



WEB COPY



W.P.(MD)No.7396 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.7396 of 2005

S.P.Ramu

... Petitioner

vs.

1.The Secretary to Government,
Agricultural Department,
Chennai-600 009.

2.The Chief Engineer (Agricultural Engineering),
Nandanam, Chennai-600 035.

3.The Assistant Executive Engineer
(Agricultural Engineering),
Soil and Moisture Conservation Scheme,
Aruppukottai,
Virudhunagar District.

4.The Accountant General,
Teynampet, Chennai.

... 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 relating to the



W.P.(MD)No.7396 of 2005

WEB COPY

impugned order of 1st respondent as per G.O.D(3).165 Agriculture AA6, dated 11.07.2005 and to quash the same. Consequently, to direct the respondents to give the petitioner consequential service benefits including promotion with retrospective effect without loss of seniority in terms of order of Tamil Nadu Administrative Tribunal in O.A.No.1195 of 1981, dated 21.02.1992, as per panel in G.O.Ms.No.1026/AE III/, dated 11.05.1988 and also, to direct the respondents to treat the period of suspension from 04.08.1981 to 23.10.1984 as duty in terms of High Court in W.P.No.3004 of 1983, dated 30.01.1985.

(Prayer amended vide Court order, dated 18.2.2020 in W.M.P.(MD)No.2053 of 2020 in W.P.(MD)No.7396 of 2005)

For Petitioner	: No appearance
For R1 to 3	: Mr.N.Muthuvijayan Special Government Pleader
For R4	: Mr.P.Gunasekaran

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order of 1st respondent passed in G.O.D(3).165 Agriculture AA6, dated 11.07.2005 and consequently, to direct the respondents to give the petitioner consequential service benefits including promotion with retrospective



W.P.(MD)No.7396 of 2005

WEB COPY

effect without loss of seniority in terms of order of Tamil Nadu Administrative Tribunal in O.A.No.1195 of 1981, dated 21.02.1992, as per panel in G.O.Ms.No. 1026/AE III/, dated 11.05.1988 and also, to direct the respondents to treat the period of suspension from 04.08.1981 to 23.10.1984 as duty in terms of High Court in W.P.No.3004 of 1983, dated 30.01.1985.

2. The brief facts of the case are that the petitioner while was working as Junior Engineer (A.E.), Kamuthi, was placed under suspension by the 3rd respondent, vide proceedings, dated 04.08.1981, then charge memo dated 24.08.1981 under 17(b) of the CCA Rules was issued to submit explanation within 21 days and the allegation is that the petitioner had deliberately arrived at double & triple the quantity of earthwork and thereby recorded incorrect measurements for earthwork excavation during the formation of percolation ponds at Maraikulam and Keelathooval villages. The petitioner submitted a letter to the 3rd respondent and requested him to serve the copies of the band measurement taken by him on 15.07.1981 and the Inspection made by the Junior



W.P.(MD)No.7396 of 2005

WEB COPY

Engineer Kariapatty on 01.08.1981.

3. The contention of the petitioner is that the 3rd respondent deliberately refused to serve the copies of the measurements taken by the 3rd respondent. Subsequently the 3rd respectively through reply letter dated 07.01.1982, stated that he had not recorded measurements of earth-work excavation and the Junior Engineer, Kariyapatti also had not taken any measurements. From the above letter the 3rd respondent admitted that they had not conducted any inspection and they had not noted any measurements to that effect. Therefore, the charges framed against the petitioner is baseless but framed with an intention to penalize the petitioner. The 3rd respondent conducted the enquiry proceedings on 05.08.1982, which is against the principles of natural justice. Thereafter, the enquiry officer one Mr.Ramachandran had conducted the enquiry proceedings on 23.01.1984. The 3rd respondent being the vital witness did not attend the enquiry and no opportunity was granted to the petitioner to cross examine the 3rd respondent. The petitioner further contended that the copy of enquiry report was not served to the



W.P.(MD)No.7396 of 2005

WEB COPY

petitioner and without getting any further explanation from the petitioner, the 2nd respondent passed the punishment order, dated 07.12.1984, stating that the increment is withheld for two years with cumulative effect and it will not affect the pensionary benefits. The petitioner preferred an appeal on 04.03.1985 to the 1st respondent. The TNPSC opined in its letter, dated 03.04.1991, stating that the entire proceedings and the punishment order is contrary to the service Rules and categorically stated that the charges framed against the petitioner is baseless. Therefore, the Commission recommended to set aside the punishment order. Based on the commission letter, dated 03.04.1991, the 1st respondent passed G.O. (D) No. 132 Agriculture (AA II) setting aside the punishment order issued by the 2nd respondent and consequently, directed the 2nd respondent to conduct a denova enquiry. The petitioner filed a Revision Petition on 24.03.2002 on the ground that the denova enquiry is contrary to the Rules and the principles of natural justice. Without considering any evidence on record and without considering the case on merits, the 1st respondent passed final order in the Revision Petition in G.O. (2D)No.124, dated 18.11.1996, stating that they have already ordered for denova



W.P.(MD)No.7396 of 2005

WEB COPY

enquiry and therefore, the Revision Petition was closed.

