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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2021

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7296 and 7400 of 2021

S.Jayaprakash Narayanan ... Petitioner in W.P.No.7296 of 2021
C.Veerasamy ... Petitioner in W.P.No.7400 of 2021

-vs-

- 1.The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Revenue Administration,
Fort St.George,
Chennai-600 009.
- 2.The District Collector,
Kallakurichi District.
- 3.The Revenue Divisional Officer,
Thirukovilur Taluk,
Kallakurichi District.
- 4.The Principal Accountant General (A & E)
Chennai - 600 018. ... Respondents

Common Prayer: Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned orders G.O.(D) No.A1/963/01, dated 28.02.2007 and G.O.(D) No.A3/2439/13, dated 28.02.2013 passed by the third respondent and quash the same and consequently direct the respondents to pay the petitioner's terminal benefits such as Full Salary during the suspended period, Pension, Gratuity and Leave encashment based on the petitioner letters dated 14.02.2016 and 18.08.2020 respectively, along with interest @ 18 % for the delayed period to till the date of payment.

For Petitioners
in both W.P.s. : Mr.V.Arunagiri

For Respondents: Mrs.P.Rajalakshmi,
in both W.P.s. Additional Government Pleader



COMMON ORDER

These Writ Petitions have been filed, to quash the impugned orders made in G.O.(D) No.A1/963/01, dated 28.02.2007 and G.O.(D) No.A3/2439/13, dated 28.02.2013 passed by the third respondent and for a consequential direction to the respondents to pay the petitioner's terminal benefits such as Full Salary during the suspension period, Pension, Gratuity and Leave encashment based on the petitioner letters dated 14.02.2016 and 18.08.2020 respectively, along with interest @ 18 % for the delayed period to till the date of payment.

2. Mrs.P.Rajalakshmi, learned Additional Government Pleader takes notice respondents. By consent of both parties, the writ petitions are taken up for final disposal at the admission stage itself.

3. According to the petitioners, while they were working as Village Administrative officers, based on a complaint given by one T.Natarajan, a criminal case was registered by the Vigilance Police and Charge Sheet has been filed. However, the learned Trial Judge, Villupuram has acquitted the petitioners, by a Judgment dated 30.09.2015 in Special Case No.21 of 2014. Aggrieved by the same, the Vigilance Police preferred an appeal in Criminal Appeal No.602 of 2016 and the same is pending before this Court. As the criminal case is pending against the petitioners as on date, they were not permitted to retire from service, though they attained the age Superannuation and that the terminal benefits have not been granted till date. In this regard, the petitioners made representations dated 14.02.2016 and 18.08.2020 respectively. Since the said representations did not evoke any response, the petitioners are before this Court by filing the present Writ petitions.

4. This is yet another classic example of dereliction of duty by the Government Officials in not proceeding with the departmental enquiry de hors pendency of the criminal case. It is pertinent to mention here that even on conviction of an employee, departmental proceedings shall be conducted, as there is every possibility of the conviction being set aside by the Higher Forum and the corrupt employees / Officials should not be allowed to go scotfree on the ground of non-initiation of departmental proceedings. It is painful to note that several talented persons have been working temporarily in Government Departments under Contractors, especially in PWD, under Non Muster Roll for years together without regularization. Deserving persons are paid meagre amount as salary under Contract, with the fear of disengagement, whereas corrupt officials are paid all the monetary benefits, including arrears of subsistence allowance on the ground of technical flaws, which is construed



as a bounty for them.

5. In case Departmental action is not taken against the delinquent in time, the Officer, who is responsible for non-initiation of Departmental Proceedings should be taken to task, on the presumption that the said Officer is in collusion with the delinquent employee and adverse remarks against the Officer, who is responsible to take action shall be entered in the Service Register and he/she should not be allowed to be promoted further and reversion to the post in which that person / Officer was appointed shall be the minimum punishment to him/her.

6. In the present case on hand, this Court is of the view that the Official of the respondents, who are in service, ought to be dealt with seriously, as they are responsible to help the petitioners, who are more dangerous to the society than real thieves, to get the benefits for non-initiation of departmental enquiry.

7. Though a larger relief of quashment of orders dated 28.02.2007 and 28.02.2013 is sought for in these case, at the time of argument, learned counsel for the petitioners has restricted his relief to the extent of consideration of the representation / letter of the petitioners dated 14.02.2016 and 18.08.2020, these Writ Petitions are disposed of with the following directions:

i) A direction is issued to the 3rd respondent herein to consider the representations preferred by the petitioners dated 14.02.2016 and 18.08.2020, respectively if not already disposed of, and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioners and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of 120 days from the date of receipt of a copy of this order;

ii) In case the petitioners are unable to appear for personal hearing, the petitioners are entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioners can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioners fail to appear or file a written submission in time, the 3rd respondent shall pass orders based on the available records and the petitioners, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioners;

iv) The petitioners shall furnish Mobile Number, email ID, if any, etc., along with the copy of the representations dated 14.02.2016 and 18.08.2020 and this order, to the 3rd respondent



forthwith;

v) The 3rd respondent is directed to communicate the decision taken on the representations, to the petitioners within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioners to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioners, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order.

8. In case of initiation of departmental proceedings against the petitioners, the respondents, while taking a decision, shall bear in mind the judgment of this Court dated 06.01.2021 made in W.P.No.13 of 2021 especially in paragraph Nos.6 & 9 and the Apex Court (as relied upon therein).

9. It is made clear that the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for non-conduct of enquiry, No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Principal Secretary to Government,
Government of Tamil Nadu,
Revenue Administration,
Fort St.George,
Chennai-600 009.

2.The District Collector,
Kallakurichi District.



3.The Revenue Divisional Officer,
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4.The Principal Accountant General (A & E)
Chennai - 600 018.

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GP(CO)
CB(14/07/2021)