

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05-03-2021

Coram

The Honourable Mr. Justice R. Subbiah
and

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup
Writ Appeal No. 2715 of 2019

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1. The State of Tamil Nadu
rep. by The Principal Secretary to Government
Home (Transport-II) Department
Secretariat, Chennai - 600 009
2. Tribunal for Disciplinary Proceedings
5/1842-A, Regulated Market Complex
Tiruchi Highway, Ramanathapuram
Coimbatore - 601 405 .. Appellants/Respondents

Versus

N. Sivalingam .. Respondent/Petitioner

Appeal filed under Clause 15 of Letters Patent against the Order dated 27.03.2018 passed in WP No. 37073 of 2016 on the file of this Court.

PRAYER IN WP.NO.37073 OF 2016:

To call for the records of the impugned charge memo of the 2nd respondent issued against the petitioner framing charges in C. No. 515/ 2008/ A1 dated 30.07.2008 in TDP Case No.46 of 2008 and quash the same and consequently direct the 1st respondent to settle the pensionary benefits entitled to the petitioner after revoking his suspension.

For Appellants : Mr. Vijay Narayan, Advocate General
assisted by Mrs. A. Sri Jayanthi
Special Government Pleader

For Respondent : Mr. C. Selvaraju, Senior Advocate
for Mr. A. Ganesan

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J

This appeal is filed as against the order dated 27.03.2018 passed by the learned single Judge, allowing the WP No. 37073 of 2016 filed by the respondent herein and by quashing the impugned charge memo in C. No. 515/2008/A1 dated 30.07.2018 in TDP Case No.46 of 2008 passed by the second appellant herein. After allowing the writ petition, a consequential direction was given

by the learned single Judge, directing the appellants to revoke the order of suspension passed against the respondent.

2. The case of the respondent before the Writ Court is that he was appointed as Motor Vehicle Inspector Grade-II through Tamil Nadu Public Service Commission in Transport Department on 01.11.1976. He was promoted as Motor Vehicle Inspector Grade-I on 22.08.1983, then as Regional Transport Officer on 28.05.1997. Thereafter, he was promoted as Deputy Transport Commissioner on 10.12.2003. When the respondent was working as Deputy Transport Commissioner, the Tribunal for Disciplinary Proceedings, Coimbatore framed charges against him on 30.07.2008 in T.D.P. Case No. 46 of 2008. The respondent was also placed under suspension on 30.07.2008. Based on the charges framed against the petitioner, the first appellant placed the respondent under suspension on 28.10.2008, just 3 days prior to his retirement on 31.10.2008, due to pendency of charges. On 31.10.2008, the first appellant passed another order not permitting the respondent to retire from service on superannuation and retaining him in service until the final orders are passed in the disciplinary proceedings.

3. During the inquiry disciplinary proceedings, the respondent submitted his written statement of defence to the Tribunal on 26.11.2008. The Tribunal for Disciplinary Proceedings submitted the enquiry report to the first appellant on 31.12.2008. The first appellant communicated a copy of the enquiry report to the respondent on 11.01.2010 nearly after a lapse of more than one year from the date of receipt of the report of the Tribunal. The respondent submitted his further representation on the enquiry report to the first appellant on 15.05.2010. Since the disciplinary proceedings initiated against the petitioner in the year 2008 has not been concluded by passing final orders for more than five years, the respondent filed WP No. 16626 of 2015 before this Court specifically on the ground of delay in concluding the disciplinary proceedings initiated against him. The learned single Judge, by order dated 12.06.2015, directed the first appellant herein to pass final orders in the disciplinary proceedings initiated against the respondent within a period of two months. Even thereafter, the first appellant did not pass final order. First Appellant also did not file any application seeking extension of time to conclude the disciplinary proceedings within the time stipulated by this Court in the order dated 12.06.2015 in WP No. 16626 of 2015. Since there are no valid reasons mentioned by the first appellant for keeping the disciplinary proceedings pending for more than six years, especially beyond the time stipulated by this Court, he has filed the present writ petition to quash the impugned charge memo dated 30.07.2008 in TDP Case No. 46 of 2008 and consequently direct the appellants to settle the pensionary benefits after revoking his suspension.

4. The learned single Judge observed that inspite of two months time granted by this Court in WP No. 16626 of 2015, the first appellant did not pass final order or chosen to file any application seeking extension of time to comply with the directions of this Court in the aforesaid WP No. 16626 of 2015. Therefore on the ground of delay in passing final orders, the learned single Judge has quashed the charge memo and allowed the writ petition filed by the respondent herein.

5. The learned Advocate General appearing for the appellants submitted that the charge against the respondent is that he and his wife have amassed wealth disproportionate to known source of income. The enquiry unfolded that the respondent and his wealth were in possession of assets to the tune of Rs.5,38,559.54. The Tribunal, after conducting enquiry in TDP Case No. 46 of 2008, held that the charge against the respondent are proved. Based on the report submitted by the Tribunal, the first appellant could not pass final orders inasmuch as there are three other disciplinary proceedings initiated against the respondent were pending by then.

