



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 25.04.2022
DELIVERED ON : 14.06.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P(MD).No.4461 of 2013

WEB COPY

C.A.Shanmukhavel

... Petitioner

Vs.

1.The Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.The Commissioner of Geology and Mining,
Guindy, Chennai-600 032

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the first respondent in G.O(2D) No.38 Industries (E1) Department dated 27.9.2012 and quash the same and consequently direct the respondents herein to re-fix the retirement benefit of the petitioner by considering the notional promotion to the petitioner as Additional Director of Geology and Mining Department on par with his juniors and to disburse the monetary benefits for his service and from 31.1.2006 till realization together with nominal rate of interest within a reasonable time.

For Petitioner
For Respondents

: Mr.C.Jeganathan
: Mr.P.Thilak Kumar
Government Pleader
Assisted by Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed to quash the impugned order passed by the first respondent in G.O(2D) No.38 Industries (E1) Department dated 27.9.2012 and consequently direct the respondents herein to re-fix the retirement benefit of the petitioner by considering the notional promotion to the petitioner as Additional Director of Geology and Mining Department on par with his juniors and to disburse the monetary benefits for his service and from 31.1.2006 till realization together with nominal rate of interest.

2. The brief facts of the case are that the petitioner had joined the service as Geological Assistant on 01.09.1972 in the erstwhile Public Works Department. Thereafter, the petitioner was promoted to the service as Assistant Director on 12.01.1979 and attained

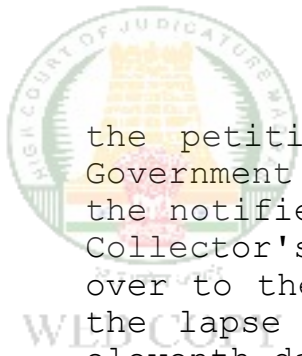


superannuation on 31.01.2006 after completion of 34 years of service.

3. The contention of the petitioner is that he was a whistle blower in the Mining Department and even after his retirement, he was doing his service to the public and writing reports of irregularities and violations committed in the Mining Department by the officials and illegal mining operators. Even in the year 2005, the petitioner was writing letters and complaints to the higher officials and the Government about the illegal mining operation with authenticated records. The petitioner made several complaints to the Government and the Vigilance Department are not handing over the documents against the erred officials. The complaints submitted are still pending.

4. The petitioner's report will speak volumes against the officials and the steps taken by the petitioner to control the illegal mining. The erred officials formed a group and levelled untenable and trivial charge against the petitioner. As a result, the petitioner was served with a charge memo by the first respondent, dated 22.12.1999 in Lr.No.47901/E1-93-32, wherein, two charges were framed against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules that there was a loss of Rs.96,577/- by issuing transport permit without collecting the seigniorage fee to one Kalyani Thevar and three others, who are the lessees who had *status quo* order in the Civil Court and by misinterpreting the *status quo* orders. The second charge is that a sum of Rs.33,102/- was not collected from one S. Jeyaraman and the lease was granted to him to another quarry without obtaining the Mining Dues Clearance Certificate.

5. Even though, the Government has accepted that there was no provision in Tamil Nadu Minor General Concession Rules, 1959 to collect the seigniorage fee during the period under reference for the auctioned quarries i.e., 1994 and the opinion on the *status quo* orders was given by the Government Pleader and even though the Government has issued orders to allow quarrying operations and to issue transport permits for those who obtained *status quo* orders even if those persons did not hold those areas under lease granted earlier. The Government is well aware of the fact that there were precedence that transport permits had been issued based on the *status quo* orders in almost all the Districts including Madurai District and the first and the initial action was taken by the Assistant, Special Revenue Inspector (Mines), Special Deputy Tahsildar (Mines) and the Assistant Geologist to issue the transport permit by issuing chalans for the remittance of lease amount charges were framed initially against the petitioner (A.O.1), Assistant (A.O.5) and Special Deputy Tahsildar (Mines) (A.O.3) and subsequently charge one was omitted for Assistant (A.O.5) and Special Deputy Tahsildar (Mines) (A.O.3) and it was pursued against



the petitioner alone by the Government wantonly. Even after the Government has accepted that the lease deed was not executed within the notified period of ten days from the date of receipt of District Collector's orders and consequently the quarry was not all handed over to the highest bidder and the quarry lease was cancelled after the lapse of one and half years instead of cancelling it on the eleventh day of the receipt of District Collector's orders.

