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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2021

CORAM:

THE HON'BLE DR.JUSTICE ANITA SUMANTH

WP.No.9269 of 2009

C.Albert Xavier

...Petitioner

vs.

1. The Government of Tamil Nadu  
Rep. By its Agricultural Production Commissioner  
and Secretary,  
Fort St. George,  
Chennai-9.

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

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records relating to the first respondent herein in G.O.(3D).No.151 Agriculture (AV.5) Department dated 30.6.2008 and quash the same and consequently direct the respondents herein to refix the petitioner's pay scales accordingly with all consequential attendant benefits including the conferment of the promotion post.

For Petitioner : Mr.R.S.Anandan for  
M/s.Anand & Suryas

For Respondents: Mr.C.Selvaraj  
Government Advocate

O R D E R

The petitioner joined the services of the Commissionerate of Agriculture in 1985 as an Agricultural Officer. Four counts of charge had been framed by the Director of Agriculture/R2 and after receipt of the explanation furnished by the petitioner, enquiry was conducted.

2.At the hearing on 30.09.2021, after hearing the parties, I had passed the following order:-



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Having heard the learned Counsel for the petitioner and the State, the question that arises for resolution in the matter is with regard to the veracity of the enquiry report dated 14.11.2005.

2. In response to the charges framed, the petitioner had filed a detailed explanation and an enquiry report dated Nil June, 2002 has come to be formulated, which strangely in conclusion states that in view of there being no acceptable explanation put forth by the petitioner, the enquiry officer is 'unable to decide' (rough translation of the Tamil version). The conclusion is extracted here for completion:

குற்றச்சாட்டுகள் அடிப்படையில் விசாரணை மேற்கொள்ளப்பட்டுள்ளது. இதில் குற்றச்சாட்டுகளின் தன்மையில் பிழையாளரிடமிருந்து பதில்களை பெற இயலாததால் முடிவான கருத்திற்கு வர இயலவில்லை.

3. He thus takes up the process of enquiry yet again and the second enquiry report is dated 14.11.2005.

4. It is the case of the petitioner that as on the date when the second enquiry report was finalized, the enquiry officer has retired from service. This does not appear prima facie to be disputed by the State, since they state in the counter 'there are no violations of any procedures in submitting of enquiry report after the retirement of the enquiry officer from the Government Service, which is unavoidable in any administrative setup.'

5. Even assuming for a moment that it is only the forwarding of the report that has transpired after retirement, it remains to be seen whether this would be in line with Regulations. Let necessary Rules and Regulations be circulated by both the parties in this regard. That apart, let records also be produced to verify as to whether the process of enquiry and formulation of report has been completed prior to the date of retirement of the enquiry officer.

6. Let the date of retirement of the officer be circulated by way of written instructions. List on 05.10.2021.'

3. Thereafter, on 05.10.2021, I passed the following order:-

'Order passed on 30.09.2021 required the learned Government Advocate to produce (i) in writing the date of retirement of the Enquiry



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Officer, (ii) the records to verify whether the process of enquiry and forwarding of report was prior to the date of retirement of officer, (iii) if the date of forwarding of the report or the date of report was after the date of retirement of the officer, a specific query was asked whether this procedure was in line with applicable Regulations. Parties were directed to circulate the applicable Rules and Regulations.

2. Today, learned Government Advocate would orally state that the Enquiry Officer has retired on 31.10.2003. Despite repeated queries as to whether there is any Rule or Regulation that supports the position that a retired Officer of the Government may continue to hold official files for two years after his retirement, formulated an enquiry report in November, 2005, forwarded to the petitioner under cover of memo dated 07.10.2006, there is no response forthcoming. The Hand book of disciplinary proceedings is referred to, but no Regulation or Rule is brought to my attention that would support the aforesaid ludicrous position.

3. In my view, it is wholly inappropriate that an official who is retired on 31.10.2003 continuous as an Enquiry Officer and formulates a report in November, 2005, two years after his retirement, such report having been forwarded to the petitioner under cover of memo dated 07.10.2006.

4. Let the concerned officials be present in Court with records on 27.10.2021. Learned Government Advocate is also requested to be present physically to explain and justify the aforesaid position.

5. List on 27.10.2021.'

4.Today, the officials of the Agricultural Department are present in Court. Mr.C.Selvaraj, learned Government Advocate would fairly accede to the position that the action of enquiry officer in having retained the file for a period of two years and issuing a report thereafter was inappropriate and wrong.

5.In light of the aforesaid statement, nothing further remains to be said in this matter and since the enquiry report which is itself the basis for passing the impugned order, is



itself found to be irregular, the impugned order is set aside and this writ petition allowed. No costs.

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Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs/kbs

To

1. The Commissioner and Secretary,  
The Government of Tamil Nadu  
Agricultural Production  
Fort St. George,  
Chennai-9.
2. The Commissioner of Agriculture,  
Chepauk, Chennai-5.

+1cc to M/s.Anand & Suryas, Advocate, S.R.No.55515

+1cc to the Government Pleader, S.R.No.56226

WP.No.9269 of 2009

BR(CO)  
RGA(17/11/2021)