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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.03.2022
Pronounced on	30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.26304 of 2008
and
WMP.No.22398 of 2021

P.Jeyabalakrishnan

...Petitioner

Vs.

1. The Secretary to Government,
Rural Development & Panchayat Raj Dept.,
Fort St. George,
Chennai-600 009.
2. K.Ashok Vardhan Shetty,
Secretary to Government,
Rural Development & Panchayat Raj Dept.,
Fort St. George,
Chennai-600 009.
3. The Director of Rural Development &
Panchayat Raj Department,
Kuralagam,
Chennai-600 104.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating the impugned order of the first respondent issued in G.O.(Ms) No.83, Rural Development and Panchayat Raj Department, dated 29.05.2008 and the consequential order passed in G.O.(D) No.519, Rural Development and Panchayat Raj (E1) Department, dated 13.10.2015 and to quash the same and to direct the respondents to reinstate the petitioner in service as Joint Director of Rural Development with continuance of service and all other attendant benefits.

(Prayer amended vide order dated 22.02.2022 made in WMP.No.22374/2021 in W.P.No.26304/2008 by MSRJ).



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For Petitioner : Mr.Vijaya Narayan, Sr. Counsel
for Mr.T.Ranganathan

For Respondent : Mr.R.Neelakandan, AAG
Nos. 1 & 3 Asst. by Mr.C.Selvaraj, AGP

O R D E R

Heard the learned counsel for the parties.

2. The petitioner herein, who was the former Personal Assistant (Panchayat Development) to the District Collector, Coimbatore and while serving as a Project Officer, (P.I.U.), Mahalir Thittam, Coimbatore was levelled with certain charges under Section 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter referred to as "TNCS (D&A) Rules] through a charge memo dated 15.12.1999. The nature of the charges against the petitioner is that there were some irregularities in the purchase of 222 Television Sets, whereby the petitioner herein is alleged to have instructed one Thiru G.Gopikrishna, Divisional Technical Assistant, Pollachi Division to collect Rs.2000/- per Television Set, totally amounting to Rs.4,44,000/- as illegal gratification. Prior to the framing of the charges, Thiru G.Gopikrishna, whose name was also implicated in the petitioner's charge memo, was allowed to retire on 05.08.1999, on medical invalidation. The petitioner herein alone was subjected to an inquiry under Rule 17(b) of the TNCS (D&A) Rules and through an inquiry report dated 06.06.2002, the charges were held to be proved. Based on the proven charges and the advice of the Tamil Nadu Public Service Commission, the first respondent herein had imposed the punishment of "removal from service" to the petitioner.

3. During the course of inquiry, the statement of three witnesses namely, G.Gopikrishna, S.Kulandaivelu and P.V.Ramakrishnan were recorded by the Inquiry Officer. Among the three, except Thiru G.Gopikrishna, the other two witnesses did not implicate the petitioner of having involved in the charges. However, the witness Thiru G.Gopikrishna had stated that he had received a commission of Rs.1500/- for each Television Set and while retaining Rs.500/- for himself, he alleged that the balance amount was handed over to the petitioner herein. In view of the statement of Thiru G.Gopikrishna, the charges against the petitioner was held to have been proved by the Inquiry Officer.

4. The learned Senior Counsel appearing for the petitioner predominantly raised a ground stating that though the



petitioner had been repeatedly seeking permission to cross examine Thiru G.Gopikrishna, who is the only witness and who directly implicated the petitioner, the Inquiry Officer had not given him the opportunity to cross examine him. The learned Additional Advocate General produced the original files relating the petitioner's inquiry and by pointing out to the petitioner's statement dated 07.12.2001, submitted that such a claim was given up by the petitioner himself. A perusal of the statement dated 07.12.2001 reveals that the petitioner had categorically stated that since all the evidences supporting him are already in the files before the Inquiry Officer, he did not want to cross examine Thiru G.Gopikrishna. Thus, when the petitioner himself has given up the right to cross examine Thiru G.Gopikrishna, the Inquiry Officer cannot be found fault with.