6. The quarry lease register pertains to the year 1991 and the collection of second year lease amount for the legally valid quarry lease before 31.06.1992 and making the entries in the arrear register pertains to the year 1992. Since the responsibilities for the above actions are the concerned officials worked at that period and not on the official who had worked subsequently. The petitioner had joined duty at Madurai only on 22.07.1994 i.e., 21 days after the expiry of lease. The charges were framed initially against the petitioner, Assistant Geologist, Special Deputy Tahsildar (Mines), Special Revenue Inspector (Mines) and Assistant (Mines). Meanwhile, promotions were given to Assistant Geologist, Special Deputy Tahsildar (Mines), Special Revenue Inspector (Mines). Charge two was dropped for Assistant Geologist, Assistant and Special Deputy Tahsildar (Mines) on 26.12.2006 and a pension cut of Rs.300/- was ordered on 13.04.2007 on Special Revenue Inspector (Mines) as he accepted for the cut and action was taken against the petitioner alone by the Government wantonly.

7. The contention of the petitioner is that there is no iota of truth in the allegation against the petitioner. Moreover, the officials who were responsible for not conducting the auction of the quarries in time, for not executing the lease deed in time, for not maintaining the quarry lease and arrear registers and for not making necessary entries in those registers in time, for not collecting the lease amount in time, for not at all handing over the possession of the quarry to the highest bidder, for not taking action to evict the ex lessees for unlawful possession in time and for supervisory lapses were not brought as delinquents.

8. The petitioner submitted his explanation and thereafter after the lapse of two years, the first respondent appointed an Enquiry Officer vide G.O (D) No.48 dated 15.02.2002. The petitioner participated in the departmental enquiry and cross examined the witnesses also and in most of the statement of witnesses there is no specific averment against the petitioner connecting with the charge. Finally, the Enquiry Officer sent a detailed report holding as far as the first charge is concerned, that there is no revenue loss to the Government as alleged in the charge memo. With regard to the second charge, the report has held that there is a specific finding that there is dereliction of duty by the Special Revenue Inspector (Mines) and that the petitioner was not guilty of the charges. The Enquiry Officer decided that there is no lapse on the petitioner's



part and he cannot be held responsible.

9. After the enquiry, the petitioner was directed to submit explanation on 14.11.2004 and 05.11.2005. Once again, the petitioner was directed to give further explanation on 05.12.2005 and no final order was passed. Since the petitioner was on the verge of superannuation i.e on 31.01.2006, the petitioner filed W.P.No.40083 of 2005 seeking to conclude the departmental proceedings before his retirement and by an order, dated 06.12.2005, there was a specific direction that final order shall be passed before 20.01.2006. The said order was also communicated to the respondents and prayed for dropping of the proceedings and include petitioner's name in the panel for his next promotion. But upto 20.01.2006, no final order was passed.

10. Therefore, the petitioner filed another writ petition in W.P.No.2090 of 2006 seeking for a direction to direct the respondents to allow the petitioner to retire from service without any remarks in view of long pending decision by the first respondent. This Court directed the first respondent to pass final orders in the disciplinary proceedings on or before 20.07.2006 failing which the disciplinary proceedings for which the enquiry is already over shall stand terminated and the petitioner will be deemed to have been retired on 31.01.2006. Since the said order was not obeyed by the respondents and the petitioner filed contempt proceedings and the same is pending. The first respondent issued a notice dated 20.07.2006 i.e., the date on which final order should have been passed as per the Court orders, stating that he is differing with the earlier report of the enquiry officer and called for a fresh explanation for the new manufactured two deviated charges.

11. The petitioner submitted a representation dated 24.08.2006. But, in the proceedings, dated 20.07.2006, the respondent has altered the charge as if there is a supervisory lapse on the petitioner's part. The predecessor of the petitioner had also deposed that illicit quarrying was detected in the quarries under reference after the expiry of lease period and lessees had obtained the interim orders of the District Munsif Court during his tenure and before the petitioner joined duty at Madurai on 22.07.1994.

12. The petitioner had taken expeditious action to lease out all the quarries including the four quarries under reference through tender system, the next day of his joining duty at Madurai and the tender notification was published in the District Gazette Notification No.30 dated 05.08.1994. The petitioner could not lease out the four quarries under reference, as the Government Pleader has opined that these quarries should not be leased out due to the pending suits and the matter is sub-judice. The Government is well aware that the suits were dismissed on 02.03.1995 i.e. after the

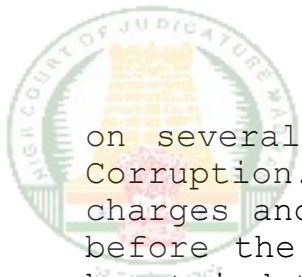


petitioner was relieved from Madurai. Even after the dismissal of the suits no action was taken by the subsequent officials to lease out the 103 quarries including these four quarries through tender system for more than 21 months resulting in actual heavy loss of revenue to the Government. The petitioner alone has set right the pell-mell condition prevailed before his joining duty at Madurai but the respondents turn around and now accuses the petitioner for all the deeds and misdeeds that happened prior to the petitioner's appointment to the said post. Hence the said view now taken by the first respondent is a vindictive measure.

