

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16951 of 2020 and
WMP No.21047 of 2020

S.Jayaraman

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by the Secretary
Housing Urban Development Department,
Fort St.George, Chennai - 600 009.

2. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to 2nd respondent's Proceedings made in No.DC4/79355/1993, dated 28.09.2013 and the consequential proceedings of the 2nd respondent made in No.DC4/36557/2013 dated 23.01.2020, to quash the same and to consequently direct the respondents to forthwith settle all retiral benefits, backwages, including appropriate pension and pensionary fixation thereto.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.A.Arul Doss, (for R1)
Government Advocate
Mr.R.Bharathkumar (for R2)

O R D E R

This writ petition has been filed, seeking to quash the impugned Proceedings made in No.DC4/79355/1993, dated 28.09.2013 and DC4/36557/2013 dated 23.01.2020 passed by the 2nd respondent and consequential direction to the respondents to forthwith settle all terminal benefits, backwages, including appropriate pension and pensionary fixation thereto.

2. It is the case of the petitioner that the petitioner, who was working as an Assistant Executive Engineer at Salem Housing Unit, was placed under suspension on 26.07.2000 due to criminal prosecution under the provision of Prevention of Corruption Act and that of IPC offences. Admittedly, there was no disciplinary proceedings conducted against the petitioner before attaining the age of superannuation. However, there was a criminal case filed against the petitioner under the Provision of Prevention of Corruption Act and that of IPC offences. The petitioner was convicted on 30.04.2013, imposing a sentence of two years Rigorous Imprisonment for each of the alleged offences and fine amount of Rs.1000/- by a common Judgment. Thereafter, the petitioner preferred Criminal Appeal Nos.375 of 2013 and 535 of 2014 before this Court, which were allowed by this Court on 02.01.2018, acquitting the petitioner.

3. In the meantime, the petitioner was issued with a show cause notice as to why he should not be dismissed from service and on 28.09.2013, he was imposed with a penalty of dismissal from service only on the ground that the petitioner was convicted by the Criminal Court.

4. Having got the conviction set aside in the appeal, the petitioner made a representation, asking the respondents to settle all the terminal benefits due to him; however impugned order dated 23.01.2020 was passed, declining the request of the petitioner.

5. It is not in dispute that that there was no charge sheet against the petitioner and he was simply placed under suspension, thereby not permitted to retire on his attaining superannuation on 31.07.2000. It is seen that his service was retained under Rule 56 (1)(c) of the Fundamental Rules and the dismissal order was issued based on the conviction. When the respondents wanted to sustain the dismissal order based on the conviction, the criminal appeal filed by the petitioner should have been dismissed and the conviction should have been confirmed by this Court. Once the criminal appeal has been allowed and the lower Court Judgment has been set aside, the charges foisted against the petitioner automatically becomes non-est and in view of non-conduct of departmental enquiry, the respondent will have to pay the monetary benefits due to the petitioner and the reason given in the impugned order for dismissing the employee, that on the principle of preponderance of probabilities, the decision can be arrived at for removing a person from service and that the petitioner charged with the offences under section 120-B r/w 167, 120-B r/w 477-A, 120-B r/w Sec.13 (1)(c) and (d) r/w 13 (2) of Prevision of Corruption Act 1988, cannot be allowed to be reinstated, is unsustainable.

6. I have gone through both the orders of the criminal Court and this Court. Though the charges against the petitioner are indeed very serious in nature and the Trial Court, taking note of various documentary evidence, convicted the petitioner, consequent to the acquittal from the charges by this Court, the refusal to settle the monetary benefits cannot stand in the eye of law, as, admittedly, there was no departmental enquiry initiated against the petitioner. It can be said in other words, that the petitioner is a very luckiest person, who has got the benefit of lottery by way of getting backwages, which is purely on the fault of the officials of the respondents, who failed to initiate departmental enquiry. Therefore, it is appropriate to observe here that it is open to the respondents to initiate departmental proceedings against the officials, in case they are in service, for their failure in non-issuance of charge sheet and commencement of departmental proceedings against the petitioner, irrespective of pendency of the criminal case. The Chief Judicial Magistrate, Salem and the Department of Vigilance and Anti Corruption, Salem District shall send a communication to the respondents recommending to take suitable action against the Officials, who failed to initiate departmental proceedings, de hors the pendency of criminal case.

7. 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, who were under suspension, 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.

