



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.6525 of 2011

R. Duraisamy

.. Petitioner

vs.

1.The Joint Director (Employment),
Employment and Training,
Guindy,
Chennai - 32

2.The Commissioner (Employment)
Employment and Training,
Guindy,
Chennai - 32

3.The Regional Deputy Director (Employment),
Office of the Regional Deputy Director,
Trichy.

.. Respondents

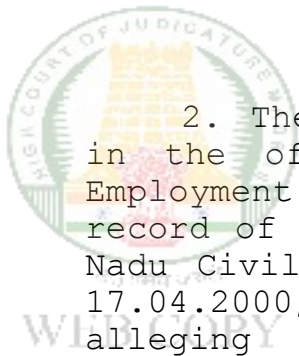
PRAYER:- This Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings No.ONa.1/21423/09, dated 19.02.2010 passed by the 1st respondent and quash the same and consequently, direct the respondents to treat the period from the date of suspension to retirement as duty period and to pay all consequential service and monetary benefits to the petitioner.

For petitioner : Mr. M. Gnana Gurunathan

For respondents : Mr. R. Velmurugan
Government Advocate

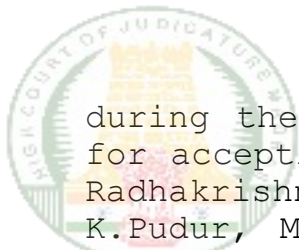
ORDER

This Writ Petition has been filed to quash the impugned proceedings No.ONa.1/21423/09, dated 19.02.2010 passed by the 1st respondent and consequently, direct the respondents to treat the period from the date of suspension to retirement as duty period and to pay all consequential service and monetary benefits to the petitioner.



2. The petitioner was initially appointed as Office Assistant in the office of the 3rd respondent on 23.06.1984 at District Employment Office, Tuticorin. After about 16 years of unblemished record of service, he was placed under suspension under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, by order dated 17.04.2000, on the basis registration of a criminal complaint alleging that the petitioner has received a sum of Rs.40,000/- under the guise of securing a job to one Tmt. Saroja @ Saraswathy and cheated the complainant therein. On 29.08.2006, the third respondent issued a charge memo alleging two charges, for which the petitioner has given his explanation on 22.09.2006. Not satisfying with the said explanation, an Enquiry Officer was appointed. After enquiry, the Enquiry Officer has reported that the charges are not proved against him. After the receipt of further explanation of the petitioner, the disciplinary authority/third respondent by proceedings dated 14.05.2009 has dismissed the petitioner from service holding that the charges are proved. Aggrieved by the same, the petitioner has filed an appeal before the second respondent on 16.06.2009. As it was pending without any progress, the petitioner had filed a writ petition in W.P.(MD). No.10865 of 2009 before this Court for a direction to the second respondent to dispose of the appeal within a stipulated time. This Court, by order dated 28.10.2009, directed the second respondent to dispose of the appeal within a period of four weeks. The second respondent, by an impugned order dated 19.02.2010, disposed of the appeal, whereby the second respondent modified the order of dismissal into a compulsory retirement and declared the suspension period as non duty period. Aggrieved by the same, the petitioner has filed this writ petition.

3.0. It is stated in the counter affidavit filed by the third respondent that the petitioner herein was initially appointed as Office Assistant in the Office of the third respondent on 23.06.1984. He was transferred to the District Employment Office, Madurai (TP) and joined in that office on 20.01.1992 F.N and subsequently, transferred to the Regional Deputy Director (Employment), Trichy and joined there on 06.02.1992. Vide proceedings dated 14.10.1992, the petitioner was inflicted with censure for the lapses in his duty by the third respondent. However, he has suppressed the above fact and stated that he has served without any blemish. As per the instruction of the first respondent, the petitioner was placed under suspension on 17.04.2000 on the basis of some grave charges in relation to allegedly accepting bribe and cheating a sum of Rs.40,000/- for securing job to one Tmt.Saroja @ Saraswathy. The petitioner has been sanctioned subsistence allowance under Rule FR 53(1) at the rate of 50% upto 16.10.2000. Subsequently, the rate of subsistence allowance has been raised from 50% to 75%, vide Joint Director (Employment), Chennai in D.O.Lr.No.Onal/1986/98, dated 11.12.2000. As per G.O.(D). No.Ms.No.373, Labour and Employment/P2/Dept., dated 03.05.2002, the suspension was extended until further orders. The petitioner



during the suspension period involved in yet another criminal case for accepting bribe and cheating a sum of Rs.40,000/- from one K. Radhakrishnan, residing at Door No.110, Alagar Koil Main Road, K.Pudur, Madurai for getting a job to his wife one Malliga, in a Government Department. The said Radhakrishnan filed a complaint against the petitioner at Madurai City Crime Branch Police Station in Crime No.50/1998 on 20.06.1998 under Section 420 IPC and subsequently, the said K. Radhakrishnan has filed a civil suit vide Case No.249/1999 for recovery of the same and got an *ex parte* decree against the petitioner.

