



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2022

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.7490 of 2020

and W.M.P. (MD) .No.6955 of 2020

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K.Arumugam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Agricultural Production Commissioner
Cum Principal Secretary,
Fort St. George, Secretariat,
Chennai - 600 009.

2.The Commissioner of Agriculture,
Ezhilagam, Chepauk,
Chennai - 600 005.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned order in No.G.O.Ms.No.(3d) No.84 dated 03-03-2020 on the file of the Respondent No.1 and quash the same as illegal.

For Petitioner : Mr.S.Louis

For Respondents : Mr.G.Suriyananth

Additional Government Pleader

O R D E R

The petitioner herein, while employed as an Agricultural Development Officer, was imputed with a charge memo dated 29.09.2008, alleging that he had failed to conduct Farmers Field School Trainings under the Integrated Cereals Development Programme (ICDP) in four villages during the year 2002-2003 and 6 villages in the year 2003-04 and created false records as if the trainings were conducted and thereby misappropriated a sum of Rs.29,265/- (Rupees Twenty Nine Thousand Two Hundred and Sixty Five only) under the expenses for tea, refreshments and ICDP kits. The enquiry was conducted by one A.Muthukrishnan, who had submitted his enquiry report on 29.05.2013. The further representation of the petitioner was made on 03.02.2015, to raising objections to the enquiry report.

2. When there was no progress in the Disciplinary Proceedings, the petitioner herein had approached this Court by filing of writ petition and in an order passed in the writ appeal in W.A.(MD). No.1463 of 2019 dated 10.01.2020, the Honourable Division Bench had directed the Disciplinary Authority to conclude the proceedings within a period of two weeks. In consequence to the present order



of the Honourable Division Bench, the respondents had sought for the views of the Tamil Nadu Public Service Commission (TNPSC), and based on the recommendations, a punishment of compulsory retirement was imposed on 03.03.2020. This order of punishment is put under challenge in the present writ petition.

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3. It is stated by the learned counsel for the petitioner that identical charges were framed against ten other Agricultural Officers and similar enquiry was conducted for them also. In the case of J.Murugabharathi, Agricultural Development Officer, similar charges of not having conducted the Farmers Field School Trainings for the year 2002-2003 in four villages and 2003-2004 in six villages was imputed against him by alleging that he had created false records as if the trainings were conducted and thereby misappropriated a sum of Rs.29,265/- (Rupees Twenty Nine Thousand Two Hundred and Sixty Five only). Based on these charges, J.Murugabharathi was also imposed the punishment of compulsory retirement. When the punishment came to be challenged, this Court in W.P.(MD).No.18206 of 2019, by an order dated 01.04.2021, had set aside the punishment by holding that the procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules were not followed. Furthermore, it was also held that the order of punishment was a non speaking order without any application of mind. The further points on which the writ petition came to be allowed was that the TNPSC's advice was not served on the delinquent and there was laches in conclusion of Disciplinary Proceedings. The relevant portion of the order reads as follows:

11. Insofar as ground **(b)** with regard to independent appraisal of the facts by the Disciplinary Authority is concerned, it is seen that pursuant to the enquiry report dated 29.05.2013, the petitioner had given his further representation on 07.02.2015. The respondents herein had thereafter, relied on the opinion of the TNPSC dated 08.05.2019 and imposed the punishment of compulsory retirement on the petitioner, through the impugned order dated 17.07.2019.

12. The petitioner herein was proceeded with the departmental action under Rule 17(b) of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules (hereinafter referred to as 'the Rules'). As per Sub rule(ii), the Disciplinary Authority is mandated to consider the evidences adduced during the enquiry, as well as the objections raised in the further representation of the delinquent and thereafter, impose the punishment. Further, when the advice of the TNPSC is sought for, such advice shall be taken into consideration before making an order imposing any such penalty.

13. Most of the aforesaid procedures, as



contemplated under section 17(B) of the Rules, have been given a go-by in the instant case. A perusal of the impugned order reveals that the respondents herein had extracted the findings of the Enquiry Officer, as well as the advice of the TNPSC and without any discussion, had imposed the major punishment. Though the impugned order of punishment runs to about 9 pages, the findings of the Disciplinary Authority is found only in the penultimate paragraph of the order. Even therein, there is absolutely no findings, for except for a solitary sentence that the Government had decided to impose the punishment of compulsory retirement on the petitioner. The impugned orders therefore, is a non-speaking order, passed without any application of mind, which is in total violation of the procedure contemplated under Rule 17(b) of the Rules.

14. The impugned order also places reliance on the advice of the TNPSC, dated 08.05.2019. The petitioner has raised a ground that a copy of the TNPSC's advice, was not served on him. This statement is not disputed. On the other hand, the impugned order ratifies the by nonfurnishing of the advice report, by serving a copy of the TNPSC report, along with the impugned order of punishment. This procedure has been held to be impermissible in various decisions of this Court, including the order of an Hon'ble Division Bench of this Court in **Union of India, Ministry of Defence and another vs. the Registrar, Central Administrative Tribunal, Chennai and another** reported in **(2005) 2 5 MLJ 154**, wherein it was held that the delinquent employee would be entitled to a copy of the report of the Public Service Commission, before passing of an order of punishment. Further, non-furnishing of the report would also disable the delinquent officer to give an effective objection, since he would be deprived of knowing the contents of the report. Thus, the manner in which the disciplinary proceedings had culminated into the impugned punishment, Regulations and scaled proportion is contrary to the Regulations and settled propositions of law.

