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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.19042 of 2012

N.Venugopal

...Petitioner

vs.

1.The Government of Tamil Nadu,  
Represented by its Principal Secretary,  
School Education (M2) Department,  
Fort St.George, Chennai-9.

2.The Joint Director of School Education (Personnel),  
Chennai-6.

3.The Accountant General,  
Tamil Nadu Circle, Teynampet,  
Chennai-18.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus by calling for the records relating to the first respondent herein in G.O.Ms.No.124, School Education (M2) Department dated 30.04.2010 and quash the same and consequently direct the respondents to regularize the suspension and out of employment period from 18.05.1998 to 27.05.2001 and 30.05.2001 & 31.05.2001 as duty for all purposes and revise the retirement benefits and confer all the monetary and retirement benefits with interest and due regards petitioner society.

For Petitioner :Mr.R.S.Anandan,

For Respondents:Mr.V.Nanmaran,  
Additional Government Pleader (Education)  
for R1 and R2  
No Appearance for R3



## O R D E R

WEB COPY The petitioner, challenging the impugned order of punishment passed by the first respondent in G.O.Ms.No.124, School Education (M2) Department dated 30.04.2010 and for a consequential direction to regularize the period of suspension as duty period and to confer all retiral monetary benefits, has filed the present writ petition.

2. The facts of the case, briefly narrated, are as follows:

2.1. The petitioner joined the service as Tamil Teacher in the year 1970. On 18.05.1998, he was taken to police custody with regard to his implication in a criminal case on the allegation of question paper leakage along with another Teacher in Crime No.616/1998 for the offences under Sections 120B r/w 457, 381, 461 and 201 r/w. 109 IPC. On account of his implication in criminal case, the second respondent vide proceedings in RC.No.58925/CB/C31/98 dated 8.6.1998, placed the petitioner under deemed suspension with effect from 20.05.1998 by invoking sub-rule (e)(2) of the Rule 17 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The petitioner was also served with a Charge Memo dated 14.07.1998, for which the petitioner had submitted his explanation dated 06.08.1998, denying the charges. Since the second respondent had failed to furnish relied on materials for framing the charges and also failed to proceed with the enquiry, the petitioner filed an Original Application in O.A.No.734/1999 challenging the Suspension Order and also for consequential direction to regularize the period of suspension as duty period for all purposes.

2.2. In the meanwhile, the criminal case registered against the petitioner, which culminated into C.C.No.5717 of 1998 on the file of the X Magistrate Court, Egmore, had ended in acquittal. O.A.No.734 of 1999 was also allowed by the Tribunal on 24.04.2001 and the suspension period was directed to be treated as duty with all monetary benefits. In pursuant to the order passed by the Tribunal, the second respondent, vide order dated 25.05.2001, reinstated the petitioner to duty without prejudice to the disciplinary proceedings pending against him and the petitioner joined duty on 28.05.2001. The petitioner was again placed under suspension by invoking Rule 17(e)(1)(i) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on the ground that an enquiry into grave charges against him is



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pending as per the proceedings of the second respondent dated 30.05.2001. On 31.05.2001, the second respondent passed an order by invoking Fundamental Rules 56(1)(c), by not permitting him to retire from service on reaching the age of superannuation on 31.05.2001.

2.3. An enquiry was conducted by the second respondent and being not satisfied with the explanation submitted by the petitioner, the second respondent held that the charges were proved against the petitioner as per the Enquiry Report dated 18.09.2001 and he was once again placed under suspension. Challenging the same, the petitioner has filed an Original Application in O.A.No.8090 of 2001, challenging the suspension order and not permitting the petitioner to retire from service. The Tribunal, vide Interim Order dated 21.12.2001, permitted the petitioner to retire from service without prejudice to the pending disciplinary proceedings and also subject to the result of the Original Application. On 29.11.2002, the criminal appeal filed against the acquittal was also dismissed. On 23.01.2003, the Tribunal had passed final orders in O.A.No.8090 of 2001 by setting aside the suspension order and ordered that he shall be treated as deemed to have retired from service with effect from 31.05.2001 and directed the second respondent to disburse all the terminal benefits without further loss of time.

2.4. Against the order of the Tribunal, the second respondent filed W.P.No.30002 of 2003 and vide order dated 02.03.2006, this Court directed the Department to proceed with the disciplinary proceedings in accordance with law and conclude the same within a time frame, but no order was passed by the second respondent within the time stipulated by this Court. However, the first respondent passed the impugned order in G.O. (Ms)No.124, School Education (M2) Department dated 30.04.2010, imposing punishment of pension cut for a sum of Rs.500/- per month for a period of 3 years. Challenging the same, the present writ petition has been filed.