8. Hence, the Chief Secretary to the Government is directed to issue a circular to all Departments that if an employee is deputed on temporary contract basis in a Department, the period of contract (not exceeding two years) must be clearly informed to the said employee by the Head of the Institution and the employee must be thereafter either regularized in the service or disengaged for his/her better career. In case the temporary employee is allowed to work for several years and subsequently, retrenched, then the Head of the Institution must be shown the doors for his inaction. Similarly, the Chief Secretary to the Government shall also issue a circular to the effect that if a criminal case against an employee is not concluded within a

period of one year from the date of registration of FIR, there is no bar for the concerned authorities to proceed with the departmental enquiry.

9. As far as the present case on hand is concerned, in view of the acquittal, this Court, with a heavy heart, directs the respondents to settle the terminal benefits due to the corrupt dishonest petitioner, less the amount, already paid within a period of six months from the date of receipt of a copy of this order.

10. A reading of the judgment of this Court in Criminal Appeal discloses the fact that the petitioner has been acquitted on the ground of benefit of doubt and not by way of honorable acquittal. It is made clear that in case the Department wants to proceed against the petitioner departmentally, the enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC, certified copies of those documents can be obtained by the Department from DVAC and in the event of any such request made, DVAC is bound to furnish the same, in order to enable the Department to proceed with the enquiry and DVAC should not be a party for non-conduct of enquiry, by indirectly helping corrupt officials to get bounty on the ground that they have already attained the age of superannuation without any departmental proceedings being conducted.

11. With the above observation and direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum/ar
To:

1. The Secretary,
State of Tamil Nadu,
Housing Urban Development Department,
Fort St.George, Chennai - 600 009.
2. The Managing Director,
Tamil Nadu Housing Board,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.

3. Chief Judicial Magistrate,
Salem.

4. The Director, Vigilance and Anti Corruption,
Chennai.

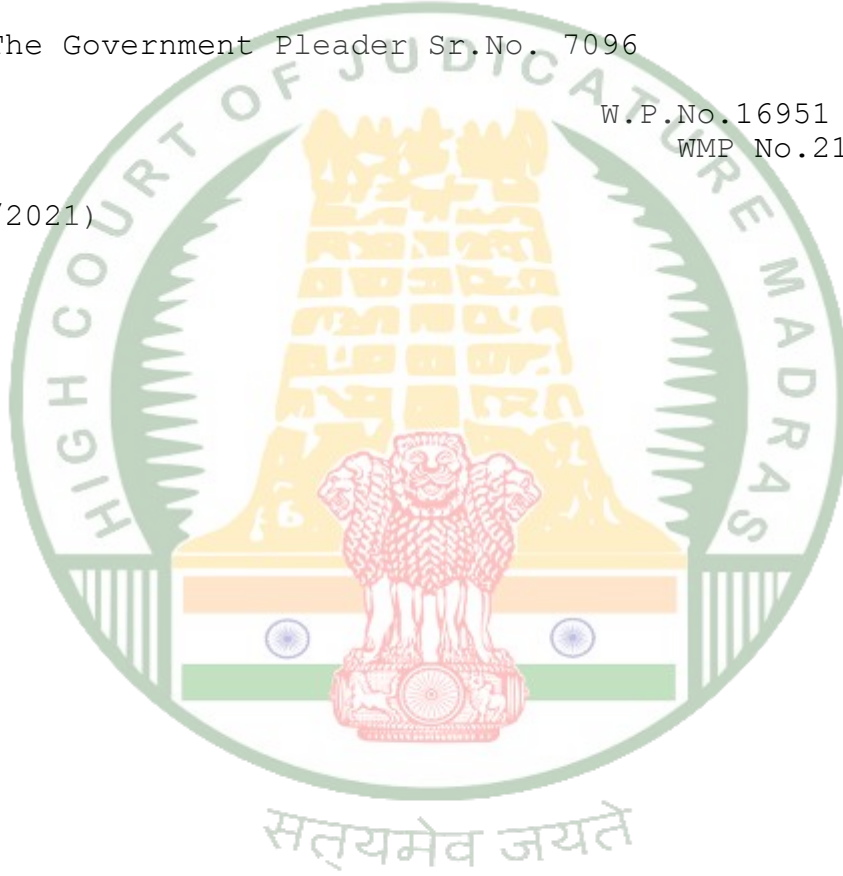
5. The Chief Secretary,
State of Tamil Nadu
Fort St.George, Chennai - 600 009.

+2cc to M/s.R.Bharath kumar, Advocate, Sr.No. 6925,6930

+1 cc to The Government Pleader Sr.No. 7096

W.P.No.16951 of 2020 and
WMP No.21047 of 2020

SRII(CO)
RMP(11/03/2021)



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