



W.P.(MD)No.15333 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15333 of 2015

A.Jesuraj

... Petitioner

vs.

The Block Development Officer,
Office of the Panchayat Union,
Viralimalai,
Pudukkottai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent in Na.Ka.A5/1706/2012 dated 30.06.2015 and quash the same as illegal and arbitrary and in consequence thereof direct the respondent to provide retirement benefits to the petitioner at once.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondent : Mr.J.Ashok,
Additional Government Pleader



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ORDER

This Writ Petition is filed for issuance of a *Writ of Certiorarified Mandamus*, to quash the impugned order, dated 30.06.2015 in Na.Ka.A5/1706/2012 and consequently direct the respondent to provide all retirement benefits to the petitioner.

2. The brief facts of the case are that the writ petitioner was appointed as Noon Meal Organizer on 20.03.1983 and posted at Middle School, Mandaiyur. On 26.04.2006, the Personal Assistant (Noon Meal Scheme) to the District Collector, Pudukkottai, visited the Noon Meal Centre, Mandaiyur and found some irregularities. Immediately, the petitioner was suspended for the above said lapses through proceedings, dated 28.04.2006 since disciplinary proceedings was contemplated. Thereafter an enquiry was conducted and the petitioner was removed from service, vide proceedings dated 26.03.2007. Aggrieved the same, the petitioner has preferred an appeal to the Government and the petitioner was directed to remit a sum of Rs.1,872/- which is the loss to the Government due to the irregularities committed by the petitioner. The petitioner



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has also remitted the said amount to the Government. After remitting the said amount, the Commissioner of Social Welfare Department, vide letter dated 25.03.2010 recommended to reinstate the petitioner and the Principal Secretary to the Government of Tamilnadu, Social Welfare and Nutrition Meal Scheme, vide G.O.Ms.No.143, dated 08.07.2010 ordered to reinstate the petitioner and set aside the order of dismissal passed by the District Collector, Pudukkottai District. Based on the aforesaid G.O., the petitioner was again posted as Noon Meal Organizer at Panchayat Union Elementary School, Sithambur, on 10.08.2010. Thereafter, the petitioner was transferred to Government Higher School, Avoor on 28.03.2013 and the petitioner ought to have been retired from service on 30.06.2015 on attaining the age of superannuation. But, to shock and surprise, the petitioner received an intimation from the respondent, whereby it was directed to clear the audit objection for the year 2004-2005 and 2005-2007 for the alleged loss of Rs.2,87,644.50/- [Rupees Two Lakhs Eighty Seven Thousand Six Hundred and Forty Four and Fifty Paise only]. The said audit objection report was not served to the petitioner. Based on the audit objection report, the respondent has passed the impugned order on 30.06.2015, wherein the petitioner was retained in service for the alleged lapses in the years 2004-2005, 2005-2006 and 2006-2007.



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Challenging the said impugned order, the writ petitioner has filed the instant writ petition.

3. The contention of the petitioner is that, for the alleged lapses for the years from 2004-2005 to 2006-2007, already disciplinary proceeding was initiated and the petitioner was terminated from service. On appeal, the petitioner was reinstated with a punishment of remitting Rs.1,872/- and he also paid the loss incurred due to his lapses. In such circumstances, the respondent cannot initiate fresh action for the same irregularities and for the same period based on audit objection report. This would amount to taking action for the same set of facts, for which already punishment was imposed and the of punishment was implemented. Hence, the writ petitioner prayed to allow the Writ Petition.

4. The respondent has filed a counter affidavit stating that an audit was conducted for the years 2004-2005 and 2005-2006 and the audit report has stated that the writ petitioner has failed to furnish accounts. Since the petitioner was working as Noon Meal Organizer during the relevant period, a notice was issued to the petitioner on 09.06.2015. Since the petitioner was on the verge of



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retirement on 30.06.2015, the petitioner was directed to submit accounts and explanation. The petitioner has not submitted any explanation and therefore, the impugned order dated 30.06.2015 was passed retaining him in service and was not allowed to retire from service. The Government has incurred loss since the petitioner has not properly maintained accounts. Since the petitioner has not replied to the notice, dated 09.06.2015, the impugned order was passed. Therefore, the respondent prayed to dismiss the Writ Petition.

5. Heard Mr.P.Ganapathi Subramanian, learned Counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondent and perused the material documents available on record.

6. On considering the rival contentions and on perusing the records, it is seen that the petitioner has not maintained proper accounts for the period from 2004-2005 to 2006-2007. The respondent has initiated disciplinary proceedings by issuing a charge memo and conducted detailed enquiry and in the enquiry, the charges were held to be proved. Thereafter, the Disciplinary



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Authority had imposed punishment of termination from service. The petitioner has preferred an appeal to the Government and in the said Appeal, the petitioner was directed to compensate the loss of Rs.1,872/- incurred by the Government. The petitioner has also remitted the said amount. Thereafter, based on the recommendation of the Commissioner of Social Welfare Department, the petitioner was reinstated into service. Thereafter, the audit division on scrutiny of records had issued an audit slip stating that the petitioner has not maintained proper accounts, whereby the petitioner is responsible for incurring loss of Rs. 2,87,644.50 [Rupees Two Lakhs Eighty Seven Thousand Six Hundred and Forty Four and Fifty Paise only] to the Government. The respondent has issued a notice dated 09.06.2015, directing the petitioner to explain the irregularities for not maintaining the accounts properly. Since the petitioner has not submitted any explanation, the respondent has issued the said impugned order, whereby the petitioner was retained in service and was not allowed to retire from service even after attaining superannuation.

7. The contention of the petitioner is that for the same set of facts, already disciplinary proceeding was initiated and the petitioner was imposed with



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the punishment of termination from service, which was modified in the appeal proceedings to pay Rs.1,872/- and the petitioner has undergone the said punishment and he was reinstated back into service. In such circumstances, based on the audit objection, the respondent cannot initiate fresh action that too when the petitioner was on the verge of retirement. On the eve of the retirement date, the respondent has issued impugned proceedings, whereby the petitioner was not allowed to retire from service.

8. In service jurisprudence, for same set of facts, two disciplinary proceedings cannot be initiated. The petitioner has already undergone the punishment for the same set of facts. Therefore, the impugned order not allowing the petitioner to retire is unwarranted and hence, this Court is inclined to set aside the impugned order passed by the respondent.

9. Accordingly, this Writ Petition is allowed on the following directions:

- (i) The impugned order, dated 30.06.2015 in Na.Ka.A5/1706/2012 passed by the respondent is hereby quashed.



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(ii) The respondent is directed to pass an order allowing the writ petitioner to retire from service.

(iii) The respondent is further directed to pay all the terminal and service benefits to the petitioner within a period of six weeks from the date of receipt of copy of this order. No costs.

Index : Yes / No
Internet : Yes

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To

The Block Development Officer,
Office of the Panchayat Union,
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S.SRIMATHY, J

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