



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 06.10.2020**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

**W.P. (MD)No.17195 of 2014**

**and**

**M.P (MD)No.1 of 2014**

WEB COPY

P.Nagarajan

... Petitioner

Vs.

The Secretary to Government,  
Public Works (E2) Department,  
Government of Tamil Nadu,  
Fort. St.George,  
Chennai - 9.

... Respondent

**PRAYER:** Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 23.09.2014 vide G.O.(D)No.271 Public Works (E2) Department, passed by the respondent and quash the same.

For Petitioner : Mr.S.Anwar Sameem  
For Respondent : Mr.G.Arjunan  
Govt.Advocate

**ORDER**

The order imposing penalty of recovery of pension issued by the respondent in G.O.(D)No.271 Public Works (E2) Department, dated 23.09.2014, is sought to be scrapped in the present writ petition.

2. The writ petitioner was appointed as an Assistant Engineer in the Public Works Department and rose upto the level of Executive Engineer and retired from service on 31.05.2007. The departmental disciplinary proceedings were initiated and charge memo was issued by the respondent in proceedings, dated 11.01.2008. The charges against the writ petitioner reads as under:-

1. Thiru P.Nagarajan, Executive Engineer formerly Executive Engineer, Fishing Harbour Project Division, Thanjavur has failed to supervise and speed up the action of the Junior Engineer, Marakkanam in in execution of civil works viz., construction of houses under Fishermen free Housing Scheme in Marakkanam Section even after the basic formalities such as execution of agreement with the contractor and handing over of sites etc., were over.



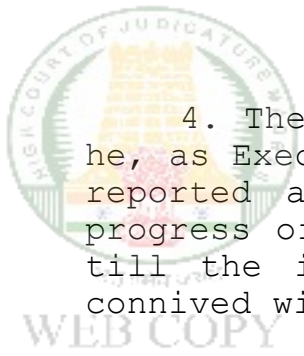
2. Thiru P.Nagarajan, Executive Engineer formerly Executive Engineer, Fishing Harbour Project Division, Thanjavur has failed to correct the false figures submitted by Thiru S.Ravindran, Junior Engineer (under suspension) formerly Junior Engineer Marakkanam regarding the execution and construction of houses under Fishermen Free Housing Scheme in Kalpanikuppam, Koonimedukuppam, Ropappanur, Pommiyarpalayam and Komuttichavadi Villages in Villupuram District and Chengam and Keelkodungalur Villages in Thiruvannamalai District.

3. Thiru P.Nagarajan, Executive Engineer formerly Executive Engineer, Fishing Harbour Project Division, Thanjavur, is responsible for fraudulently making payment of Rs.10,42,142/- towards the works not all carried over by making false M-Book entries in respect of the construction of 90 houses sanctioned for the year 2001-02 to the Koonimedukuppam village at Villupuram District to the contractor causing loss of Rs.10,42,142/- to Government.

4. Thiru P.Nagarajan, Executive Engineer, formerly Executive Engineer, Fishing Harbour Project Division, Thanjavur has failed to submit progress reports then there for the construction of houses at various places under the control of Fishing Harbour Section.

5. Thiru P.Nagarajan, Executive Engineer formerly Executive Engineer, Fishing Harbour Project Division, Thanjavur has not gathered and furnished upto date accounts showing the details of excess expenditure if any incurred by the Junior Engineer, Marakkanam for the various works under Junior Engineer control including free Housing Scheme for the year 1996-97 to 2000-2001 in spite of repeated reminders and instructions from the Division and Circle and he is responsible of accounts in various construction works in Marakkanam Section."

3. Annexure to the charge memo provides statement of allegations viz., imputations of misconduct or misbehavior in support of the charges framed. The said annexure reveals that false monthly progress reports were filed in respect of construction of houses under Fishermen Free Housing Scheme at Kalpanikuppam at Koonimedukuppam Village in Villupuram District and reports were submitted to the Division during the year 2005.



4. The specific allegation against the writ petitioner was that he, as Executive Engineer during the relevant point of time, had not reported about the irregularities in the financial and physical progress of work in Koonimedukuppam Village in Villupuram District, till the irregularities are brought into light and thus, he had connived with the irregularities committed by the contractors.

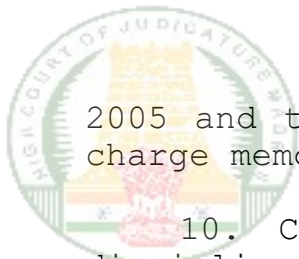
5. However, on receipt of the information regarding irregularities, the Government initiated action in this case. The list of documents enclosed in Annexure 3 reveals that the letter of Assistant Engineer, dated 12.12.2005 and 21.12.2005 as well as the letter of the Superintendent of Engineer, dated 03.12.2004, are considered for the purpose of framing the charges. The writ petitioner attained the age of superannuation in the year 2007.