3. Mr.R.S.Anandan, learned counsel appearing for the petitioner would contend that though the alleged occurrence took place during May 1998, Charge Memo was issued during July 1998, enquiry was conducted in the year 2001 and enquiry report was submitted on 18.09.2001, no final order was passed till the petitioner attained the age of superannuation on 31.05.2001 and would further add that there is an inordinate delay in conclusion of the disciplinary proceedings, as final orders in the disciplinary proceedings were passed only on 30.04.2010, nearly after expiry of 12 years and on the ground of delay



alone, the entire disciplinary proceedings are liable to be vitiated. The learned counsel for the petitioner would further contend that the petitioner is arrayed as A2 in the criminal case and for the very same offence/occurrence, another teacher by name V.Kannadasan / A1 was charged and who was also acquitted in the criminal case, was awarded with lesser punishment of censure and while that being so, awarding higher punishment of stoppage of pension to a sum of Rs.500/- per month for a period of three years would clearly amount to discrimination and therefore, on that ground also, the impugned order of the first respondent is liable to be vitiated. The learned counsel for the petitioner would also contend that the once the petitioner is allowed to retire from service, the respondent cannot proceed with the disciplinary action pending against him, even if the same is ordered without prejudice to the disciplinary proceedings and also add that in pursuant to the order of the Tribunal, the respondents have not treated the suspension period as duty period and therefore, he prays for consequential relief to direct the respondents to consider the period of suspension as duty period for all retiral and terminal benefits.

4. Mr.V.Nanmaran, learned Additional Government Pleader appearing for the respondents 1 and 2 has relied on the counter affidavit of the respondents wherein it has been stated that the petitioner was arrested for his involvement in leakage of question paper and the criminal case has ended in acquittal, not by fully exonerating him but on benefit of doubt. While the departmental charges were proved by the enquiry officer, even though the criminal charges were not proved, passing final order in the disciplinary proceedings is within the ambit of the appointing authority and hence, the Government has passed final orders under the Pension Rules. When a suspended Government Servant is fully exonerated of the charges, then only the period of suspension shall be treated as duty and since the petitioner is not fully exonerated of the charges, the suspension period shall be treated as eligible leave and hence, the impugned order of punishment is sustainable in law and therefore, prays for dismissal of this writ petition.

5. This Court has considered the submissions made and also perused the materials placed.

6. It is not in dispute that the petitioner has been implicated and arrayed as A2 in a criminal case for his involvement in leakage of the question paper and after full fledged trial, the said criminal case in C.C.No.5717/1998 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai had



ended in acquittal, by awarding benefit of doubt. In the operative portion of the Judgment of Acquittal, the Criminal Court had come to the conclusion that persons who were behind the scene and who were successfully operating it had not been brought to the book by the Investigating Agency as well as by the prosecution and several missing links had not been chained together by the Investigating Agency so as to bring out the truth and the prosecution had failed to prove the guilt of the accused beyond reasonable doubt. Therefore, it could be seen that the charges could not be proved against the petitioner in the criminal case.

7. The petitioner was originally suspended from service on 08.06.1998 and thereafter, the said suspension order was set aside by the Tribunal in O.A.No.734 of 1999, vide order dated 24.04.2001. In pursuant to the order of the Tribunal, he was reinstated into service on 25.05.2001 and again was suspended, by invoking Fundamental Rule 56(1)(c) vide order dated 30.05.2001 and also not permitted to retire from service. The said suspension order was challenged before the Tribunal in O.A.No.8090 of 2001 and vide order dated 23.01.2003, the petitioner was permitted to retire from service without prejudice to the disciplinary proceedings. Thereafter, the petitioner was allowed to retire from service and based on the explanation submitted by the petitioner the respondents have passed the impugned punishment order of pension cut to a sum of Rs.500/- per month for a period of three years. However, this Court, on consideration of materials as well as the charges framed against the petitioner, is of the view that there is no irregularity or infirmity in the impugned order of punishment passed by the second respondent.

8. The second limb of the contention is that though the Tribunal has set aside the suspension order and also directed the respondents to treat the suspension period as duty period with all consequential monetary benefits, the said order of the Tribunal has not been complied with and therefore, the petitioner has also sought for the said prayer in this writ petition. In this regard, the petitioner shall make a representation to the Government/first respondent within a period of two weeks from the date of receipt of a copy of this order and if any such representation being filed, the first respondent shall consider the same and pass orders on merits and in accordance with law in the light of the order passed by the Tribunal dated 23.01.2003 in O.A.No.8090 of 2001, as expeditiously as possible, without any further delay.



9. The writ petition stands disposed of with the above directions. No costs.

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s/d-  
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

Jvm

To

1.The Principal Secretary to Government,  
The Government of Tamil Nadu,  
School Education (M2) Department,  
Fort St.George, Chennai-9.

2.The Joint Director of School Education (Personnel),  
Chennai-6.

3.The Accountant General,  
Tamil Nadu Circle, Teynampet,  
Chennai-18

+1 CC to Mr.R.S.Anandan, Advocate sr 64594  
+1 CC to The Government Pleader sr 65283.

W.P.No.19042 of 2012

GPL(CO)  
SP(17/12/2021)