



W.P.(MD).No.9956 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.9956 of 2017
and
W.M.P.(MD).No.18074 of 2017**

A.P.Vijayakumar

... Petitioner

Vs.

1.The Agricultural Production Commissioner and
Principal Secretary to Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

2.The Director Agriculture,
O/o. the Directorate of Agriculture,
Chepauk,
Chennai – 05.

3.The Joint Director of Agriculture,
Tallakulam, Madurai,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in G.O.(3D) No.109, Agriculture (Ve.Ni.5) Department dated 28.03.2017 on the file of the first respondent and quash the same as illegal.



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For Petitioner : Mr.T.Lajapathi Roy

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

ORDER

This Writ Petition has been filed for Writ of Certiorari to quash the impugned order in G.O.(3D).No.109, Agriculture (Ve.Ni.5) Department dated 28.03.2017 on the file of the first respondent.

2. The brief facts of the case are that the petitioner was serving as an Office Assistant in the respondent Agriculture Department from 25.01.1985. A criminal case was registered against the petitioner and others in the year 2001 alleging that an amount of Rs.63,589/- was loss to the Department due to the negligence of the petitioner and others. In the criminal case, a charge sheet was filed in C.C.No.327 of 2005 and the same is pending till date. The petitioner was suspended from service on 01.09.2001, based on this Court order, the suspension was revoked on 14.03.2016 and the petitioner was serving as Office Assistant till date. A charge memo was issued on 11.03.2003 levelling two charges, wherein the charge memo had placed the entire responsibility on the



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petitioner for the loss. The contention of the petitioner is that the vital documents listed in Annexure-3 of the charge memo were not provided to the petitioner, in spite of repeated request made by the petitioner. In the meanwhile, the enquiry officer concluded the enquiry holding that the charges were proved and the reason given in the enquiry report is that the charge sheet is filed in the criminal case on the same set of charges and hence the charges are proved. The petitioner offered explanation dated 20.02.2008 explaining that the vital documents were not provided and could not offer any explanation on the enquiry report as well. In spite of these objections, the first respondent passed the impugned order dated 28.03.2017 imposing a punishment of stoppage of increment for one year with cumulative effect and with recovery of Rs.63,589/- on monthly installments from the petitioner's salary. According to the petitioner, the impugned order ought to be set aside since the department enquiry was concluded after a lapse of so many years, the enquiry was not conducted in a fair manner and the vital documents were not provided. The petitioner also contented that the impugned order was served on 03.05.2017 and the recovery was initiated from the end of May, 2017 i.e. on the same month itself. Hence the petitioner has prayed to set aside the impugned order.



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3. When this case was taken up for admission, an interim order was granted staying the recovery proceedings alone.

4. The respondents have filed a counter along with vacate stay petition. In the counter it has been stated that during his service under the Assistant Director of Agriculture, Usilampatti, the petitioner was directed to encash the bill amount from the treasury of Usilampatti. The petitioner has committed malpractices by tampering the departmental records such as departmental bills and MTC-70 Register etc., thereby, he involved in misappropriation of Government amount totally to the tune of Rs.63,589/-. The particulars of misappropriation and details are as follows:

Sl. No.	Date of Encashment	Original Bill Amount	Encashed amount by the petitioner	Receipt Number in the Treasury	Amount returned to the office by the petitioner	Misappropriated amount (Rs.)
1.	20.04.2001	1815	4815	126	1815	3000
2.	22.06.2001	15250	25250	84	15250	10000
3.	11.07.2001	5589	11178	313	5589	5589
4.	23.07.2001	54840	64840	300	54840	10000
5.	08.08.2001	15000	50000	236	15000	35000
					Total	63589



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5. The respondents further submitted that the petitioner was the accused in the criminal case in Crime No.25 of 2001 for alleged offences under Sections 403, 409, 468 and 420 IPC on the file of District Crime Branch, Madurai. The petitioner was arrested, was under judicial custody for more than 48 hours and hence the petitioner was placed under deemed suspension. In the meanwhile, a charge sheet was filed in C.C.No.327 of 2005 and the same is pending for trial. In spite of pending criminal case, a separate disciplinary proceeding was initiated, a charge memo imputing two charges were issued. The enquiry was conducted and an enquiry report has been submitted. Thereafter, based on the enquiry report, impugned punishment order was passed imposing punishment of stoppage of increment for one year with cumulative effect and directed to recovery the loss amount of Rs.63,589/- from the petitioner's salary for 13 months. In the meantime, based on the orders of higher officers, after 15 years the petitioner was reinstated into service through the order of the third respondent dated 09.03.2016. Presently, the petitioner is continuing his service in the cadre of Office Assistant under the control of Assistant Director of Kottampatty, Melur Taluk, Madurai District. Aggrieved over the punishment, the present Writ Petition is filed. The contention of the respondent is that the enquiry was conducted by affording sufficient opportunities to the petitioner,



