IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14127 of 2013

1.R.Shanmugam (Died)
2.Madhammal
3.Yogeshwaran
4.Vanipriya ...Petitioners
(P2 to P4 substituted as LRs of deceased sole petitioner vide order dated 31.01.2022 in WMP.No.26442 of 2021 in WP.No.14127 of 2013)

-Vs-

1. The Principal Secretary/
Revenue Commissioner,
Accounts Department,
Ezhilagam, Chennai - 5.

2. The District Collector,
Erode District, Erode. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, quash the order of the 2nd respondent bearing Na.Ka.No.34650/2008/A3 dated 13.09.2010 and the order of the 1st respondent dated 07.03.2013 bearing Na.Ka.No. Va.Ni.2(2)/1363/2011 and consequently direct the respondents to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

For Petitioners : Mr.V.Kadirvelu

For Respondents : Mr.E.Veda Bagath Singh,
Special Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. A charge memo was framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (hereinafter

referred to as 'the Rules') against Thiru R.Shanmugam, the Government employee, alleging that he had forged and created false seal of the Government, while he was required to remit the land tax collected from the villagers in the Bank. Accordingly, he was proceeded against with a departmental enquiry on the ground of misappropriation of Government funds.

3. The Enquiry Officer had placed reliance on the oral evidences before him and held the charges to be proved. Accordingly, the Disciplinary Authority had passed the order of dismissal on 13.09.2010. As against the order of dismissal, the employee had filed an appeal on 12.11.2010 before the first respondent herein, which came to be rejected on 07.03.2013. Challenging the original order of punishment, as well as the order passed in appeal, the present writ petition has been filed.

4. Pending the writ petition, the employee, namely, R.Shanmugham, expired and the petitioners 2 to 4 herein, who are his legal heirs, have been substituted in his place.

5. The original order of punishment passed by the second respondent herein cannot be strictly found fault with, since the evidences before the Enquiry Officer were considered by him and accordingly, the punishment of dismissal from service came to be passed. Since the charges were serious in nature, the punishment can also be said to be proportionate to the charges.

6. However, when the late employee had filed an appeal before the first respondent on 12.11.2010, he had raised grounds questioning the order of the second respondent herein. Among other grounds, the employee had also raised the ground of hostile discrimination, whereby he has stated that the delinquency was imputed to both the Village Administrative Officer as well as the Assistant. However, while the Village Administrative Officer has been reinstated back into service, the late employee was dismissed.

7. The first respondent herein, while passing the order-in-appeal, had referred to the various charges against the petitioner and the report of the Enquiry Officer, as well as the punishment imposed by the Disciplinary Authority. However, while considering the grounds in the appeal, the first respondent herein had rejected the appeal with a single line order, stating that "the grounds were carefully perused and there are no acceptable explanations".

8. Rule 23 of the Rules provides for the procedure to be adopted by the Appellate Authority while considering the order of punishment. As per the said rule, the Appellate Authority is required to consider as to whether the facts on which the order of punishment was passed have been established; whether the

facts established afford sufficient ground for taking action; and whether the penalty is excessive, adequate or inadequate. This is a mandatory procedure to be adopted by the Appellate Authority, which has apparently been violated by the first respondent herein.

9. When the petitioner had raised a specific ground that there was hostile discrimination between the two delinquents, there was a duty cast on the first respondent to have dealt with the same, apart from rendering a finding with regard to the proportionateness of the punishment. Thus, the order passed in appeal cannot be sustained.

10. In normal circumstances, this Court would have remitted the matter back to the Appellate Authority for reconsideration and to pass a speaking order. However, in the instant case, the Government employee had expired and the legal heirs have now been brought on record and therefore remitting back the matter to the Appellate Authority, would be a futile exercise. Considering this aspect and on the peculiar circumstances of this case, this Court is of the view that the punishment of dismissal could be modified into one of compulsory retirement, so as to enable the legal heirs of the deceased employee to get the monetary benefits. However, since the charges against the employee were serious in nature, he would not be entitled for the back wages.

11. In the light of the above observations and findings, the impugned order passed by the first respondent in Na.Ka.No. Va.Ni.2(2)/1363/2011 dated 07.03.2013 is quashed. Insofar as the order of punishment passed by the second respondent in Na.Ka.No.34650/2008/A3 dated 13.09.2010 is concerned, the punishment of dismissal is modified into one of compulsory retirement. Accordingly, the second respondent shall pass appropriate orders for disbursement of the death-cum-retirement gratuity benefits of late R.Shanmugam to the petitioners 2 to 4 herein, including the family pension, but without back wages. Such orders of disbursement shall be passed by the second respondent within a period of 8 weeks from the date of receipt of a copy of this order.

12. The Writ Petition stands allowed, accordingly. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Principal Secretary/
   Revenue Commissioner,
   Accounts Department,
   Ezhilagam, Chennai - 5.

2. The District Collector,
   Erode District, Erode.

+1cc to Government Pleader SR. No.17785

W.P.No.14127 of 2013

VBM (CO)
PR (21/03/2022)