



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.1535 of 2014

and

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

K.Viswanathan

... Petitioner

vs.

1.The Government of Tamil Nadu,
represented by its Secretary,
Rural Development and Panchayat
Raj (E3) Department,
Fort St.George, Secretariat,
Chennai-600 009.

2.The Commissioner,
Directorate of Rural Development and
Panchayat Raj (E3) Department,
Chennai-600 015.

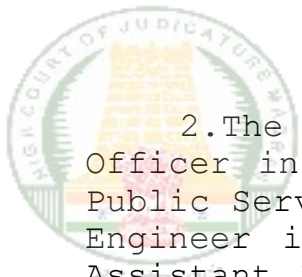
3.The District Collector,
Thanjavur District, Thanjavur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in G.O.(P)No.15, dated 13.01.2014, quash the same and consequently to direct the respondents to promote the petitioner to the post Executive Engineer from the day of his immediate junior was promoted with all monetary and service benefits.

For Petitioner : Mr.P.Saravakumar
For Respondents : M/s.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the first respondent in G.O.(P)No.15, dated 13.01.2014, quash the same and consequently to direct the respondents to promote the petitioner to the post Executive Engineer from the day of his immediate junior was promoted with all monetary and service benefits.



2.The petitioner was appointed as Assistant Soil Conservator Officer in Agriculture department on 04.09.1986 through Tamil Nadu Public Service Commission. The petitioner was selected as Assistant Engineer in the Rural Development Department and was promoted as Assistant Executive Engineer. When the petitioner was working as Assistant Executive Engineer, Rural Development, Thanjavur, was placed under suspension for having wilfully prepared inflated estimates of eight pond works by incorporating false measurements which are completely at variance with the state of ground.

3.The petitioner has taken the estimate for the year 2008-2009 but the petitioner ought to have taken the estimate for the year 2007-2008, thereby, inflated the cost. The petitioner was placed under suspension on 09.05.2008 and a charge memo was issued on 22.07.2008. The petitioner submitted an explanation in 02.08.2008. The petitioner's suspension was revoked on 14.08.2008. On 31.12.2008, the Enquiry Officer was appointed and the Enquiry Officer submitted the findings on 12.12.2009. But, the Enquiry Officer's report was served to the petitioner on 05.06.2012 and the petitioner submitted his explanation for the enquiry report also. Since no final orders were passed by the Appointing Authority, the petitioner filed a Writ Petition, in W.P.(MD)No.16581 of 2013. This Court, vide order, dated 08.10.2013, directed the first respondent to pass final orders. Then, the petitioner filed a Contempt Petition in Cont.P.(MD)No.1485 of 2013. Thereafter, the first respondent passed the final order imposing punishment of postponement of increment for a period of six months without cumulative effect. In the meanwhile, the Writ Petitioner filed another Writ Petition in W.P.(MD)No.8211 of 2021 in the Principal Bench for issuance of a Writ of Mandamus, directing the respondents to grant increments and promotion as Executive Engineer by including the name of the petitioner in the seniority list 2009. This Court vide order, dated 30.03.2021, disposed of the Writ Petition with certain terms and the same is extracted below:

"6. Considering the facts and circumstances of the case and taking into account the fact that the petitioner-s representation is already pending with the 2nd respondent, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the respondents herein to consider the representation preferred by the petitioner dated 31.12.2020, if not already disposed of and pass appropriate orders thereon, in accordance with law, after affording an opportunity of hearing to the petitioner and other persons, if any, who are likely to be affected, as expeditiously as possible, preferably within a period of 90 days from the date of receipt of a copy of this order;

ii) In case the petitioner is unable to appear



for personal hearing, the petitioner is 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 petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

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

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 31.12.2020 and this order, to the respondents forthwith;"

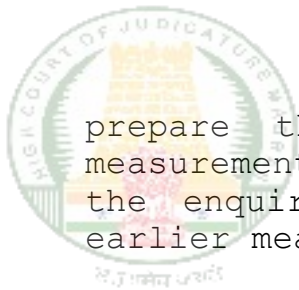
4. In this Writ Petition, the petitioner is seeking to quash the punishment order. The respondents have filed a detailed counter affidavit opposing the claim of the petitioner.

5. Heard Mr. P. Saravakumar, learned Counsel appearing for the petitioner and M/s. D. Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

6. The claim of the petitioner is that the pond cannot be measured during rainy days. The petitioner has admitted that he has given the estimate applicable for the year 2008-2009, but denies that the same has resulted in a loss of Rs. 4,23,426/- (Rupees Four Lakh Twenty Three Thousand Four Hundred and Twenty Six only), since the said estimate was not acted upon and there is no loss to the Government.

7. The respondents stated that since the petitioner has admitted that he has taken the estimate applicable for the subsequent years, that itself amounts to misconduct. The measurement that was available for a previous period can be taken into account and the petitioner's work is to ascertain the same measurement as available in the ground also. But, the petitioner failed to do so and thereby, has acted with an intention to create loss to the Government. Therefore, the petitioner has consciously escalated the cost and the act is wilful and wanton.

8. This Court on perusal of the entire records is of the view that the respondents are right in stating that the subsequent year estimates cannot be given to arrive at the cost. Since the petitioner is in the rank of Assistant Executive Engineer, has responsibility to take the current financial years into account and



prepare the estimate. For the subsequent charge about the measurement of the ponds, the respondents had given a tabulation in the enquiry report which clearly states the discrepancy in the earlier measurement and the present measurement of the petitioner.

9. Therefore, this Court is not inclined to interfere with the punishment. Hence, the Writ Petition is dismissed. However, the respondents are directed to consider the claim of the petitioner after the currency of the punishment is over, if the petitioner is otherwise eligible for promotion, the same may be considered within a period of four weeks from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

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Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Secretary,
The Government of Tamil Nadu,
Rural Development and Panchayat
Raj (E3) Department,
Fort St. George, Secretariat,
Chennai-600 009.
2. The Commissioner,
Directorate of Rural Development and
Panchayat Raj (E3) Department,
Chennai-600 015.



3.The District Collector,
Thanjavur District, Thanjavur.

+1 CC to M/s.SPL GP (SR-36277[F] dated 29/11/2021)

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Order made in
W.P. (MD) No.1535 of 2014
26.11.2021

KMK (CO)
TR(06.12.2021) 5P 5C