



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.03.2022

DELIVERED ON : 14.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.13303 of 2018

and

W.M.P(MD)No.12108 of 2018

C.Bharathwaj

... Petitioner

vs

1.The Agriculture Production Commissioner and
Principal Secretary to Government,
Agriculture Department, Secretariat,
Chennai-600 009.

2.The Joint Director of Agriculture,
Tirunelveli,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the files of the first respondent pertaining to its order bearing G.O(3D).No.40 (Agriculture Ve Ni 2) Department, dated 26.03.2018 and to quash the same and consequently direct the respondents to permit the petitioner to retire from service and to grant all monetary and service benefits to the petitioner within a time frame that may be stipulated by this Court.

For Petitioner : Mr.SC.Herold Singh

For Respondents : Mr.G.Suriyananth
Additional Government Pleader

O R D E R

This Writ Petition is filed challenging the G.O.(3D)No.40 (Agriculture Ve Ni 2) Department dated 26.03.2018 and consequently prayed to direct the respondents to allow the petitioner to retire from service and to grant all the monetary and service benefits.

2. The brief facts of the case are that the petitioner is qualified as M.Sc. Agriculture and was appointed through TNPSC referring through Employment Exchange. The petitioner joined the Department during 1985. In the year 1991, while the petitioner was working as Agricultural Officer at Srivilliputhur, the petitioner was allotted the work of identifying the beneficiaries under the



Scheme and provide equipment to the beneficiaries. The petitioner has to take the list of beneficiaries and after scrutinizing the application ought to forward the application, to the Assistant Director of Agriculture (Oil seeds). On 15.07.2002, the petitioner received a charge memo for which he had submitted an explanation on 27.12.2005. For a similar set of facts, the Vigilance and Anti Corruption has also filed a criminal case. The petitioner was due to retire on 31.05.2017. On the last day the petitioner was suspended and was not allowed to retire, vide G.O. Ms. No. 157 and 159, dated 30.05.2017 and 31.05.2017 respectively. The petitioner has put in thirty one and a half years of service. The three charges against the petitioner are extracted hereunder:

- (i) During 1990-91, the delinquent official caused created false records to facilitate the cheating and defalcation of subsidy amount in collusion with Assistant Director of Agriculture and Village Administrative Officer, in the sanction of subsidy amount to the small and marginal farmers for installation of sprinkler sets in the fields of farmers under National Oil Development Programme Scheme.
- (ii) During 1990-91, the delinquent officer acted with an ulterior motive to misappropriate subsidy amount by violating the established norms, rules, regulation while executing the works under National Oil Development Programme Scheme.
- iii. During 1990-91, the delinquent officer as Government Servant has grossly erred in the duties and responsibilities as Agricultural Officer of Srivilliputhur, he failed to safeguard the financial interest of the Government while executing the Works under National Oil Development Programme Scheme and thereby failed to Maintain absolute integrity and devotion to duty and thus violated Rule 20 of Tamil Nadu Government Servant Conduct Rules 1973.

3. A criminal case was registered in C.C.No.06 of 1994 and a charge sheet was issued and the case was filed under Special Court in C.C.No.15 of 2014. The Trial Court has acquitted the petitioner, vide judgment, dated 25.06.2015. In the meanwhile, in domestic enquiry, vide proceedings, dated 21.05.2014 it was held that the charges No.1 and 2 were proved and charge No.3 was not proved. The contention of the petitioner is that the enquiry officer failed in his duty to examine any of the witnesses cited in the list of witness in the charge memo and he was absolutely biased. Thereafter, the first respondent, vide order, dated 28.03.2018 passed an order that the charges against the petitioner are proved. The enquiry officer's report was submitted on 21.05.2014 and the copy was served on 16.02.2017 after a lapse of more than three years. On receipt of the same, the petitioner submitted his explanation indicating the violation of principles of natural justice. Since there was no



whisper from the respondent, the petitioner has filed W.P.(MD) No.10998 of 2017 and this Court directed the first respondent to consider and pass final orders. Thereafter the first respondent has passed the present impugned order without proper application of mind. Aggrieved over the same, the present writ petition is filed.

4. The second respondent has filed a counter affidavit stating that the petitioner while he was working as Agricultural Officer at Srivilliputhur in order to implement National Oil Development Programme Scheme during the year 1990-1991, the petitioner with the connivance with the then Assistant Director of Agriculture (Oil Seeds) and Village Administrative Officer committed irregularities and malpractices by writing false monthly tour diary, preparing false records with intention to sanction of subsidy allotted to the small and marginal farmers for installation of sprinkler units. Thereafter action was taken under Section 19 of Prevention of Corruption Act, 1988, proper sanction was granted and then criminal proceedings were initiated. The intention to get wrongful gain and misappropriation was alleged against the petitioner and for the said misconduct, disciplinary proceedings were initiated on three counts. Since criminal case is different from the domestic enquiry, based on the enquiry report for the proved charges the punishment of removal from service was imposed on the petitioner. For the domestic enquiry "preponderance of probabilities" is sufficient to impose punishment. If there is any evidence for lacking integrity and honesty then the employer has every right to impose the punishment on the delinquent. Since the misconduct of the petitioner is grave in nature, an enquiry was conducted after giving an adequate opportunity to the petitioner. Since the enquiry report has held two charges are proved, the punishment of removal of service was imposed on the petitioner. The petitioner has not raised any valid ground to interfere with the punishment. Hence the respondents prayed to dismiss the writ petition.

5. Heard Mr.S.C.Herold Singh, learned Counsel appearing for the petitioner and Mr.G.Suriyananth, learned Counsel appearing for the respondents.

6. The contention of the petitioner is that the said charge memo, dated 15.07.2002 was issued for the alleged delinquency which was committed in the year 1990, 1991 and the petitioner attained superannuation on 31.05.2017. The petitioner was acquitted in the criminal case, vide judgment, dated 25.06.2015. Even though, a criminal case ended up as early as 2015, the respondents have passed the impugned order of removal from service in the year 2018. The contention of the petitioner is that the Charge memo itself is a belated charge memo and an enquiry was conducted after a lapse of 3



years from the date of order passed in the criminal proceedings and the same is a belated enquiry.

7. On perusal of the dates, it is seen that right from 2002 onwards until 2018 most of the service of the petitioner is covered under the delinquency. The petitioner was not able to service during his entire tenure without any anxiety of the delinquency. On perusal of the judgment passed by the Criminal Court it has clearly stated that there is no direct evidence against the petitioner to come to the conclusion that he has committed the allegation as stated by the respondents. Since the petitioner has put in thirty one years of service, because of the belated proceedings which is covering almost his service, this Court is of the considered opinion that the punishment of removal from service is too harsh. Therefore, this Court is modifying the punishment as 'Compulsory Retirement' and the respondents are directed to pay the terminal and monetary benefits as applicable to the petitioner. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Agriculture Production Commissioner and
Principal Secretary to Government,
Agriculture Department, Secretariat,
Chennai-600 009.



2.The Joint Director of Agriculture,
Tirunelveli,
Tirunelveli District.

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+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-25492[F] dated
14/06/2022)

W.P. (MD) No.13303 of 2018
14.06.2022

MGJ(23.06.2022) 5P 4C