



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P.(MD) No.12797 of 2014 and

M.P.(MD)No.2 of 2014

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M.Kayethey Ajam

... Petitioner

vs.

1.The State represented by
the Secretary to Government,
Secretariat,
Animal Husbandry, Dairying and Fisheries Department,
Chennai.

2.The Director/Commissioner,
O/o the Director/Commissioner of Fisheries,
DMS Complex,
Thenampettai, Chennai -6.

... Respondents

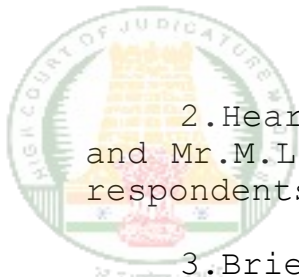
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned Government Order issued by the first respondent in G.O.(D) No.170 Animal Husbandry, Dairying and Fisheries (FS2) Department dated 30.05.2014 and consequential order issued by the second respondent in his proceedings in R.C.No.28380/L3/2007 dated 23.07.2014 and quash the same as illegal and consequentially to direct the first respondent to pursue the departmental proceeding initiated against the petitioner in pursuant to the charge memo issued by the second respondent vide his proceedings in Rc.No.L3/28380/2007 dated 12.09.2007 and conclude the same within the period that may be stipulated by this Court.

For Petitioner :Mr.Mohammed Imran
for M/s.Ajmal Associates

For Respondents :Mr.M.Linga Durai
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned Government order in G.O.(D)No.170, Animal Husbandry, Dairying and Fisheries (FS2) Department, dated 30.05.2014, and the consequential order issued by the second respondent, dated 23.07.2014, and to direct the first respondent to pursue the departmental proceedings initiated by the second respondent vide proceedings, dated 12.09.2007.



2. Heard Mr. Mohamed Imran, learned Counsel for the petitioner and Mr. M. Linga Durai, learned Government Advocate appearing for the respondents.

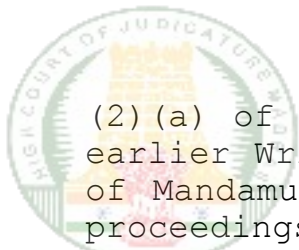
3. Brief facts, that are necessary for the disposal of this Writ Petition, are as follows:

3.1. The petitioner is a Government servant and he retired from service on attaining the age of superannuation on 28.02.2011. While the petitioner was in service, a charge memo, dated 12.09.2007 was issued to the petitioner. The charge was that the petitioner demanded and accepted bribe from 20 fishermen for getting subsidy. Since the explanation submitted by the petitioner was not satisfactory, an Enquiry Officer was appointed and he submitted a report and the charges against the petitioner were proved. During the pendency of departmental proceedings, the petitioner reached the age of superannuation and the Commissioner of Fisheries, vide proceedings, dated 28.02.2011, allowed the petitioner to retire from service without prejudice to pending departmental proceedings against him.

3.2. The second respondent, vide proceedings, dated 23.02.2011, imposed a punishment of stoppage of increment for a period of five years without cumulative effect. It is the case of petitioner that the petitioner was directed to remit a sum of Rs.36,120/- equivalent to the financial implications by implementing the order of punishment. As against the order of punishment, the petitioner preferred an appeal before the first respondent seeking review of the order of punishment. The first respondent, by the impugned order, cancelled the punishment on the ground that no punishment of stoppage of increment can be imposed, when no increment is to be earned by the petitioner before the date of superannuation.

3.3. Thereafter, the first respondent directed the second respondent to remit the papers in regard to the disciplinary proceedings initiated against the petitioner, so as to continue the same under the Rule 9 (2)(b) of Tamil Nadu Pension Rules, 1978. Meanwhile, an amendment was introduced to Rule 9 of Tamil Nadu Pension Rules, 1978 vide G.O.349, dated 12.08.2013. As per the amendment, the Sub Rule 2(a) was amended by substituting the proviso. As per the amendment, where the departmental proceedings are instituted by an Authority subordinate to the Government, that Authority shall submit a report recording its findings to the Government in case of pensioners who belonged to the State Service and the Head of the Department in respect of other pensioners.