4. The contention of the petitioner is that the order is a non- speaking order and passed in mechanical manner, since the grounds raised were considered by the 1st respondent in the Revision Petition. Pending Revision Petition, the 2nd respondent directed the 3rd respondent to conduct the denova enquiry. The petitioner submitted his objection and requested the 2nd Respondent till the disposal of the Revision Petition, the enquiry proceedings shall be stopped. But without considering the request and without giving any reasonable opportunity, the 2nd respondent passed the impugned order, dated 17.01.1997, whereby the punishment of stoppage of increment for two years with cumulative effect was imposed. Against the said order, the petitioner preferred an appeal on 25.03.1997 and no orders were passed. Hence, the petitioner preferred the present writ petition.

5. Pending this writ petition, the respondents have passed an order in



W.P.(MD)No.7396 of 2005

WEB COPY

G.O.D(3).165 Agriculture AA6, dated 11.07.2005. In the meanwhile, the writ petition was taken up for hearing and the Learned Single Judge had dismissed the writ petition vide order on 26.09.2007. Aggrieved over the petitioner had preferred writ appeal in W.A.(MD)No.1110 of 2012 and this Court vide order dated 19.07.2019 set aside the order of the Learned Single Judge and directed the petitioner to amend the prayer and the relevant portion of the order is extracted hereunder:

“3.The appellant invited our attention to the proceedings of the Chief Engineer, dated 07.12.1984, and submitted that in fact he had attended the enquiry on 23.01.1984. Therefore, he contended that the finding of the Court, as if he did not attend the enquiry, is factually incorrect. Further, he contended that he has not slept over the matter for eight years after the order of punishment and on the other hand, he filed an appeal before the appellate authority on 25.03.1997 itself and however, the said appeal was disposed of only on 11.07.2005. He invited the order passed by the appellate authority, dated 11.07.2005, which is made available in the typed set of papers. Perusal of the said order would show that the appeal presented by the appellant on 25.03.1997 was disposed of only on 11.07.2005. In any event, as the appellate authority has also rejected the appeal, it is for the writ petitioner to challenge the said order also by amending the prayer in the writ petition. Accordingly, we are inclined to remit the matter back to the Writ Court for reconsidering the matter afresh after allowing the appellant to amend the prayer in the writ petition.



W.P.(MD)No.7396 of 2005

WEB COPY

4. Accordingly, the writ appeal is allowed and the order of the Writ Court is set aside and the matter is remitted back to the Writ Court for reconsidering the matter afresh after permitting the appellant to amend the prayer in the writ petition as indicated supra.”

Hence, the case is remitted back to this Court. In the meanwhile the petitioner preferred W.M.P.(MD)No.2053 of 2020, to amend the prayer, whereby, the petitioner sought to quash G.O.D(3).165 Agriculture AA6, dated 11.07.2005 and consequently, to direct the respondents to grant service benefits including promotion with retrospective effect without loss of seniority in terms of order of Tamil Nadu Administrative Tribunal passed in O.A.No.1195 of 1981, dated 21.02.1992, as per panel in G.O.Ms.No.1026/AE III/, dated 11.05.1988 and also, to direct the respondents to treat the period of suspension from 04.08.1981 to 23.10.1984 as duty period and pass orders.

6. The respondents have filed counter affidavit stating that the petitioner while working as Junior Engineer (Agricultural Engineering) has committed certain irregularities and he was placed under suspension with effect from



W.P.(MD)No.7396 of 2005

WEB COPY

04.08.1981 and a charge memo was issued imputing six charges. The averments in the affidavit in paragraphs Nos.4 and 5 are totally false and baseless. The petitioner has deliberately entered false pre-measurements and incorrect measurements for earth works excavation. The Assistant Executive Engineer (Agricultural Engineering) Soil Conservation Scheme, Aruppukottai who noticed the above false measurements, gave instructions to the petitioner to re-measure and to enter correct measurement. But the petitioner did not care to record the correct measurements and simply handed over the Measurement Book and Bills along with the old false measurements. Hence, the petitioner was placed under suspension and disciplinary proceeding was initiated by framing charges as per Rules by the third respondent. As per the then rules, any immediate superior officer may initiate disciplinary action under rule 17 (a) or 17 (b) of the said Rules, against the members of the subordinate service. The post of Junior Engineer comes under the Tamil Nadu Agricultural Subordinate Service. As per G.O. Ms.No.454, Personnel and Administrative Reforms Department, dated 18.08.1988, with effect from 11.07.1977, the authority competent to impose