3.1. After getting complaint, the petitioner was called for enquiry as he has violated Tamil Nadu Civil Service (Discipline and Appeal) Rules and 17(b) charges were framed against him and he was called for to submit his explanation vide the Charge memo No.A4/660/2006 dated 28.08.2006. He submitted his explanation for the said charge memo on 12.05.2009, after a lapse of three years. The Enquiry Officer had conducted an enquiry vide DET. Proc. No. Onal/1986/98, dated 24.11.2006 and the said complainant / Radhakrishnan did not appear before the said authority as a witness to depose before him and hence, the Enquiry Officer has held charges against the petitioner are not proved.

3.2. The third respondent / disciplinary authority passed the final order stating that as per the Judgment passed by the District Munsif Cum Judicial Magistrate, Madurai dated 11.10.2010, the petitioner has violated CCA Rule 20(1) and therefore, he has held that the charges levelled against the petitioner were proved. He has ordered to remove the petitioner from the Government Service vide his proceedings No. A4/660/06 dated 14.05.2009. The petitioner was also informed that he can prefer an appeal if he wants before the Joint Director (Employment), Chennai, within a period of two months. After filing appeal, the petitioner also filed a Writ Petition in WP (MD)No. 10865 of 2009 before this Court seeking a direction to the Regional Deputy Director (Employment), Trichy to consider his appeal and the same was disposed of by order dated 28.10.2009 directing the concerned authority to dispose his appeal within a period of four weeks from the date of receipt of a copy of the order. The Joint Director (Employment) passed an order in his Proc.No. Onal/21423/09, dated 19.02.2010, duly modifying the orders issued by the third respondent herein vide Proc.No. A4/660/2006, dated 14.05.2009 i.e., removal from Government Service into compulsory retirement and also ordered that the petitioner is eligible to draw full compensatory pension and gratuity as per Rule 39 of the Tamil Nadu Pension Rules. The period of suspension was not treated as duty period. After his compulsory retirement, eligible pensionary benefits were claimed and disbursed. He has been given maximum benefits from 17.04.2000 without delay. The action of the authorities are bona fide and well within the ambit of law. Hence, the writ petition may be rejected as devoid of



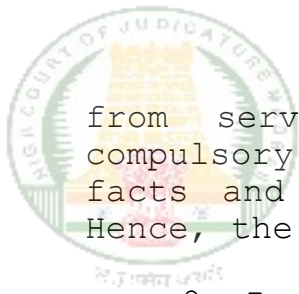
4. Heard the learned counsel for both sides and perused the records carefully.

4 (A). The charges against the petitioner were held as proved. Further, he has cheated two persons. Such kind of act of a Government has to be dealt seriously.

5. The contention of the petitioner is that he was transferred from Madurai to Trichy and it caused difficulty for him to run the family and lead day to day life and due to financial crisis, he was forced to get loan from the said Radhakrishnan, but, he could not repay the same. He had taken loan only for his children education and treatment. The contention of the petitioner cannot be accepted, because transfer is an incidental one in the service. As per CCA Rule No.6, it is clear that Government servant should not borrow any loan from any private parties without any permission. If any property/loan has been obtained exceeding a value of Rs.5,000/-, the same should be intimated to the proper authority and prior permission should be obtained. As the petitioner had failed to obtain prior permission in this case and violated CCA Rule 20(1), the contention made by the learned counsel appearing for the petitioner deserves no merits.

6. It is the next point for consideration of the petitioner is that the period of suspension ought to have been treated as service period and the same has to be taken into account for compulsory retirement and consequential benefits ought to have been granted by the respondents. It is seen from the record that the petitioner's case was proved from the contradictory Statement given by himself. However, taking into consideration of the grounds of financial crises raised by the petitioner, the first respondent has modified the punishment of dismissal from service into a compulsory retirement. This Court does not find any reason to interfere with such modification made by the first respondent. The first respondent has rightly held that as per Rule 39, the petitioner is entitled to get full compensation pension and gratuity. The first respondent has held that as per Sub Rules 4 and 5 of Rule 54, the suspension period ie., from 17.04.2000 to 19.02.2010 is to be treated as non duty period. According to the petitioner, the suspension period should be treated as duty period and consequential benefits may be given to him. The petitioner was paid 75% of salary as subsistence allowance during the suspension period. The petitioner has filed an additional affidavit stating that he is ready to forego 25% of salary to be payable to him in the event of treating the period of suspension as duty period and this Court may take into consideration of the said undertaking and pass orders to treat the said suspension period as duty period.

7. This Court is not inclined to accept the above submission of the respondents in view of the fact that the punishment of dismissal



from service has been already considered and modified into compulsory retirement by showing some leniency on considering the facts and circumstances of the case by the appellate authority. Hence, the prayer of the petitioner cannot be considered.

8. In view of the above facts, this Writ Petition is dismissed.
No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

To

1.The Joint Director (Employment),
Employment and Training,
Guindy,
Chennai - 32

2.The Commissioner (Employment)
Employment and Training,
Guindy,
Chennai - 32

3.The Regional Deputy Director (Employment),
Office of the Regional Deputy Director,
Trichy.

+1 CC to M/s.SPL.GP (SR-12006[F] dated 17/03/2020)

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-12143[F]
dated 17/03/2020)

W.P(MD)No.6525 of 2011

16.03.2020

NR (22.06.2020) 5P 6C