



W.P.No.26457 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.26457 of 2016
ad
W.M.P.No.22679 of 2016

C.Rengaswamy Pandian

.. Petitioner

VS

1.The Government of Tamil Nadu
Rep. By its Secretary,
Highways Department & Minor Ports Department,
Fort St.George, Chennai – 09.

2.The Director General,
Highways Department
Chepauk, Chennai – 5.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pertaining to impugned order viz., G.O.(2D) No.7, Highways & Minor Ports (HL2) Department dated 05.02.2016 issued by 1st respondent and quash the same and consequently direct the respondents to settle all the retirement benefits of the petitioner viz., pension, the arrears of pension, computation of pension, etc., which had not been paid so far due to the charges imposed on the petitioner with appropriate rate of interest as this



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Court may fix from the date of due of each benefit and till the date of its payment to the petitioner and also to direct the first respondent to award compensation to the petitioner for the sufferings illegally he was forced to undergo all these years including the cost of this litigation.

For Petitioner : Mr.N.Subramaniyan
For Respondents : Mr.S.Ravikumar
Special Government Pleader

ORDER

Writ petition has been filed in the nature of certiorarified mandamus relating to an order of the first respondent, the Secretary to Highways Department and Minor Ports Department, Government of Tamil Nadu, dated 05.02.2006, G.O (2D)No.7, Highways & Minor Ports (HL2) Department and quash the same and direct the respondents to settle all retirement benefits to the petitioner.

2. The petitioner was originally appointed as Assistant Engineer in the Highways Department on 04.01.1978 by the Tamil Nadu Public Service Commission. Thereafter he was promoted as Assistant Divisional Engineer on 11.06.1998. He was suspended by



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order dated 23.09.2010 and thereafter on the date of superannuation, on 30.09.2010, an order was passed not permitting him to retire from service. There was a disciplinary proceedings initiated against the petitioner herein.

3. In view the nature of the order now passed in this writ petition, it may not be proper on my part to enter into a detailed discussion about either the subjective satisfaction attained by the enquiry officer during the course of the disciplinary proceedings or the subsequent order which is now impugned, which had been passed by the disciplinary authority.

4. The brief facts are that the petitioner was in-charge of measuring the work of relaying done for two roads which were sanctioned as Karukanni Konar Veettu Salai for a distance of 1 km for which the estimated cost was Rs.4 lakh and another street namely, Karukanni Eda Street which also was to a distance of 1 km and for which also the estimated cost was Rs. 4 lakhs. These were situated at Kovilpathu Salai at Agragaram Street to Burial Ground Salai. In effect, the charge against the petitioner was that instead of re-laying these two roads, the contractor or whoever was responsible for actual execution of the work re-laid two other



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roads.

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5. The petitioner being in a supervisory capacity was found fault that he did not periodically inspect the on-going work to ensure that the correct road was being laid. This in effect is the charge.

6. There were five separate charges framed against the petitioner, more or less, surrounding the same issue. An enquiry was undertaken and the petitioner has not complained about denial of opportunity during the enquiry process. The enquiry officer gave a finding that the five charges were not established.

7. Thereafter, the matter went before the Disciplinary Authority. The Disciplinary Authority, however, had taken a decision to deviate from the findings of the enquiry officer and he came to a conclusion that the charge nos. 1 and 4 were partly established and charge no.5 was established. After holding so, he asked the petitioner to give an additional explanation.

8. The petitioner had forwarded an additional explanation. After receiving the same, the impugned order came to be passed.



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In the impugned order, it was found that owing to the fact of the petitioner in not periodically inspecting the works, a total loss about Rs.16 lakhs had occurred and the petitioner was directed to pay the said sum of Rs. 16 lakhs back to the treasury accounts.

9. When the writ petition had been admitted on 01.08.2016, an interim stay for a period of four weeks had been granted. It is presumed that the recovery had not yet been initiated as against the petitioner herein.

10. A counter affidavit has been filed on behalf of the respondents stating the facts with respect to additional explanation given by the petitioner herein and the allegation in the affidavit that it was not considered. In the counter affidavit, it has been stated as follows:-

"14. With regard to the averments made in Ground C of the affidavit, it is submitted that the first respondent failed to consider the explanation of the petitioner, dated 21.01.2014 inspite of the direction issued by this Hon'ble Court in their orders dated 20.08.2014 against the second show cause notice and even not bringing on record the relevant portion of the explanation given by the petitioner vitiates the charges and the impugned punishment are baseless. The explanation given by the petitioner with regard to the charges framed against him were not acceptable and hence and thereby the 1st respondent imposed



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punishment.”

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11. It had only been stated that the first respondent had taken a decision that the explanation given by the petitioner was not acceptable and, therefore, they stood rejected.

12. It is trite in law to point out that any quasi judicial authority who passes any order, should state reasons. Reasons are required so that it would provide clarity to whom the order is focused upon. The petitioner in this particular case claims he is still not unaware as to why his explanations were rejected. He claims that he is not aware as to why explanations were not acceptable. To that extent, the reasons must be given.

13. The reasons may be good, the reasons may not be satisfactory, but still the mind of the authority should be reflected in the order. There must be an application of mind and an impression must also be held out that the explanation which he had called-for was duly considered and thereafter, it could be either accepted or rejected. If it is rejected, reasons why it is rejected should be stated. If it is not stated then calling for an additional explanation from the petitioner is only an empty formality.



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14. It can always be observed by this Court that the petitioner was called upon to give an additional explanation when it was already decided to reject the same and to hold that it is not acceptable. The Court can come to a conclusion that the first respondent would not have even read the explanation to find out reasons as to why they are not acceptable. These are the issues which forces this Court, at this late stage, to set aside the order insofar as non-consideration of the explanation is concerned.

15. The first respondent will have to conduct further examination of the additional explanation given by the petitioner herein and examine it with an open mind. It is hoped that for this exercise, another official re-examines the entire issue. To clarify that the correct papers are being examined and it would only be appropriate that the official who now re-examines so far as explanation given by the petitioner is concerned, issues notice to the petitioner and clarify that the actual papers are available and then, re-examine the entire issue. This would primarily be focused on the explanation given by the petitioner herein

16. Learned counsel for the petitioner gave several



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explanations. He stated that the this being a village there were no name boards and the petitioner being in the administrative section only as supervisory officer, made inspection of the work which was going on and did not verify the name of the road since the name board is not available. He stated that the village panchayat president, who was physically there and the contractor who had taken the work of contract, should have been aware of these facts.

17. It is the grievance of the learned counsel that thrse factors had been stated in the additional explanation which had not been taken into consideration at all. The first respondent as Disciplinary Authority has additional responsibility to re-examine the entire file. He should also examine the file with the prejudged intention to reject the explanation as not acceptable.

18. There is also another issue of the quantum, which is directed to be recovered from the petitioner herein. I would leave that to the wisdom of the petitioner herein, to raise grounds relating to the quantum. If they are so raised, the first respondent may re-examine that particular aspect also. To the extent of re-examination to these two aspects, the matter has to be reverted back to the first respondent. Let another official, not the official



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who passed the impugned order, now examine the case of the petitioner herein.

19. The entire exercise may be completed within a period of four months from the date on which fresh officer is nominated by the first respondent to re-examine the entire issue on the basis of the observations stated above.

20. In view of the above reasoning, this writ petition stands partly allowed to that particular extent of re-examining the two issues stated above. No costs. Connected miscellaneous petition is closed.

19.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To:

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Fort St.George, Chennai – 09.
- 2.The Director General,
Highways Department
Chepauk, Chennai – 5.



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C.V.KARTHIKEYAN,J.

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