W.P.(MD)No.7396 of 2005

WEB COPY

minor penalty and also place a Government servant under suspension shall be his immediate superior officer of the State Service. The Enquiry Officer shall normally be superior to the rank of the delinquent officer. Moreover, the petitioner was awarded only a minor penalty i.e., stoppage of increment for two years with cumulative effect. The punishment order, dated 07.12.1984, was issued by the second respondent along with a copy of the inquiry report. At that time, as per the then rules, it was not necessary to communicate the Enquiry Officer's Report to the delinquent officers for obtaining their further representation. Usually, copies of inquiry reports are furnished to the Government servants along with the final orders issued in the disciplinary cases and the said method was changed after issuance of G.O. Ms.No.405, personnel and Administrative Reforms (Per-N) department, dated 19.09.1990. Therefore, there is no infirmity. The charges were held proved and hence, a minor punishment was imposed. Subsequently, the Government has taken the opinion of TNPSC. Based on the views, the impugned order was set aside. A denova proceedings was initiated.



W.P.(MD)No.7396 of 2005

WEB COPY

7. The contention of the petitioner that the denova enquiry ordered by the 1st respondent is contrary to the rules and principles of natural justice is totally baseless. Hence, the Revision Petition filed by the petitioner was rejected in G.O. (2D)No.124, Agriculture, dated 18.11.1996, since already the Government has ordered denova proceedings from the stage where the defect had crept in. Hence, it is a speaking order. In pursuance of the directions of the 1st respondent, the 2nd respondent imposed a punishment of stoppage of increment for two years with cumulative effect, vide proceedings, dated 17.01.1997. The petitioner preferred an appeal on 25.03.1997 and the Government has passed G.O.(3D)No.165, Agriculture (AA.VI) Department, dated 11.07.2005, confirming the orders.

8. The petitioner vide letter had stated that there is no evidence on record to substantiate the allegation and no records for framing charges against him. Hence, the respondents directed the petitioner to appear on subsequent dates, but subsequently, the petitioner did not appear for the enquiry. In his absence, no deposition of witnesses could be conducted. Hence, an ex-parte enquiry was



W.P.(MD)No.7396 of 2005

WEB COPY

conducted based on the records. Hence, the respondents prayed to dismiss the writ petition.

9. The W.M.P.(MD)No.2053 of 2020, to amend the prayer was allowed on 18.2.2000. The petitioner appeared as party in person on 10.10.2022 and then the case was posted for hearing in the first week of December. The petitioner was allowed to submit written arguments and the petitioner had submitted written arguments.

10. The 1st ground that was raised by the petitioner is that the 3rd respondent being his immediate superior was appointed as prosecuting officer in the disciplinary proceedings. According to the petitioner, the 3rd respondent by sending another Junior Engineer has officially created forgery documents of bund measurement. Before doing the earth-work, pond clearance was done, the cost of clearance was Rs.1/- per square meter. The Executive Officer, Sivagangai, accepted this cost and cleared shrubs and earth work was also carried over



W.P.(MD)No.7396 of 2005

WEB COPY

subsequent to the execution of the work. The 3rd respondent directed the petitioner and compelled the petitioner to tamper the records and directed him to make increased payment to the contractors as Rs.5/- per square meter. Since the petitioner refused the same, the 3rd respondent decided to remove the petitioner and put some other officer in his place. Hence, the 3rd respondent suspended the petitioner and put another officer by name Vellaisamy. With the help of the said Vellaisamy, the 3rd respondent had tampered the records and the payment was increased to Rs.5/- per square meter. In order to carry his plan, the 3rd respondent placed the petitioner under suspension and issued charge memo. This action was noticed by TNPSC and the Commission has condemned those contractors, which would be evident from the recommendation of the Commission. The relevant portion of the same is extracted here under:

“It may not be out of place to point out that for this tank work the rate for jungle clearance for which the agreement rate which was Rs.1.10/-sq.mtr. was subsequently increased 5.00-sq.mtr after completion of the work on the plea that the rate provided in the estimate was wrong. Normally such procedures are not accepted and when pointed out by the Accused officer in his reply to the charge sheet some not very convincing reply has been given. In fact, the pre measurement recorded by the Accused Officer for clearing light jungle is available in the measurement



W.P.(MD)No.7396 of 2005

WEB COPY

book whereas after doing earth work another junior engineer has recorded the specification as juliflora jungle reported to have been recorded as per local enquiry is highly irregular and is condemnable as it is against the basic principles of recording measurements.”

