without cumulative effect imposed to the petitioner was only for the reason that there was a failure on the part of the subordinates of the petitioner to detect the delay caused by the Panchayat Union staff in remitting the amount to the bank, which, in my view, is not legally sustainable and on that ground also, the impugned order is liable to be set aside.

For the reasons stated above, the Writ petition is allowed and the impugned order passed by the 1st respondent is set aside."

4. Learned Special Government Pleader further drew the attention of this Court to the judgment dated 03.10.2016 rendered by this Court in W.A.(MD) No.1320 of 2016, wherein, similar issue was dealt with. For better appreciation, relevant portion of the said judgment is extracted hereunder:

"The impugned order of the learned Single Judge dated 1.4.2013 is predicated on an unexplained inordinate delay in the departmental proceedings. In paragraph (9) of the impugned order, it has been noticed that the impugned order before the learned Single Judge was passed on 17.3.2008 with a total delay of about 12 years in initiating the disciplinary proceedings. After referring to different judicial pronouncements on the issue of fair-play for a public servant and the requirement of completion of departmental proceedings within a reasonable period of time, it was noticed that enquiry having been completed as early as 23.12.2002, the respondent was furnished with a copy of the report of the Enquiry Officer after three years. The impugned order was, in fact, passed after the respondent approached the Court seeking promotion.

2. We find, thus, no infirmity on the application of the legal principles in the given facts and circumstances of the case, as it suffers from gross and unexplained delay in the departmental proceedings.

The appeal is dismissed accordingly. ..."

5. In the light of the said decisions, the impugned order dated 17.03.2008 passed by the 1st Respondent herein is set aside and this Court holds that, the case of the Petitioner herein shall also be considered on par with similarly placed persons, as and when he comes within the zone of consideration for promotion, i.e. after his punishment period is over, and all the benefits shall be extended to the Petitioner within a period of three months from the date of receipt of a copy of this order.

The Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

aeb/jas)

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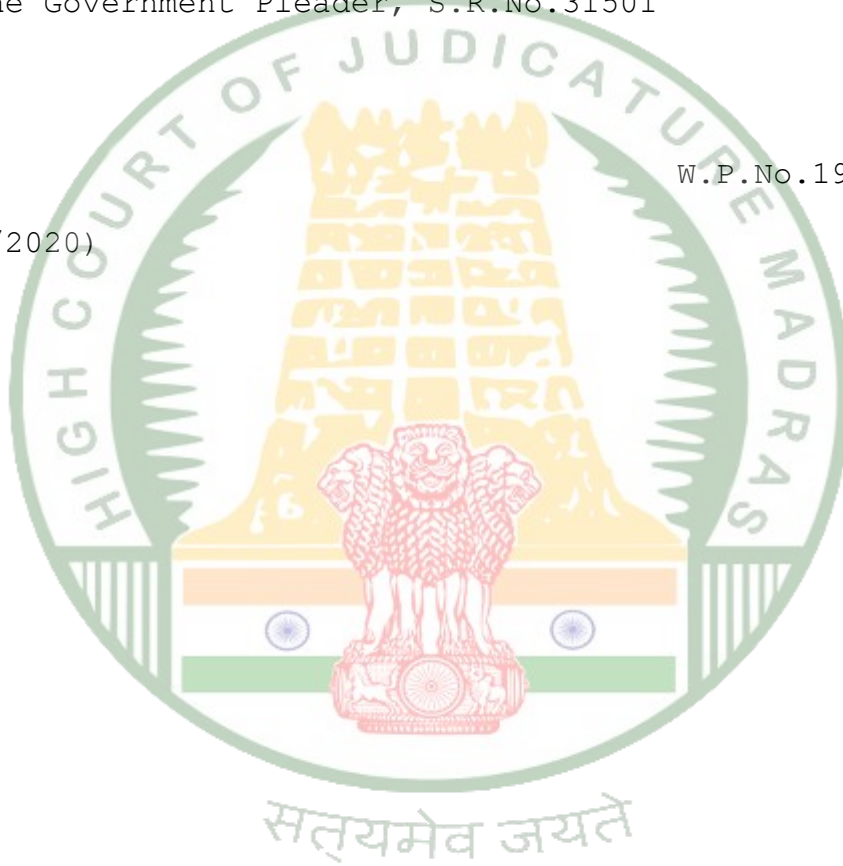
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+1cc to Mr. M.Muthappan, Advocate, S.R.No.31449

+1cc to the Government Pleader, S.R.No.31501

VG II(CO)
NRA(10/12/2020)

W.P.No.19123 of 2010



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