13. Even after the order, the petitioner was not allowed to retire from service, the petitioner filed two writ petitions in W.P. (MD). Nos. 1772 and 1773 of 2006 praying to allow the petitioner to retire from service with all the benefits. This court directed the Government to pass final orders with regard to the allegations pending against the petitioner on or before 31.01.2007. Since the Government has not passed any orders, the petitioner was constrained to file Contempt Petition (MD) No. 81 of 2007 and the notice was ordered by this court on 10.09.2007. But the Government instead of concluding the proceedings by passing final orders as per the Court directions passed the orders allowing the petitioner to retire from service on superannuation on 31.01.2006 without prejudice to the disciplinary proceedings pending against the petitioner on 05.10.2007.

14. After several years, the first respondent issued a letter stating that the enquiry proceeding is concluded and it is proposed a penalty of Rs.200/- per month for one year shall be cut from the pension. The petitioner submitted an explanation on the same day i.e. on 05.11.2007 opposed the penalty proposed for the reasons stated in the explanation. After five years of keeping the petitioner's representation and the proposed penalty and even though the Government has conclusive proof that even the deviated charges have no bearing on the petitioner and they are only applicable to his predecessor and successor, the impugned order was passed by the first respondent on 27.09.2012. The cause of action for the charge was happened in the year 1994 and the petitioner cooperated with the departmental proceedings and gave his explanations, whereas the penalty imposed by the first respondent, now on a new charge which was not framed earlier and after a period of 20 years imposing punishment vide G.O. (2D) No.38 Industries (E1) Department dated 27.09.2012 is vindictive in nature. Aggrieved over the same, the present writ petition has been filed.

15. The first respondent filed counter stating that before going into the contentions of the petitioner, a detailed history is considered necessary in this case because the Government has issued several orders based on the reports of the Vigilance and Anti-Corruption Department. Charges were framed against the petitioner



on several counts based on the report of the Vigilance and Anti-Corruption. The petitioner instead of furnishing reply to the charges and instead of furnishing reply to the charges and to appear before the inquiry officer and to obtain orders from the government has tried to attach the charges through this writ petition.

WEB COPY

16. The Vigilance and Anti-Corruption Department has reported about the petitioner who was working as Assistant Director of Geology and Mining at Madurai and based on the report of the Vigilance and Anti-Corruption Department, the Government have issued two charge memos in Government Letter No.47901/E1/1993-32, Industries Department, dated 22.12.1999. The petitioner has submitted his reply, dated 15.08.2000 for the said two charge memos to the Government. The Inquiry Officer has furnished his report after enquiry vide report dated 28.10.2004.

17. After careful examination of the charges framed, explanation and further explanation of the Delinquent Officer and the findings of the Inquiry Officer along with the connected records, decided that the charges have been proved. The Government is of the view that the petitioner has misinterpreted the *status quo* order granted by the District Munsif Court, Madurai and issued transport permit for rough stone to the ex-lessees, thereby showed illegal favour to the four lessees. Therefore, the Inquiry Officer has clearly stated that the Accused Officer misinterpreted the *status quo* order to show illegal favour to the lessee with respect to charge 1 and Accused Officer-1 is also responsible for his failure and lack of supervision in addition to Thiru M.Sappani formerly Revenue Inspector, Office of the Assistant Director, Geology and Mining, Madurai and Thiru K.Muthusamy, formerly Assistant, Office of the Assistant Director, Geology and Mining, Madurai who was held responsible for the failure to note the arrear lease amount by Thiru S.Jayaraman and with respect to charge-II.

18. For the proven charge against the delinquent officer, the Government have arrived at a provisional conclusion to impose the punishment of cut in pension at the rate of Rs.200/- per month for the period of one year on the Delinquent Officer, which was a minor punishment only. The Delinquent Officer had not accepted the provisional punishment of cut in his pension. Thereafter, the Government sought its opinion from the Tamil Nadu Public Service Commission and the Commission has stated that the Government have acted very leniently and imposed a lighter punishment of cut in provisional pension of Rs.200/- that too for only one year. The said order was issued in G.O.2D No.38 Industries (E1) Department, dated 27.09.2012.

19. The petitioner filed several writ petitions and the above stated statements indicate that the petitioner is a Court Bird. The petitioner was issued with four different charges over a period of



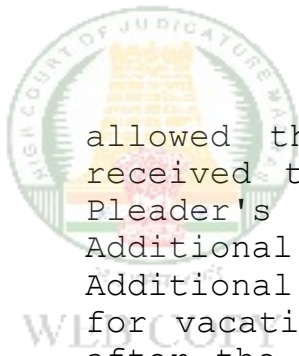
time. The District Collector, Madurai has submitted a report to the Government on huge loss of revenue due to the illicit mining operation of Granite. The charges indicated by the petitioner are not allowed to get finalized as it has been often challenged in this Court. The fact that the charges cannot be challenged before any Court of law. After several stages of consideration of the relevant facts from the files and from the individual petitioner and also from the corroborative evidences only the Government have issued orders after consulting the Tamil Nadu Public Service Commission. Hence there is no infirmity in the order.

