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W.P.No.3033 of 2014 and W.P.No.29701 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.3033 of 2014 and W.P.No.29701 of 2016

and

M.P.No.1 of 2014, W.M.P.Nos.25709 and 25710 of 2016

W.P.No.3033 of 2014

S.Ayyanan

... Petitioner

Vs.

1.The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai – 9.

2.The Engineer-in-Chief,
W.R.O and Chief Engineer P.W.D (General),
Chepauk, Chennai – 5.

... Respondents

Prayer in W.P.No.3033 of 2014: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned orders passed by the first respondent in G.O.(D).No.37, Public Works (E1) Department dated 23.01.2012 and quash the same and consequently direct the respondents to allow the petitioner to retire from service on 31.03.2006 and settle all the terminal and pensionary benefits with arrears.



W.P.No.3033 of 2014 and W.P.No.29701 of 2016

W.P.No.29701 of 2016

V.Mahalingam

... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by
The Secretary to Government,
Public Works Department,
Fort St. George, Chennai – 600 009.

2.The Engineer-in-Chief,
W.R.D and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai – 600 005.

... Respondents

Prayer in W.P.No.29701 of 2016: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned orders passed by the first respondent vide G.O.(D)No.508, Public Works (E1) Department dated 03.12.2013 and the second respondent in Letter No.CII(3)/2003/2006-195 dated 28.06.2016 and quash them as illegal, arbitrary, unreasonable, being violative of rules and principles of natural justice and thereby direct the respondents herein to permit the petitioner to retire from service with effect from 30.05.2006, the date on which the petitioner attained the age of superannuation and sanction all consequential monetary and service benefits within a time frame.



W.P.No.3033 of 2014 and W.P.No.29701 of 2016

In both W.Ps

For Petitioners : Mr.A.R.Suresh
For Respondents : Mr.M.Shahjahan
Special Government Pleader

COMMON ORDER

The petitioners have filed the present writ petitions seeking to quash the impugned orders passed by the first respondent in G.O.(D).No.37, Public Works (E1) Department dated 23.01.2012 and G.O.(D)No.508, Public Works (E1) Department dated 03.12.2013 and consequently, to allow the petitioners to retire from services on their respective dates of superannuation and to consequently settle the terminal and pension benefits with arrears.

2. The common case pleaded by the petitioners is that they were holding the post of Superintending Engineer and Assistant Executive Engineer in the Public Works Department. On 30.03.2016, one day prior to the superannuation of the petitioner in W.P.No.3033 of 2014 and on 30.05.2006, prior to the superannuation of the petitioner in W.P.No.29701 of 2016, both the petitioners were placed under suspension and Charge Memos were issued.



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3. The charge against both the petitioners was that they did not carry out proper measurements at the construction site namely Shenbagathoppu Reservoir Project in Thiruvannamalai District and that the Contractor was over paid.

4. The petitioners submitted their explanations. The Enquiry Officer conducted an enquiry and submitted his final report. Since no orders were passed subsequent to the final report, the petitioners moved this Court by way of writ petitions and this Court directed that the final orders should be passed, within a period of three months in W.P.No.20990 of 2019 and within a period of four weeks in W.P.No.26265 of 2011.

5. Despite the said orders of this Court, no orders were passed by the first respondent and therefore, the petitioners have approached this Court. This Court by its order dated 21.12.2011 held that as a final chance, the first respondent was directed to pass final order, within a period of four weeks from the date of receipt of a copy of the order. Thereafter, the impugned order came to be passed by the first respondent, which is under challenge in the present



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writ petitions on the ground that in the criminal case, both the petitioners were acquitted and all the other employees against whom, the charges were framed in the departmental disciplinary proceedings were either allowed to retire or reinstated in service and only in respect of one of them, an order of compulsory retirement came to be passed. However, insofar as the petitioners were concerned for the same charge and offence, they were given capital punishment of being removed from service.

6. The respondents have filed a counter affidavit wherein, it is stated that M-Book was verified and only since the work was incomplete and huge amounts were paid as advance to the contractor, resulted in over payment of Rs.1,20,80,231/- and according to the respondents, the petitioners are responsible for the same, being superior officers and their failure to check measurements and making excess payments was rightly dealt with by removing them from service.

7. Insofar as the other employees being either reinstated or allowed to retire and being awarded compulsory retirement, it is stated that the role of the concerned employees were entirely different and cannot be equated to the



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responsible positions held by the petitioners and being superior authorities, they alone were responsible to ensure that the payments made to the contractor was in line with the instructions and the decisions taken. The respondents therefore prayed for dismissal of the writ petition.

8. Heard the learned counsel for the petitioners and the learned Special Government Pleader for the respondents.

9. The learned counsel for the petitioners would submit that in the criminal case, there is an acquittal order passed in favour of the petitioners and unfortunately for the petitioners, a different Enquiry Officer was appointed who took a totally contra view taken by the other Enquiry Officer, who dealt with the enquiry against the other employees, who were all let off lightly, excepting from one employee, who was punished with compulsory retirement.

10. The learned counsel for the petitioners would rely on the Judgment of the Hon'ble Supreme Court in **State Bank of Bikaner and Jaipur Vs Nemi Chand Nalwaya**, reported in (2011) 4 SCC 584, to drive home on the point that the Court should interfere with the findings in disciplinary matters, when



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principles of natural justice or statutory regulations have been violated or the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.

11. The learned Special Government Pleader would draw strength from the very same Judgement, where, the Hon'ble Supreme Court has held that the Criminal Court acquitting the concerned delinquent would not in any way affect the departmental disciplinary proceedings or invalidate the same, because, the standard of proof required in the criminal proceedings was entirely different from the standard of proof required in the departmental enquiry proceedings and the same set of charges and evidence may lead to different results in both the proceedings.

12. The Hon'ble Supreme Court has also held that the Courts should not in interfere with the findings of facts recorded in departmental enquiries and the order of the High Court directing reinstatement with back wages and consequential benefits was set aside by the Hon'ble Apex Court in the said case.

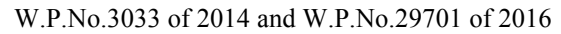


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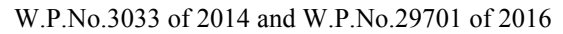
13. The learned counsel for the petitioners would invite the attention of this Court to the findings rendered by the Criminal Court acquitting the petitioners. There is a reference to evidence of the prosecution witnesses, who have stated that materials have been supplied and available at the sites and therefore, there is no loss to the Government.

14. The Criminal Court has also found that the prosecution has failed to establish quantum of loss to the State. However, the learned Special Government Pleader for the respondents would contend that the findings in the Criminal Court cannot be taken as gospel truth while deciding departmental disciplinary proceedings and in any event, availability of material was only one aspect and erection of the shutters was another aspect.

15. The directions issued were clearly distinguishing payments to be made for supplying of materials and on completion of the work namely erection of shutters. Therefore, the learned Special Government Pleader for the respondents would contend that no reliance can be placed on the said findings of the Criminal Court, in order to exonerate the petitioners.



19. The allegations of fraudulent conduct or misappropriation are also not established during the departmental disciplinary proceedings. Viewing this in the light of the findings of the Criminal Court that even according to the



20. Therefore, considering all this, the capital punishment of removing the petitioners from service can be modified to compulsory retirement, since the punishment awarded by the first respondent is disproportionate with the charges framed and proved during departmental disciplinary proceedings.

21. Accordingly, these writ petitions are partly allowed, confirming the guilt recorded by the disciplinary authority while modifying the punishment from dismissal to compulsory retirement. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.06.2023

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes / No

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P.B.BALAJI, J.

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