



Order dated : 07.07.2022
Writ Petition No.18528 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

Writ Petition No.18528 of 2014

and

M.P.No.2 of 2014

P.Gopalsamy

S/o.P.M.Ponnusamy

... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by its
Secretary to Government,
Home (Tr-II) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Principal Secretary/
Transport Commissioner,
Ezhilagam, Chepauk,
Chennai - 600 005.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records culminating in GO (2D) No.348, Home (Tr-II) Department, dated 17.10.2012 of the first respondent and quash the same and consequently, direct the respondents to sanction and disburse petitioner's eligible full pension every month and pay the arrears with interest and other consequential benefits accrued thereon within a time frame to be fixed by this Court.



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For Petitioner : Mr.A.Mohamed Ismail

For Respondents : Mrs.R.L.Karthika
Government Advocate

ORDER

The order of punishment of cut in pension at the rate of Rs.3,000/- p.m. for a period of five years imposed on the petitioner by the Government is under challenge in the present writ petition.

2. The petitioner joined as Motor Vehicle Inspector Grade II in the transport department and retired from service in the year 1996 from the post of Deputy Transport Commissioner after rendering 31 years of service. Two set of charges were framed against the petitioner with regard to allegation of accumulation of disproportionate wealth and one set of charges initiated in charge memo in R.No.90551/V4/1999 dated 22.03.2005 were dropped on the ground of delay. As far as the other set of charges relating to disproportionate wealth is concerned, the matter was referred to Tribunal for Disciplinary Proceedings, Coimbatore and the Tribunal conducted an enquiry. The petitioner participated in the process of enquiry and defended his case. The Tribunal submitted its report holding that the charge against the petitioner was proved. Based on the proved charges, the Government issued the order impugned



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imposing penalty of cut in pension at the rate of Rs.3,000/ -p.m. for a period of five years.

3. Learned counsel appearing on behalf of the petitioner mainly contended that there was enormous delay in pursuing the charge memo and even, the enquiry was pending for more than 10 years. The other set of charges were dropped on the ground of delay. Therefore, the present impugned order is also to be set aside on the ground of delay.

4. The competent authority of the Government submitted its preliminary enquiry report in July 1991 after a lapse of nearly 14 years from the start of check period on 01.01.1978. Since the case falls under the purview of the Department of Vigilance and Anti Corruption, the time limit prescribed for completing the investigation is to be followed. Further, in the case of petitioner, there was enormous delay in completing the proceedings in all respects and therefore, the order of punishment is to be set aside. The petitioner states that certain documents relied on by the petitioner were not furnished by the Tribunal for Disciplinary Proceedings. The Tribunal has not appreciated those documents in a proper manner and that also resulted in imposing of punishment.



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5. Learned Government Advocate appearing on behalf of the respondent objected the said contention by stating that no doubt one set of charges were dropped on the ground of delay by the Government. As far as the other set of charges are concerned, it was relating to accumulation of disproportionate wealth and therefore, the matter was referred to the Vigilance and Anti Corruption Department and subsequently, the disciplinary proceedings were transferred to the Tribunal. The Tribunal conducted a detailed enquiry and submitted its report holding that the charges are proved. Thus, the Government issued the order impugned imposing punishment of cut in pension at the rate of Rs.3,000/- for a period of five years.

6. Learned Government Advocate reiterated that the procedures contemplated under the Rules are followed scrupulously by the competent authorities and opportunity was provided to the petitioner and thus, there is no infirmity.

7. It is contended that based on the report of appropriate charge, the Government/first respondent forwarded the case to the Tribunal for Disciplinary



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Proceedings for enquiry of the charges of disproportionate assets to the extent of Rs.3,99,717.45. The Tribunal for Disciplinary Proceedings, Coimbatore, enquired the issues in case No.22/1992 and held that the charges are proved.

8. The Court, in exercise of judicial review, must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with;
- (ii) the finding of misconduct is based on some evidence;
- (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed;
- (iv) whether the findings of the disciplinary authority suffer from perversity;
- (v) the penalty is disproportionate to the proven misconduct.

The above principles, in exercise of power of judicial review, are enumerated by the Hon'ble Supreme Court of India in the case of *State of Karnataka v. Umesh* [2022 LiveLaw (SC) 304].

9. With reference to the above principles, the allegation against the petitioner was accumulation of disproportionate wealth and the Department of Vigilance and Anti-Corruption conducted an enquiry and consequently, the



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Government referred the matter for Tribunal for Disciplinary Proceedings towards conduct of enquiry. The Tribunal conducted an enquiry by affording opportunity to the charged official, who, in turn, availed of the opportunity and defended his case. Based on the proved charge, the punishment of cut in pension at the rate of Rs.3,000/- for a period of five years was imposed.

10. In the present case, the petitioner was provided with an opportunity to defend his case and the Tribunal for Disciplinary Proceedings arrived at a conclusion that the charges against the petitioner were proved based on some evidence and further, the findings of the disciplinary authority do not suffer from any infirmity or perversity. The punishment of cut in pension at the rate of Rs.3,000/- for a period of five years cannot be construed to be disproportionate to the gravity of the proved charges. This being the factum, this Court does not find any other acceptable reason for considering the relief as such sought for in the present writ petition.

Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking order
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To

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S.M.SUBRAMANIAM., J

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