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all the documents referred in the proceedings were served to the petitioner and he was permitted to see the respective original documents also. The respondents denied the allegations of the petitioner that he was not served with annexure-III of the charge memo and submitted that the annexure -III is the list of documents before the enquiry officer. The petitioner had submitted his explanation as early as on 21.05.2003. Before submitting his explanation, the petitioner did not raise any plea relating to non-furnishing of documents. If the petitioner has not furnished any documents, he could have specifically raised the plea much prior to his explanation submitted to the enquiry officer on 21.05.2003. The enquiry report has held that the charges were proved and the enquiry report was duly served to the petitioner on 14.12.2007 and the petitioner was directed to submit his further explanation. The petitioner in order to drag on the disciplinary proceedings had made a representation dated 20.02.2008 alleging that he was not furnished with some documents for which the second respondent replied vide letter dated 28.04.2008 rejecting the petitioner's claim by specifically mentioning that the act of the petitioner was nothing but to drag on the disciplinary proceedings. Since the petitioner who had involved in tampering of evidence and re-creating the bills in the MTC records, the petitioner was shown as Accused No.1 in the criminal proceedings.



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Therefore, the respondents have rightly imposed a punishment of stoppage of increment for one year with cumulative effect along with the recovery of loss of Rs.63,589/-. The petitioner has not raised any legal grounds to interfere with the punishment. Hence the Learned Additional Government Pleader prayed to dismiss this Writ Petition.

6. Heard Mr.T.Lajapathi Roy, the Learned Counsel for the petitioner and Mr.J.Ashok, Learned Additional Government Pleader appearing for the respondents and perused the records.

7. When the Writ Petition was taken up for final hearing, the Learned Additional Government Pleader appearing for the respondents submitted that in the criminal case the charge sheet has been filed and the petitioner is shown as Accused No.1 along with other co accused and the criminal case is still pending before the Learned Judicial Magistrate. In the meanwhile, the petitioner had attained superannuation on 30.06.2019, the respondents had passed an order of suspension on the eve of the date of superannuation and the petitioner was not allowed to retire and retain in service. Hence the petitioner has filed another Writ Petition in W.P.(MD).No.14895 of 2019, wherein, the petitioner had



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prayed to revoke the suspension order and to set aside the consequential order to retain the petitioner in service. The Learned Single had dismissed the aforesaid Writ Petition by order dated 08.02.2022.

8. The Learned Counsel appearing for the petitioner submitted that there are other co-delinquents in the proceedings and the respondents have imposed a punishment of censure and contended that the respondents have discriminated and imposed a punishment of stoppage of increment for one year with cumulative effect along with the recovery of loss of Rs.63,589/-. The Learned Counsel appearing for the petitioner submitted that the punishment of stoppage of increment for one year with cumulative effect was already given effect to and the petitioner is more than sixty years old and he has not received any terminal benefits after superannuation. The Learned Counsel further submitted that the criminal case is pending for the past fifteen years and the criminal case was not taken up inspite of this Court order wherein this Court had directed to complete the trial within one year. The petitioner further contended that after retirement, the enquiry cannot be conducted, if at all the enquiry ought to be conducted then the proceedings ought to be initiated under the Pension Rules. Since the disciplinary proceeding has ended up in punishment, the petitioner prayed to



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allow the writ petition and direct the respondents to allow the petitioner to retire and to pay the terminal benefits.

9. Therefore, this Court is of the considered opinion that the petitioner claim ought to be considered, since the co-delinquents were imposed lesser punishment, the petitioner's punishment ought to be interfered with. Since the petitioner is shown as Accused No.1 in the criminal case, the punishment ought to be modified proportionately, hence this court is modifying the punishment from stoppage of increment for one year with cumulative effect as stoppage of increment for one year without cumulative effect.

10. Further the disciplinary proceedings cannot be kept endlessly pending by showing the pendency of criminal case. Moreover, in the present case the respondents have already completed the disciplinary proceedings and had imposed punishment. Now by citing criminal proceedings the petitioner cannot be retained in service. In several judgments, it has been held that the criminal proceedings and disciplinary proceedings are independent to each other and disciplinary proceedings can be dealt with separately. If that is so retaining the petitioner in service is unwarranted.



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11. To meet the ends of justice, this Court is passing the following order:

(i) The punishment of stoppage of increment for one year with cumulative effect is modified as punishment of stoppage of increment for one year without cumulative effect.

(ii) The respondents are directed to allow the petitioner to retire from service.

(iii) The respondents are directed to pay all the terminal and monetary benefits including the salary which is pending after retaining Rs.63,589/- (Rupees Sixty Three Thousand Five Hundred and Eighty Nine only) alone.

(iv) The respondents shall consider and pass orders regarding the amount after disposal of the criminal proceedings, until then the amount of Rs.63,589/- (Rupees Sixty Three Thousand Five Hundred and Eighty Nine only) shall be retained by the respondents.



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12. With the above modification, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Internet : Yes/ No
Nsr

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S.SRIMATHY, J.

Nsr

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