



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

CORAM

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mrs. Justice V. BHAVANI SUBBAROYAN

W.A.No.1635 of 2021

1. The Government of Tamil Nadu
Rep. By it Secretary to Government,
Agriculture Department,
Fort St.George, Chennai - 9.
2. The Chief Engineer (Agricultural Engineering),
Nandanam, Chennai - 35. .. Appellants

Vs

I.Imthiyas Mohammed .. Respondent

Appeal preferred under Clause 15 of Letters Patent against the order dated 21.08.2020 made in W.P.No.10069 of 2013.

Prayer in W.P.No.10069 of 2013 : Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari filed mandamus calling for the entire records which culminated in passing the order in G.O. (3D) No.128, Agriculture Department dated 28.09.2012 on the file of the 1st respondent, quash the same and consequently direct the respondents to disburse all the terminal benefits due and payable to him within a period to be specified by this Court.

For Appellants : Mr.Abishek Murthy
Government Advocate

For Respondent : Mr.T.Sellapandian

JUDGMENT

(Made by PARESH UPADHYAY, J.)

1. Challenge in this appeal is made to the order dated 21.08.2020 recorded on W.P.No. 10069 of 2013. This appeal is by the respondent / State Authorities.

2. Learned Government Advocate has vehemently submitted that, interference in the punishment order by learned Single Judge was unjustified since, on the basis of the material on



record the Government as the Disciplinary Authority had imposed punishment and the State was well within its right to do so. It is submitted that the interference by learned Single Judge on the ground of proportionality was unwarranted in the facts of this case. Reliance is also placed on the decision of the Supreme Court of India in the case of Shyam Lal v The State of U.P and others reported in AIR 1954 SC 369 to contend that the impugned order is unsustainable. It is submitted that this appeal be entertained.

3. Learned advocate for the respondent / original writ petitioner has supported the order of learned Single Judge. Attention of the Court is also invited to the documents placed on record right from the charge memo to the final punishment order. It is submitted that, learned Single Judge has not committed any error and therefore no interference be made by this Court. It is submitted that this appeal be dismissed.

4. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

4.1 The writ petitioner had joined the services on 20.08.1984. He was working as Assistant Engineer.

4.2 There was alleged misconduct on his part of dereliction of duty, since one Measurement Book No. 1361 was not found to be on record. This happened in the year 2001. It is a matter of record that, the said measurement book, in any case was received by the State Authorities and the inspection of the work as mentioned in the said measurement book was also carried and no irregularity is found therein.

4.3 The writ petitioner was issued charge memo on 23.04.2004 for the above so called dereliction. He denied the charges. Departmental enquiry was conducted on 27.12.2004. The writ petitioner did not hear anything for years. On 31.08.2008 second show cause notice was given to the writ petitioner intimating him that charge against him is treated to have been proved. He replied to it. This was again kept pending for years.

4.4 The writ petitioner was to attain the age of superannuation on 30.09.2012. Two days before his retirement, punishment order was passed on 28.09.2012 ordering compulsory retirement. It is this order, which is set aside by learned Single Judge. Learned Single Judge has on the basis of the material on record arrived at the conclusion that the punishment order was unsustainable on more than one ground.

5. We have considered the reasons recorded by learned



Single Judge. We find that in the gross facts noted above, the setting aside of the punishment order by learned Single Judge can not be said to be an error which may call for any interference. This appeal therefore needs to be dismissed. While dismissing this appeal, we note that on independent of appreciation of material on record we have also arrived at that conclusion that the punishment order was unsustainable. It was for more than one reason. Firstly that the charge against the writ petitioner was about missing of measurement book which was already received by the Department and the work mentioned therein was also independently audited and there was no irregularity or atleast there is nothing on record to show that there was any irregularity. Therefore on merits nothing was required to be done. In any case the missing measurement book was subsequently found. If any officer was to be punished, keeping that issue pending for about 12 years and passing an order of compulsory retirement two days prior to superannuation retirement itself speaks a lot about its unsustainability. We find that, though learned Single Judge has not interfered in the impugned order on the ground of malafide exercise of power, over and above what is noted by learned Single Judge we find that, at least there was malice in law. In totality we find that, this appeal needs to be dismissed. No interference is required in the order of learned Single Judge.

6. For the reasons recorded above, this appeal is dismissed. No costs. C.M.P.No.10233 of 2021 would not survive.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ssm/13

TO

1. The Secretary to Government,
Agriculture Department,
Fort St.George, Chennai - 9.
2. The Chief Engineer (Agricultural Engineering),
Nandanam, Chennai - 35.

+1cc to Mr.S.Mani, Advocate, S.R.No.33496

W.A.No.1635 of 2021

EV(CO)
CT/28/06/2022