15. The third and last ground **(c)** raised by the learned counsel for the petitioner is the latches in conclusion of the disciplinary proceedings. The entire disciplinary proceedings initiated with the charge memo on 29.09.2008. After the enquiry report



dated 29.05.2013 and the petitioner's further representation dated 07.02.2015, there was no much progress and therefore, the petitioner had filed a writ petition in W.P. (MD) No.11969 of 2018 seeking for issuance of a writ of Mandamus, directing the Authorities to pass final orders to the disciplinary action. By an order dated 06.06.2018, a learned Single Judge of this Court had directed the respondents herein to pass final orders the disciplinary proceedings, within a period of four weeks from the date of receipt of a copy of that order. Though this Court had stipulated the time for conclusion of the disciplinary proceedings, the respondents had chosen to seek the advice of the TNPSC only on 08.02.2019 i.e. after eight months from the High Court's order. The TNPSC had rendered its advice on 08.05.2019 and the impugned order of punishment came to be passed on 17.07.2019. Thus, it is seen that there has occurred an inordinate delay in the disciplinary proceedings from the inception, till the punishment. Such an inordinate delay could be fatal to the entire action as held in various decisions of the Hon'ble Supreme Court as well as this Court. More so, when this Court had specifically directed the respondents to complete the disciplinary action within four weeks, there was a mandatory duty cast upon the respondents to comply with such a direction passed in the writ petition.

16. The Hon'ble Division Bench of this Court in the case of **State of Tamil Nadu, Personnel and Administrative Reforms Department, Chennai and another vs. T.Ranganathan** had held that, such inaction to comply with the time limit fixed by the Court would be fatal to the disciplinary action. The relevant portion of the order reads thus:

"We are conscious of the fact that if there is noncooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency it is for the Department to point out the noncooperation on the part of the delinquent officer in finalising the proceeding and the hardships faced by the Department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders



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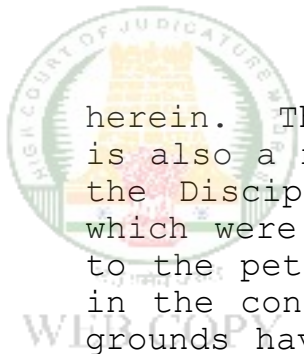
seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking inherent powers to meet the ends of justice. In this case, there is no whisper about the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003."

17. *The aforesaid observation of the Hon'ble Division Bench is self-explanatory. As held therein, the respondents herein had not sought for any further extension of time from this Court for completing the disciplinary action nor any reason has been adduced in the counter affidavit filed before this Court for such an inordinate delay. Thus, the latches on the part of the respondents would accrue in favour of the petitioner.*

18. *In normal circumstances, when the order of punishment imposed by the Disciplinary Authority is found to be a non-speaking order or that it suffers from non-application of mind, this Court would generally remand the matter back for reconsideration. However, the petitioner has succeeded on the other two grounds viz. that there was bias in the conduct of the enquiry itself and the delay in concluding the disciplinary action was also inordinate, which does not deserve consideration. The disciplinary action has been pending for the past 12 years and therefore, if the matter is sought to be remanded back for at this point of time reconsideration at this point of time, serious prejudice would be caused to the petitioner herein. As such, this Court is of the considered view that such remand is unwarranted in the instant case. Consequently, the petitioner would be entitled to succeed in this writ petition."*

4. In the instant case also all the grounds on which the case of

<https://hcservicetraining.gov.in/rosebud/> came to be allowed are available to the petitioner



herein. The impugned order of punishment in the petitioner's case, is also a non speaking order since no reasoning has been adduced by the Disciplinary Authority. Apart from that, the TNPSC's advise which were relied upon in the order of punishment was not supplied to the petitioner herein. Likewise, there was an inordinate delay in the conclusion of the Disciplinary Proceedings. When all these grounds have already been dealt with by me in a similar case, I am of the view that the petitioner herein is also be entitled for the same relief.

5.For all the reasons stated above, the impugned Charge Memo in No.VCS1/139810/05 dated 29.09.2008 on the file of the respondent and the consequential impugned Government Order in G.O.(3D) No.84 Agriculture (Ve.Ni.8) Department dated 03.03.2020 are set aside and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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To

1.The State of Tamil Nadu,
Rep. by its Agricultural Production Commissioner
Cum Principal Secretary,
Fort St. George, Secretariat, Chennai - 600 009.

2.The Commissioner of Agriculture,
Ezhilagam, Chepauk,
Chennai - 600 005.

+1 CC to M/s.S.LOUIS, Advocate (SR-24566[F] dated 08/06/2022)

+1 CC to M/s.SPL.GP (SR-24871[F] dated 09/06/2022)

W.P. (MD) No.7490 of 2020
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KMV(CO)

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