



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.04.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD)No.12094 of 2020

and WMP (MD) Nos.10396 & 10398 of 2020

WEB COPY

M.Muthumuniyandi

... Petitioner

Vs.

1.The State of Tamilnadu

Rep. by its Secretary to the Government
Social Welfare and NMP Department
St. George Fort, Secretariat
Chennai 600 009.

2.The Commissioner,

Social Welfare Department
Commissionerate of Social Welfare,
Panagal Building, Chennai 600 015.

3.The District Social Welfare Officer,

Social Welfare Department
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent vide his proceedings in G.O.(D) No.104, Social Welfare and Nutritious Meal programme (Sw-1) Department, dated 07.06.2018 and consequential impugned proceedings of the 2nd respondent in Roc.No.18440/Admn.5-1/2013, dated 30.03.2020 and quash the same as illegal and consequently direct the respondents herein to disburse all the petitioner's retirement benefits with accrued interest at the rate of 12% per annum w.e.f. Date of his superannuation ie., 31.03.2020 within the time stipulated by this Court.

For Petitioner : Mr.J.Lawrance

For Respondents : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

The initiation of review proceedings under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules'), by the Government and the consequential proceedings are under challenge in the present writ petition.



2.The petitioner was appointed as Surveyor on consolidated pay and subsequently brought under the regular establishment as Junior Assistant. He was promoted as Assistant and to the post of Industrial Cooperative Supervisor. The petitioner was allowed to retire from service on attaining the age of superannuation on 31.03.2020. The petitioner was permitted to retire from service with liberty to continue the departmental disciplinary proceedings already initiated against the writ petitioner under the Tamil Nadu Pension Rules, 1978.

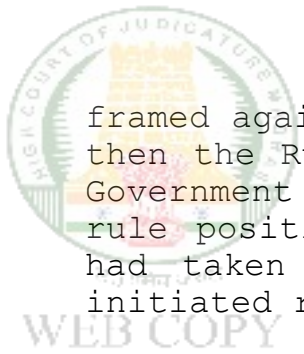
3. The departmental disciplinary proceedings were initiated against the writ petitioner during the year 2013, when he was working as Assistant. A charge memo was issued under Rule 17(b) of the Rules.

4. The learned counsel for the petitioner mainly contended that the Commissioner, Social Welfare Department considered the explanation submitted by the writ petitioner and dropped the charge memo. The disciplinary proceedings were initiated against the similarly placed persons were also dropped. The Government also granted ratification against those employees, who are all similarly placed. However, the writ petitioner was permitted to retire from service subject to the condition that the departmental disciplinary proceedings will be continued under Rule 9 of the Tamil Nadu Pension Rules, 1978.

5. The learned counsel for the petitioner states that once the dropping of the allegations were ratified in respect of other similarly placed persons, the petitioner is also eligible for grant of ratification on similar line and therefore, the order impugned initiating review proceedings under Rule 36 is to be set aside.

6. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contention by stating that the departmental disciplinary proceedings are concerned, it is to be treated independently. When the charges were framed independently, the explanation and other facts and materials available on record are to be considered independently by the authorities for forming a final opinion. In the present case, admittedly the disciplinary proceedings were initiated. The petitioner was allowed to retire from service subject to the conditions that the departmental disciplinary proceedings will be continued under Rule 9 of the Tamil Nadu Pension Rules.`

7. The learned Additional Government Pleader further contended that the necessity arose in the present case in view of the fact that some other higher officials from some other department and in the same department had also involved in the allegations and in respect of those higher officials, the Government is the competent authority to pass final orders. When the Government alone is the



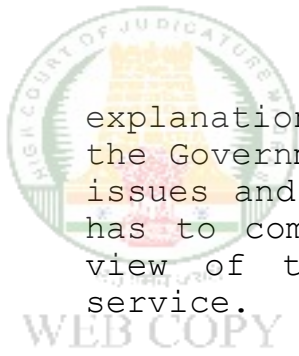
framed against the higher officials and other subordinate officials, then the Rules required that all the cases to be placed before the Government for passing appropriate orders. In violation of the said rule position in the present case, the Director of Social Welfare had taken an independent decision and therefore, the Government initiated review proceedings under Rule 26 of the Rules.

8. In reply, the learned counsel for the petitioner reiterated that in similar circumstances, for similarly placed persons and co-delinquent, the authorities have ratified the dropping of charges. However, these facts are to be verified with reference to the original files. However, the present writ petition is filed without any documents to establish. Thus, the authorities have to verify such facts and circumstances and take a decision. This apart, Court cannot grant ratification in this regard and the Government alone is competent to consider the facts and circumstances and take a final decision in accordance with the procedures contemplated under the Rules.

9. In the present writ petition, the petitioner was allowed to retire from service on condition to continue the departmental disciplinary proceedings under the Pension rules. The Government found that the dropping of charges by the head of the department is improper and without jurisdiction. In view of the fact that the higher officials also have involved in the allegations the head of the department has no power to drop the charges independently in respect of the petitioner alone. The Government alone is competent to pass orders in all such circumstances under Rule 9 (A) of the Rules. Therefore, the head of the department has committed jurisdictional error in passing the order dropping the allegations, which warranted the Government to initiate review proceedings under Rule 36 of the Rules.

10. No doubt, the petitioner made a submission that against similarly persons and co-delinquent ratification orders were issued in respect of dropping of charges. If at all such facts are similar, it is for the Government to consider, compare the facts and circumstances and accordingly, take a decision on merits and in accordance with law. Contrarily the Court cannot conduct a roving enquiry in respect of such disputed facts between the parties, which is to be done only by scrutinizing the original documents and evidences on record.

11. As far as the power of review for the Government is concerned, the Government is empowered to initiate suo motu review or otherwise at any time and there is no restriction for the Government to initiate review proceedings under Rules 36 and 37 of the Rules and thus, this Court do not find any infirmity in initiation of proceedings. However, the merits of the case of the petitioner is to be decided independently by the respondents. In



explanation, objections along with relevant documents, if any, to the Government and the Government is empowered to consider all those issues and take a decision and proceed accordingly. The Government has to complete the said exercise as expeditiously as possible in view of the fact that the petitioner has already retired from service.

12. With these observations, the writ petition stands disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

RR

To

- 1.The Secretary to the Government
Social Welfare and NMP Department
St. George Fort, Secretariat, Chennai 600 009.
- 2.The Commissioner,
Social Welfare Department
Commissionerate of Social Welfare,
Panagal Building, Chennai 600 015.
- 3.The District Social Welfare Officer,
Social Welfare Department
Virudhunagar District, Virudhunagar.

+1 CC to M/s.SPL.GP (SR-19374[F] dated 19/04/2022)

+1 CC to M/s.J. LAWRANCE, Advocate (SR-19456[F] dated 19/04/2022)

W.P. (MD)No.12094 of 2020

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