6. According to the learned Advocate General, the respondent was also facing disciplinary proceedings in TDP Case No. 47 of 2008 before the Tribunal for Disciplinary Proceedings, Coimbatore on the allegation that during the course of his employment from 12.04.1999 to 15.01.2002 he has allotted advance registration number without following the procedures laid down in that regard. Furthermore, yet another case in TDP Case No. 53 of 2008 was registered against the respondent on the allegation that he started a petrol bunk in the name of his sister-in-law without getting prior permission from the Government. Another case in TDP Case No. 110 of 2008 was also pending before the Tribunal against the respondent for the allegation that when he was working as Regional Transport Officer, Tirupur during 12.04.1999 to 15.01.2002, he failed to follow the guidelines with respect to allotment of advance registration number. The learned single Judge, without considering the fact that the respondent is facing atleast three other disciplinary proceedings in TDP Case Nos. 47 of 2008, 53 of 2008 and 110 of 2008, has allowed the writ petition filed by the respondent. When the respondent is facing three other departmental proceedings as aforesaid, the first appellant could not pass final orders only based on the conclusion of the inquiry proceedings in TDP Case No. 46 of 2008, which is the subject matter of the writ petition. Since other disciplinary proceedings are pending, the first appellant is not in a position to pass any order. Further, an order removing the respondent from service was passed in the other connected disciplinary proceedings initiated against the respondent. In

any event, the learned Advocate General only submitted that if few weeks time is granted, the first appellant will be in a position to pass final orders in the disciplinary proceedings initiated and finalised against the respondent in TDP Case No. 467 of 2008, which is the subject matter of this appeal.

7. On the above contention, the learned Senior counsel for the respondent submitted there is enormous delay in conducting the disciplinary proceedings against the respondent, by which, he was subjected to acute mental disturbance and discomfort. The disciplinary cases were initiated against the respondent in the year 2008, but even after lapse of 13 years, final order was not passed in some cases. The learned single Judge rightly quashed the disciplinary proceedings against the respondent in TDP Case No. 46 of 2008 on the ground of delay, over which, interference of this Court is not warranted.

8. We have heard the learned Advocate General appearing for the appellants and the learned Senior counsel for the respondent. Admittedly, there are four disciplinary cases registered against the respondent herein in TDP Case Nos. 46, 47, 53 and 110. When the other connected cases are pending at various stages, the learned Single Judge ought not to have allowed the writ petition filed by the respondent on the ground of delay and laches in passing final orders in TDP Case No. 46 of 2008. In any event, in one of the disciplinary proceedings initiated against the respondent, final order was passed by the first appellant herein removing the respondent from service.

9. In view of the above fact that the respondent was imposed with major punishment of removal from service in the disciplinary proceedings initiated against him, the order passed by the learned single Judge cannot be sustained. The first appellant is directed to pass final orders in the charge memo issued to the respondent, which is the subject matter of this writ appeal, within a period of two weeks from the date of receipt of a copy of this order.

10. Accordingly, the Order dated 27.03.2018 passed in WP No. 37073 of 2016 is set aside. The Writ Appeal is allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

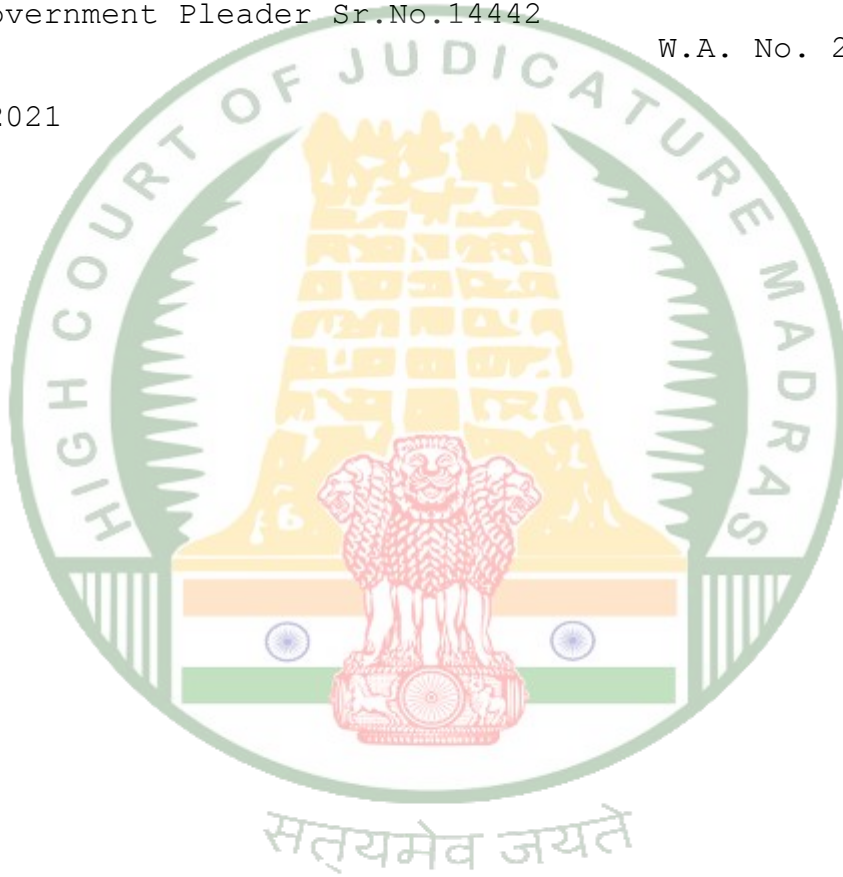
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+lcc to Government Pleader Sr.No.14442

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PP(CO)
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