5. However, the enquiry proceedings appears to be vitiated on a more serious aspect. Admittedly, the charges against the petitioner were held to be proved only through the statements of Thiru G.Gopikrishna that he had received Rs.1,500/- from the Television Dealer and while retaining Rs.500/-, he had handed over the balance amount to the petitioner herein. In the original files produced by the learned Additional Advocate General, it is seen that the Government in G.O.(D) No.448, Rural Development (E1) Department, dated 07.10.1999, had accorded sanction to initiate departmental proceedings against the petitioner, as well as Thiru G.Gopikrishna, under Rule 17(b) of the TNCS (D&A) Rules. By the time the sanction was accorded, Thiru G.Gopikrishna was allowed to retire on 05.08.1999 itself.

6. Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978, provides that the departmental proceedings, if not instituted while the Government Servant was in service, whether before his retirement or during his re-employment, shall not be instituted, save with the prior sanction of the Government. Thus, there is no bar under the Pension Rules for initiating action against a retired Government Employee.

7. Though the Government in G.O.(D) No.448, Rural Development (E1) Department, dated 07.10.1999, had accorded sanction to initiate departmental proceedings against Thiru G.Gopikrishna together with the petitioner herein, the respondents had chosen to subject the petitioner alone for the inquiry and not only excluded Thiru G.Gopikrishna from the departmental proceedings, but also had used him as a witness to testify against the petitioner herein. It is needless to point out that had the respondents, levelled charges against Thiru G.Gopikrishna also and subjected him to departmental enquiry, he may not have implicated himself, as well as the petitioner herein, by admitting that he had received Rs.1,500/- as



commission and handed over the balance amount to the petitioner herein after retaining Rs.500/- for himself.

8. The action on the part of the respondents in excluding Thiru G.Gopikrishna from the departmental action, whose statement alone enabled the Inquiry Officer to hold the charges against the petitioner as proved and turned hostile to the petitioner, the action amounts to discrimination. Thus, when there is no bar under the Pension Rules for initiating action against a pensioner and when the respondents had chosen to proceed with the departmental action against the petitioner alone, the same could be termed as an act of "hostile discrimination". On this ground of hostile discrimination, the entire departmental enquiry against the petitioner, as well as the consequential punishment, would stand vitiated.

9. For all the foregoing reasons, the impugned order in G.O.(Ms) No.83, Rural Development and Panchayat Raj Department, dated 29.05.2008 and the consequential order in G.O.(D) No.519, Rural Development and Panchayat Raj (El) Department, dated 13.10.2015 passed by the first respondent, are hereby quashed. Since the petitioner is said to have reached the age of superannuation, there shall be a direction to the first respondent herein to forthwith pass appropriate orders, notionally retiring the petitioner on the date he had attained the age of superannuation and disburse all the service and monetary benefits, including the pensionary benefits, within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petition is also closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS III)

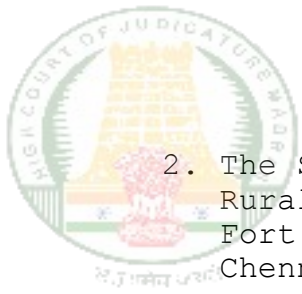
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Sub Assistant Registrar

DP

To

1. The Secretary to Government,
Rural Development & Panchayat Raj Dept.,
Fort St. George,
Chennai-600 009.



2. The Secretary to Government,
Rural Development & Panchayat Raj Dept.,
Fort St. George,
Chennai-600 009.

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3. The Director of Rural Development &
Panchayat Raj Department,
Kuralagam,
Chennai-600 104.

+lcc to Mr.T.Ranganathan, Advocate, S.R.No.21408
+lcc to the Government Pleader, S.R.No.21714

W.P.No.26304 of 2008
and
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NSK 06/04/2022