3.4. It is by virtue of the amendment in the impugned Government order, vide G.O.(D) No.170, Animal Husbandry, Dairying and Fisheries (FS2) Department, dated 30.05.2014, the first respondent issued orders directing the Director of Fisheries to pursue further action in the disciplinary proceedings against the petitioner under Rule 9

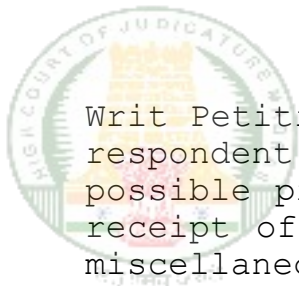


(2)(a) of Tamil Nadu Pension Rules, 1978. The petitioner has filed earlier Writ Petition in W.P.(MD)No8685 of 2014, for issuing a Writ of Mandamus to direct the respondents to conclude the disciplinary proceedings initiated pursuant to the charge memo, dated 12.09.2007. This Court also allowed the Writ Petition and directed the respondents to conclude the disciplinary proceedings within a period of four months from the date of receipt of the said order. Pursuant to the direction of this Court, the second respondent, by order, dated 23.07.2014, issued a notice regarding provisional conclusion of punishment under Tamil Nadu Pension Rules, 1978. Challenging the impugned Government Order and the impugned order passed by the second respondent, the above Writ Petition is filed.

4.The learned Counsel appearing for the petitioner submitted that the amended rule is not applicable to the petitioner, as it will apply only to cases where disciplinary proceedings are initiated after the amendment and not in respect of disciplinary proceedings, which was initiated and pending at the time of introduction of amendment. It is his case that the amendment is prospective in nature and no retrospective effect can be given so as to direct the second respondent to pursue with the disciplinary proceedings. Therefore, the question raised before this Court is whether it is the Government or the Head of the Department, who has to proceed with the enquiry under Tamil Nadu Pension Rules, 1978. The amendment that was introduced, no doubt, was during the pendency of disciplinary proceedings against the petitioner. However, the amendment is purely pertaining to the procedure that should be followed. It is not the case where the amendment deals with substantive rights of parties. The procedure to be followed while disciplinary proceedings continued after retirement of a person is modified by the amendment.

5.It is not in dispute that the Government passed an order directing the second respondent to initiate fresh proceedings against the petitioner. It is not in dispute that the second respondent is the Head of the Department. When the order was passed after amendment, the procedure to be followed is as one contemplated under the amended rules and therefore, this Court is unable to accept the arguments of the learned Counsel for the petitioner. The petitioner has filed a Writ Petition earlier for issuance of a Writ of Mandamus to conclude the proceedings immediately after the impugned Government Order was passed directing the second respondent to complete the proceedings. The point, which is now raised by the petitioner, was not raised in the earlier Writ Petition. Therefore, the conduct of the petitioner also would indicate that the petitioner had earlier accepted the competence of second respondent by getting a direction from this Court. Therefore, principle of constructive *res judicata* is applicable and this Court is not inclined to entertain the Writ Petition.

<https://hcservices.courts.gov.in/hcservices> reasons stated above, this Court find no merit in the



Writ Petition and hence, the Writ Petition is dismissed. The second respondent is now directed to conclude the proceedings, as early as possible preferably within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Secretariat,
Animal Husbandry, Dairying and Fisheries Department,
Chennai.

2.The Director/Commissioner,
Office of the Director/Commissioner of Fisheries,
DMS Complex,
Thenampettai, Chennai -6.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-29508[F] dated
17/09/2021)

+1 CC to M/s.SPL. GP (SR-29781[F] dated 21/09/2021)

W.P.(MD) No.12797 of 2014

17.09.2021

RD(11.10.2021) 4P 5C