



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2021

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.10318 of 2014 and

M.P. (MD)No.1 of 2014

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C.Dhasaratharajan

... Petitioner

vs.

1.State of Tamil Nadu represented
by Secretary to Government,
Public Works Department,
Fort St.George, Chennai.

2.The Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, Chennai - 600 003.

3.Tribunal for Disciplinary Proceedings
through its Commissioner,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent, dated 26.05.2014 made in G.O.(D)No.133, Public Works (E1) Department and to quash the same as it is arbitrary and illegal and in consequence to direct the respondents to disburse the petitioner's pension benefits by calculating his service, promotion and other service benefits.

For Petitioner	: Mr.R.Suriyanarayan
For R-1 and R-3	: Mr.Linga Durai Government Advocate
For R-2	: Mr.K.K.Senthil

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of first respondent, dated 26.05.2014, and to direct the respondents to disburse the petitioner's pensionary benefits. By the impugned order, the first respondent imposed a punishment of withholding pension at rate of Rs.4,850/- per month for a period of three years.

2.Heard Mr.R.Suriyanarayan, learned Counsel appearing for the petitioner, Mr.Linga Durai, learned Government Advocate appearing for the respondents 1 and 3 and Mr.K.K.Senthil, learned Standing Counsel appearing for the second respondent.



3.While the petitioner was working as an Executive Engineer in the Public Works Department (Construction and Maintenance) Division at Dindigul, a charge memo was issued to the petitioner for demanding and accepting bribe to register the name of individual as a Contractor. Based on the complaint, the Director of Vigilance Department laid a trap. Based on the complaint lodged by the Vigilance Department, a criminal case was also registered in crime No.1 of 2006 and it is not known as to whether the criminal case has been prosecuted further or not. However, pursuant to the charge memo issued by the third respondent, disciplinary proceedings went on. Based on the enquiry report submitted by the third respondent, the first respondent passed the impugned order imposing the punishment of withholding of pension at the rate of Rs.4,850/- per month for three years. Challenging the same, the above Writ Petition is filed.

4.It is the case of the petitioner that his explanation to the enquiry report was not considered by the first respondent while imposing the punishment and that the first respondent failed to furnish the remarks obtained from the second respondent which was also relied upon to impose the punishment.

5.Though the learned Counsel appearing for the petitioner raised several grounds attacking the findings of the Enquiry Officer and the conclusions, this Court is convinced that the impugned order is vitiated, as there was total non application of mind with regard to the further representation of the Delinquent Officer on the findings of the third respondent. After extracting the charges, the defence statement of the petitioner, findings of the second respondent and the further representation of the petitioner on the findings of third respondent, the first respondent has passed the impugned order. The operative portion of the impugned order of first respondent reads as follows:

"5.The Government have carefully and independently examined the charge framed against Thiru.C.Dhasaatharajan, formerly Executive Engineer, Public Works Department, defence statement of the delinquent officer, findings of the Tribunal for Disciplinary Proceedings, Madurai, and further representation of the delinquent officer on the findings of the Tribunal for Disciplinary Proceedings, Madurai, in detail and decided to confirm the provisional conclusion holding the charge as proved against him. The Government, therefore, proposed to impose the punishment of withholding of pension at the rate of Rs.4,850/- (Rupees four thousand eight hunder and fifty only) per month (being the one-third value of pension) for a period of three years on Thiru.C.Dhasaratharajan, Executive Engineer (retired), Public Works Department, for the



charge held proved against him.

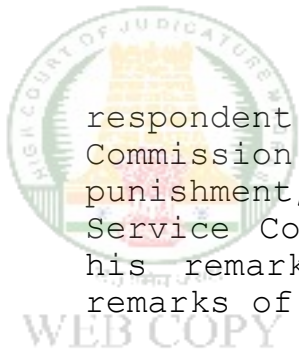
6. In the Government letter ninth read above, a consent letter under Tamil Nadu Pension Rules, 1978, was issued to Thiru.C.Dhasaratharajan, Executive Engineer (retired), Public Works Department, asking him to state specifically as to whether he accepts the proposed punishment of pension cut or not. Thiru.C.Dhasaratharajan, Executive Engineer (retired), Public Works Department, in the letter tenth read above, refused to accept the provisional conclusion of the Government. Hence, the views of the Tamil Nadu Public Service Commission on the provisional conclusion of the Government were called for under Regulation 18(1)(c) of the Tamil Nadu Public Service Commission Regulations, 1954 in the Government letter eleventh read above.

