

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23178 of 2014

And

M.P.No.1 of 2014

T.Ganesan

... Petitioner

Vs.

1.The Government of Tamil Nadu
Represented by its Agricultural Production Commissioner
and Secretary to Government
Agriculture (AA-2) Department
Fort St.George,
Chennai - 9.

2.The Commissioner of Agriculture
Chepauk,
Chennai - 5.

3.The Commissioner
Tribunal for Disciplinary Proceedings
Nagercoil.

4.The Accountant General (A&E)
Tamil Nadu Circle
261, Anna Salai, Teynampet,
Chennai - 600 018.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus by calling for the records relating to the first respondent herein in G.O.(3D) No.159 dated 18.07.2014 and quash the same and consequently direct the first and second respondents herein to confer the promotion post of Agriculture Officer on par with the petitioner's juniors and confer all the attendant and consequential benefits with due regards to petitioner seniority including refixation of pay scales and release of all the retirement benefits with interest.

For Petitioner : Mr.R.S.Anandan

For Respondents : Mr.A.N.Thambi Durai for R1 to R3
Special Government Pleader
Mr.S.Balaji for R4

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus by calling for the records relating to the first respondent in G.O.(3D) No.159 dated 18.07.2014 and to quash the same and to consequently direct the first and second respondents to confer the promotion post of Agriculture Officer on par with the petitioner's juniors and to confer all the attendant and consequential benefits with due regards to petitioner seniority including refixation of pay scales and release of all the retirement benefits with interest.

2.The case of the petitioner is that the petitioner joined the services as Field Man through Employment Exchange in the Tamil Nadu State Farm Corporation, Neyveli, in the year 1979. The said Corporation was closed on 31.08.1982. Thereafter, the petitioner joined as Assistant Agricultural Officer on 25.10.1982 and he was conferred with selection grade on 25.10.1992.

3.It is the further case of the petitioner that he was issued with charge memo dated 28.08.2001 alleging that during 1993-94, the petitioner along with nine other Officials have committed grave official irregularities and malpractices in the distribution of tarpaulins, 5 power sprayers, 22 hand sprayers and one foot sprayer (32 instances) to the small/ marginal farmers identified by the Agricultural Department under subsidy scheme from the Agricultural Extension Centre, Parakkai, created fictitious application forms and prepared bogus records and recommended them with a view to misappropriate subsidy amount by misusing official position have caused wrongful financial loss of Rs.24,175/- to the Government.

4.It is the further case of the petitioner that thereafter enquiry was conducted. According to the petitioner though enquiry was completed in the year 2002, the final order in the disciplinary proceedings was not passed till his retirement from service on 31.05.2012, due to which, he was denied special grade and promotion to the post of Deputy Agriculture Officer and Agriculture Officer. Thereafter, the impugned order dated 18.07.2014 came to be passed. Hence, this writ petition.

5.The learned counsel appearing for the petitioner would submit that a bare perusal of the findings rendered by the Tribunal would disclose that the Tribunal has arrived at a conclusion that A6 (petitioner) and A9 are responsible for causing loss of Rs.920/- to the Government. Hence, the petitioner is responsible only for a sum of Rs.460/-, however, the impugned order has been passed ordering recovery of a sum of Rs.500/- per month for a period of two years from the petitioner's pension and a sum of Rs.4,029.16/- from the petitioner's death cum retirement gratuity. Hence, the impugned order is un-sustainable one.

6.Per contra, the learned Special Government Pleader would submit that disciplinary proceedings were initiated before the Tribunal for Disciplinary Proceedings, Nagercoil and charge memo was issued to the petitioner. Thereafter, the enquiry report and finding of the Tribunal were furnished to the petitioner and the petitioner submitted his further explanation to the first respondent on 25.06.2005. The petitioner was permitted to retire from service with effect from 31.05.2012 AN without prejudice to the disciplinary proceedings pending against him.

7.The learned Special Government Pleader would further submit that the impugned order was passed following all the procedures contemplated under the provision of law and based on the proceedings of various Authorities and hence, the same does not warrant any interference.

8.Heard the arguments advanced on either side and perused the materials available on record.

9.It has been the consistent view of the Courts that it is always within the domain of the Appointing Authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the Courts interfere in the same, in exercise of powers under Article 226 of the Constitution of India. The Hon'ble Supreme Court in its decision reported in 2015 (16) SCC 415 (Prem Nath Bali - Vs - High Court of Delhi), has held as under:-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record

of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

10. In the present case, the petitioner was issued with charge memo dated 28.08.2001 alleging that during 1993-94, the petitioner along with nine other Officials have committed grave official irregularities and malpractices in the distribution of tarpaulins, 5 power sprayers, 22 hand sprayers and one foot sprayer (32 instances) to the small/ marginal farmers identified by the Agricultural Department under subsidy scheme from the Agricultural Extension Centre, Parakkai, created fictitious application forms and prepared bogus records and recommended them with a view to misappropriate subsidy amount by misusing official position have caused wrongful financial loss of Rs.24,175/- to the Government.

11. Perusal of records disclose that the impugned order was passed following all the procedures contemplated under the provision of law and based on the proceedings of various Authorities. Considering the nature of delinquency, the punishment imposed on the petitioner, in the opinion of this Court is just and reasonable. Therefore, the punishment imposed on the petitioner is in no way shocking the conscience of this Court or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

12.Unless the impugned order is set aside, the consequential prayer regarding direction to the respondents 1 and 2 to confer the promotion post of Agriculture Officer on par with the petitioner's juniors and to confer all the attendant and consequential benefits with due regards to petitioner's seniority including refixation of pay scales and release of all the retirement benefits with interest cannot be granted as per G.O.Ms.No.68, P & AR Department, dated 23.01.1986.

13.Accordingly, this Court is not inclined to interfere with the impugned order and hence, the consequential prayer also cannot be granted. The writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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and Secretary to Government
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+1cc to Mr.S.Balaji, Advocate Sr.42966
+1cc to the Government Pleader Sr.43030

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