20. The vigilance report and the inquiry report and the connected documents would indicate that the petitioner has shown favouritism to the former lessees under the guise of the interim Court orders and caused loss of revenue to Government. The respondents have followed the rules and regulations prescribed for conducting enquiry and the petitioner had participated and cross-examined the witnesses. Therefore, the petitioner has not raised any contention to interfere with the impugned punishment order and prayed for dismissal of the present writ petition.

21. Heard Mr.C.Jeganathan, the learned counsel for the petitioner and Mr.P.Thilak Kumar, the learned Government Pleader for the respondents and perused the materials on record.

22. As per the charge memo, the alleged delinquency was happened in the year 1994. The allegation against the petitioner is that the petitioner has not cancelled the lease already granted to the ex-lessees and ought to have conducted a fresh auction to lease the land, but the petitioner has failed to do so. The disciplinary proceedings were initiated against the petitioner. However, the contention of the petitioner is that the ex-lessee had approached the Civil Court, Madurai and has obtained an interim order against the respondents. The petitioner has approached the Government Pleader and obtained information wherein, it has been stated that there was an interim stay passed by the Civil Court. Further the Government Pleader has also opined that the proceedings of auctioning or cancelling the lease to the existing lessees cannot be carried on. Therefore, the petitioner allowed the existing lessees to continue in the said post without modifying the lease amount. In the second charge memo, the charges against the petitioner is that the petitioner allowed to continue the lease without calling or without issuing any notification for fresh lease. The petitioner has submitted that since there was a stay for four quarries, the petitioner could not issue notice or take steps for conducting any auction to the said four quarries.

23. On perusing the records, it is seen that the Government Pleader has stated that there was a stay, the respondents shall not initiate proceedings to conduct fresh lease. Hence, the petitioner



allowed the ex-lessees to continue in the same lease and has received the existing lease amount. After getting the Government Pleader's opinion, the Government has approached the learned Additional Advocate General for fresh auction. The learned Additional Advocate General stated that the steps should be taken for vacating the interim order and the interim order was obtained after the expiry of lease. Therefore, the lessees are not entitled to any further extension of time for lease. Thereafter, steps ought to be taken to vacate the interim order.

24. The contention of the petitioner is that the respondents have dropped the proceedings regarding other delinquents and in both charges, the petitioner alone was punished. The claim of the respondent is that the petitioner ought to have approached the Civil Court, Maduari and ought to have filed a vacate stay petition or prefer an appeal before the appellate court to vacate the interim order and the petitioner has not taken any such steps and hence the petitioner is liable to be punished.

25. This Court is of the considered opinion even though the steps were taken, it would take some more time for vacating the interim order. As rightly pointed out by the petitioner, the alleged delinquency happened in the year 1994, but the charge memo was issued belatedly in the year 1999. Hence, this Court is of the considered opinion that the charge memo is belated and the same is liable to be quashed.

26. Thereafter, the Enquiry Officer after going through the charge memo and after considering the documentary evidence and after perusing the cross-examination of the witness, has held that there is no lapse on the part of the petitioner and he cannot be held responsible. In spite of the enquiry officer's report, wherein it has been held that the petitioner is not responsible for the alleged charges, the respondents have deviated from the charges. Hence this Court is of the considered opinion that the charges are not proved as per the provisions of the service rules.

27. It is seen from the records that the respondents had not issued any notice for deviating from the Enquiry Officer's report after the lapse of so many years. For the deviation of charge, the respondents have not conducted any fresh enquiry. Hence the respondents action of deviating from the original enquiry report is against law and the same is violating the principles of natural justice. Therefore, from any angle, the impugned order is liable to be set aside. The respondents are directed to implement this order and consider the petitioner's name for promotion and consequential monetary benefits on par with the petitioner's junior and pass orders within a period of 12 weeks from the date of receipt of copy of this order.



28. The writ petition stands allowed with the above directions.
No costs.

Sd/-

Assistant Registrar(CO)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
Industries Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009.

2.The Commissioner of Geology and Mining,
Guindy, Chennai-600 032.

+1 CC to M/s.C. JEGANATHAN, Advocate (SR-25541[F] dated
14/06/2022)

+1 CC to M/s.C. JEGANATHAN, Advocate (SR-25677[F] dated
14/06/2022)

+1 CC to M/s.SPL.GP (SR-25785[F] dated 15/06/2022)

W.P (MD)No.4461 of 2013
14.06.2022

IM(CO)
KB(30.06.2022) 9P 6C