7. The Tamil Nadu Public Service Commission in the letter twelfth read above stated that the provisional conclusion of the Government was in order and advised the Government to go ahead with the provisional conclusion.

8. The Government, after careful and independent examination of the case again with the relevant records along with the views of the Tamil Nadu Public Service Commission, have decided to confirm the provisional conclusion to impose the punishment of withholding of pension at the rate of Rs.4,850/- (Rupees four thousand eight hundred and fifty only) per month (being the one-third value of pension), for a period of three years on Thiru.C.Dhasaratharajan, Executive Engineer (retired), Public Works Department. Accordingly, the Government order that the punishment of withholding of pension at the rate of Rs.4,850/- (Rupees four thousand eight hundred and fifty only) per month (being the one-third value of pension), for a period of three years be imposed on Thiru.C.Dhasaratharajan, Executive Engineer (retired), Public Works Department, for the charge held proved against him.

9. A copy of the letter of the Tamil Nadu Public Service Commission twelfth read above is communicated to Thiru.C.Dhasaratharajan, Executive Engineer (retired), Public Works Department, along with the order."

6. From the impugned order, it is seen that the first respondent admitted that the letter of Tamil Nadu Public Service Commission, which was relied upon by the first respondent was communicated to the petitioner only along with the impugned order. When the first



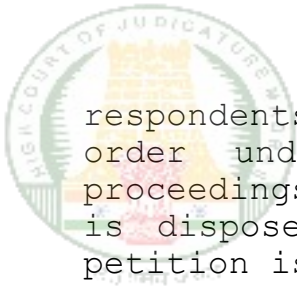
respondent decided to get the views of Tamil Nadu Public Service Commission and to rely upon the same for passing an order of punishment, it is expected that the views of Tamil Nadu Public Service Commission should be served to the petitioner for getting his remarks and the conclusion should be after considering the remarks of the petitioner, if any.

7. Secondly, the points raised by the petitioner after receiving the findings of the third respondent cannot be ignored in this case. It is admitted that the criminal case was not prosecuted further. Similarly, the Officials have recorded that no colour change was found when the hands of the petitioner were dipped in the Sodium Carbonate solution at the time when the vigilance team laid the trap. When serious issues were raised by the petitioner, it is unfortunate to notice that the first respondent did not consider any of the points raised by the petitioner in his further representation after getting the enquiry report.

8. The learned Counsel relied upon a judgment of the Honourable Supreme Court in the case of **Roop Singh Negi vs Punjab National Bank and others**, reported in (2009) 2 SCC 570, to sustain his arguments that the orders passed by the second and first respondent without referring or assigning reasons cannot be sustained. The relevant portion of the said judgment of the Honourable Supreme Court reads as follows:

"23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

9. Relying upon the judgment of the Honourable Supreme Court, this Court has no hesitation to hold that the impugned order is vitiated for violation of principles of natural justice. Hence, the impugned order is quashed. However, liberty is given to the



respondents to proceed afresh if necessary after passing appropriate order under Pension Rules to keep alive the disciplinary proceedings under the Pension Rules. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS II)

// True Copy //

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Sub Assistant Registrar(CS)

tmg/cmr

To

1.Secretary to Government,
State of Tamil Nadu ,
Public Works Department,
Fort St.George, Chennai.

2.The Secretary,
Tamilnadu Public Service Commission,
Frazer Bridge Road, Chennai - 600 003.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Madurai.

+1 CC to M/s.K.K.SENTHIL, Advocate (SR-32271[F] dated 22/10/2021)

+1 CC to M/s.SPL.GP (SR-32592[F] dated 26/10/2021)

Order made in
W.P. (MD)No.10318 of 2014
22.10.2021

DJ(CO)

RS/SKN (16.11.2021) 5P 6C