On perusing the views of the commission, wherein it has been categorically recorded in the pre-measurement that it is light jungle and the rate is Rs.1 per Sq. Meter, but after doing earth work, another Junior Officer has recorded it as juliflora jungle and increased the rate is highly irregular and condemnable which is against the basic principles of recording measurements. Hence the contention of the petitioner that since the petitioner denied to increase the cost of payment to the contractor, the 3rd respondent had appointed another Junior Engineer by name Vellaisamy, in order to tamper the records ought to be accepted. The respondents have not stated any reason in the counter affidavit for this contention. Since there was a clear allegation against the 3rd respondent, the petitioner is right in stating that the 3rd respondent should not have acted as a prosecuting officer in the disciplinary proceedings and thereby there is violation of principle of natural justice.



W.P.(MD)No.7396 of 2005

WEB COPY

11. The next contention that was raised by the petitioner is that the Government has accepted the views of TNPSC Commission and has passed G.O. (D)No.132, Agriculture (AA.II) Department, dated 24.12.1991, that is why the Government has ordered for denova enquiry. Subsequently, a review petition was filed by the petitioner stating that having accepted the views of the TNPSC some other Junior Officer has entered the entry, the Government ought not to have directed for denova enquiry against the petitioner alone. The denova enquiry ought to be ordered against the 3rd respondent as well as the subsequent Junior Engineer namely Vellaisamy. Therefore, this Court is of the considered opinion that the disciplinary proceeding is discriminatory.

12. Strangely, in the counter affidavit, it is mentioned that due to excess of earth work, the measurement is double and triple the actual measurement. The respondents have quantified the amount as loss to the Government to the tune of Rs.14,551/-. Having quantified the said amount as loss, the respondents have not taken any steps or passed any order to recover the said amount. When the amount



W.P.(MD)No.7396 of 2005

WEB COPY

of loss is quantified, it ought to have been recovered from the delinquent officer who was responsible for the loss. This would indicate that the respondents are not genuine in taking disciplinary proceedings and there is element of vindictiveness.

13. The next ground that was submitted by the petitioner is that the 3rd respondent has accepted that subsequently, the 3rd respondent has not carried out any bund measurement at all, for which the petitioner relies on the order passed by the 2nd respondent, dated 07.12.1984. The relevant portion of the letter is extracted here under:

“Charge: 1: When the Assistant Executive Engineer went over to the pond sites for check measurement on 15.7.81, he found the Junior Engineer's measured quantity of earth work to be far excessive and irrationally higher than the actual quantity of earth work which was made out roughly by measuring the bund itself.

Since the arrangements were made for taking bund measurement roughly and recording it in a sheet of paper and the Assistant Executive Engineer had not recorded any of percolation ponds, the Delinquent Officer was informed that the question of ending of copies of the said measurements to the Delinquent does not arise.”



W.P.(MD)No.7396 of 2005

WEB COPY

When the respondents have categorically admitted that the 3rd respondent has not recorded any percolation pond measurement and it was informed to the delinquent officer that the bund measurement was roughly taken and recorded in a sheet of paper. Hence, there is no question on sending the copies of the said measurement to the delinquent which will clearly indicate that the respondents have carried out only a rough measurement and the base of the charge itself is based on the said measurement. Therefore, this Court is of the considered opinion that the respondents have not carried out the enquiry properly, but in order to victimize the petitioner the present disciplinary proceedings was initiated.

14. The petitioner is aged about 68 years and the petitioner had attained superannuation on 30.10.2001. Therefore, this Court is not inclined to remit the case back for any further enquiry or denova enquiry. Therefore, the impugned orders are set aside. The respondents are directed to regularize the suspension period as duty period. The petitioner is entitled to all increments, service benefits and monetary benefits. As far as promotion is concerned, since the promotion is



W.P.(MD)No.7396 of 2005

WEB COPY

not automatic and it is based on merit, ability and also based on availability of vacancy. If the petitioner's junior were granted promotion, then the petitioner is entitled to promotion. Hence the respondents shall consider the case of the petitioner and if promotion is granted to the petitioner's junior, notional promotion shall be granted to the petitioner. However, the petitioner is not entitled to the monetary benefits for the notional promotion, but the effect shall be granted in the pensionary benefits. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above said directions, the writ petition is allowed. No costs.

Index : Yes / No
Internet : Yes

14.12.2022

Tmg



WEB COPY



W.P.(MD)No.7396 of 2005

To

- 1.The Secretary to Government,
Agricultural Department,
Chennai-600 009.
- 2.The Chief Engineer (Agricultural Engineering),
Nandanam, Chennai-600 035.
- 3.The Assistant Executive Engineer
(Agricultural Engineering),
Soil and Moisture Conservation Scheme,
Aruppukottai,
Virudhunagar District.



WEB COPY



W.P.(MD)No.7396 of 2005

S.SRIMATHY, J

Tmg

W.P.(MD)No.7396 of 2005

14.12.2022