6. The writ petitioner submitted his explanation denying the charges. Thereafter, an enquiry officer was appointed and the enquiry officer submitted his final report. Based on the report of the enquiry officer, the order of punishment was imposed in proceedings, dated 23.09.2014, imposing the punishment of withholding of pension at the rate of Rs,.1000/- per mensem for a period of one year, besides a recovery of a sum of Rs.1,57,024/- from his Death-cum-Retirement Gratuity to make good the loss caused to the Government. Challenging the said order of punishment, the present writ petition is filed.

7. The learned counsel appearing on behalf of the writ petitioner mainly raised the questions whether the respondent has obtained a prior sanction from the Government, as contemplated under Rule 9(2)(b) of the Tamil Nadu Pension Rules. Whether the incident regarding the allegations took place beyond the period of four years.

8. The learned counsel for the petitioner is of the opinion that there is no document to establish that prior sanction was granted by the Government to take disciplinary proceedings against the petitioner. Further, the construction of the housing scheme for fishermen was mooted out in the year 1996 and the writ petitioner attained the age of superannuation in the year 2007 and therefore, the allegations are beyond the period of four years and therefore, as per the Rule 9(2)(b) of the Tamil Nadu Pension Rules, no action can be initiated against the writ petitioner.

9. The learned Government Advocate appearing on behalf of the respondent opposed the contention by stating that the Government itself issued the charge memo and therefore, no prior sanction is required. The counter also reveals the said ground. This apart, as per the annexure to the charge memo, the irregularities were noticed or brought to the knowledge of the Government at the latter of point of time and immediately actions were initiated. This apart, the documents were submitted by the competent authority in the year

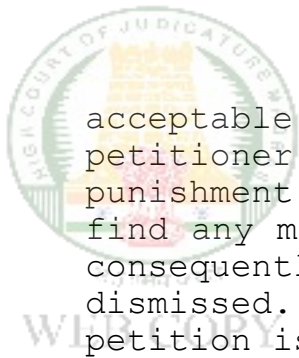


2005 and thereafter, actions were initiated and on 11.01.2008, the charge memo was issued. Thus, the petitioner cannot be exonerated.

10. Considering the arguments, the Rule is clear that the disciplinary proceedings shall not be instituted save with the sanction of the Government, if not instituted when a Government employee is in service. As far as the above condition in the Pension Rule is concerned, the same would not have any implication as far as the present writ petitioner is concerned. The writ petitioner retired as an Executive Engineer in Public Works Department, which is a State service and the State Government is the appointing authority and in the present case, the initiation as well as the charge memo itself was done by the Government itself. When the Government itself issued charge memo, there is no question of obtaining prior sanction from the very same Government and such an interpretation is meaningless and would not serve the purpose of the Rule. The Rule is framed in order to avoid abuse of powers by the subordinate authorities. It is not as if any authority can institute disciplinary proceedings against the Government employee after retirement. Thus, the Rule is framed for the purpose of imposing certain restrictions so as to get sanction from the Government before instituting disciplinary proceedings against the retired employees. This being the purpose and object of the provision, the writ petitioner cannot seek asylum by citing the said Rule, as the institution and the charge memo itself was issued by the Government in the present writ petition.

11. Regarding the second ground, the occurrence may commence from the year 1996, however, the knowledge regarding the irregularities were brought to the Government during the year 2005 through the reports submitted by the authorities concerned. The annexure to the charge memo framed reveals that the reports were submitted in the year 2005. Irregularities occurred at various stages. The knowledge about the irregularities, which were placed before the Government is to be considered at the point for the purpose of reckoning the period of limitation and therefore, the grounds raised in this regard is of no avail to the writ petitioner.

12. With reference to the merits of the case is concerned, the writ petitioner submitted his explanation and domestic enquiry was conducted holding that the charges were proved and as far as the writ petitioner is concerned, the main allegation was he was not brought to the notice of the higher authorities regarding the irregularities occurred in the scheme. The report of the enquiry officer is also clear and the impugned order also deals with the findings of the enquiry officer in a categorically way. Perusal of the charges as well as perusal of the enquiry report are unambiguous that there is no acceptable ground for the purpose of interfering with the quantum of punishment or to interfere with the procedures and the process followed by the respondent for concluding the disciplinary proceedings. Out the outset, there is no



acceptable ground even on merits to consider the case of the writ petitioner for the purpose of scrapping the impugned order of punishment. This being the factum established, this Court do not find any merits so as to interfere with the order of punishment and consequently, the writ petition is devoid of merits and stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CSI)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

To

The Secretary to Government,  
Public Works (E2) Department,  
Government of Tamil Nadu,  
Fort. St.George,  
Chennai - 9.

+1 CC to M/s.T. ANTONY ARUL RAJ, Advocate ( SR-19477[F] dated  
08/10/2020 )

W.P. (MD) No.17195 of 2014  
06.10.2020

NA (CO)

KB(17.10.2020) 5P 3C