



WEB COPY



W.P.No.30155 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30155 of 2023

P.Vinayagamoorthy

...Petitioner

Vs

1. The Government of Tamil nadu,
Rep. by its Additional Chief Secretary to Government,
Revenue and Disaster management Department,
Service Wing,
Service (10(1)) Section
Secretariat, Fort St. George,
Chennai 600 009

2. The District Collector,
Villupuram, Villupuram District.

3. The Adi Dravidar Welfare Officer,
Adi Dravidar Welfare Department,
Villupuram, Villupuram District.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the records which culminated in passing the order in the G.O(2D) No.239, Revenue and Disaster Management Department, Service Wing, Service 10(1) Section dated 28.07.2023 on the file of first respondent and quash the



W.P.No.30155 of 2023

same in the light of the order dated 21.06.2023 passed in WP No.17561 of 2023 and consequentially direct the respondents to confer all consequential attendant benefits to the petitioner within a time limit that may be prescribed by this Court.

For Petitioner : Mr.M.Elumalai

For Respondents : Mr.M.Alagu Gowtham
Government Advocate

ORDER

On a set of certain allegations, the petitioner along with four others were subjected to disciplinary proceedings through a charge memo issued by the Commissioner for Disciplinary Proceedings dated 26.08.2011. Pursuant to the charge memo, an enquiry was conducted by the Tribunal for disciplinary proceedings and a report was filed, holding the charges against the petitioner as proved. Along with the petitioner, the charges against the other four accused persons were also held as proved. The Disciplinary authority through the impugned punishment order passed in GO.(2D) No.239, Revenue and Disaster Management Department Services Wing, Service 10(1) Section, dated 28.07.2023, had imposed the punishment of compulsory retirement. Challenging the same, the present writ petition has been filed before this Court.



W.P.No.30155 of 2023

WEB COPY

2. It is brought to the notice of this Court that insofar as the other two co-delinquents, who were also leveled with identical charges, an enquiry was conducted by the Tribunal for disciplinary proceedings and they were also imposed with punishment of compulsory retirement. When one of the co-delinquent viz., Mr.P.Jayamurthy, had challenged the order of punishment in WP No.17561 of 2023, this Court by an order dated 21.06.2023, had set-aside the order of punishment and directed the Government to reinstate the petitioner by assigning duties to him together with all service and monetary benefits. The said order reads as follows :-

2. The petitioner herein along with four others were levelled with certain charges of possessing unaccounted money in the inspection conducted by the Inspection Cell of Vigilance and Anti-Corruption Wing of Villupuram. Based on the levelled charges, an enquiry was conducted. The Enquiry Officer in his report had observed that the petitioner was counting the money alone and that the petitioner had neither received nor gave the bribe amount. Tamil Nadu Public Service Commissioner while rendering its view on the Enquiry Officer-s report had also recommended to the



W.P.No.30155 of 2023

Disciplinary Authority for imposing a minor punishment. However, the Disciplinary Authority had chosen to impose a major punishment of compulsory retirement through the impugned G.O.(2D)No.31, Revenue and Disaster Management Department, dated 29.01.2018.

3. The petitioner had challenged the order of punishment before this Court in W.P.No.15149 of 2018 and this Court by order dated 22.03.2021 found that the impugned order of punishment was a non~speaking order and that the petitioner was not provided with a copy of the Tamil Nadu Public Service Commission-s Report. On this ground, the punishment of compulsory retirement was set aside and the matter was remanded back to the respondents fixing time limit of eight weeks to pass fresh orders. The relevant portions of the order are as follows:~

7. In the present case, the impugned order passed is apparently a non~speaking order, that too without furnishing a copy of the Tamil Nadu Public Service Commission-s Report. Hence, in the light of the decisions cited supra, this Court is inclined to set aside the impugned order.

8. Accordingly, the impugned order dated 29.01.2018 is set



WEB COPY



W.P.No.30155 of 2023

aside. The matter is remanded back to the respondents for fresh consideration and for passing appropriate orders, after following due process of law. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

4. The copy of the order was made ready on 30.04.2021 and as such the eight weeks period prescribed by this Court would approximately end on 30.06.2021. In the meantime, the petitioner had made several representations dated 16.06.2021, 13.08.2021 and 09.12.2021, seeking for assigning duties to him. There was no response to the petitioner-s representations till 06.06.2022. When there was a communication from the first respondent herein through his letter dated 06.06.2022 furnishing a copy of Tamil Nadu Public Service Commission-s report and seeking for petitioner-s reply, on 01.07.2022, the petitioner had given his reply to the Government which has also been duly received by them and acknowledgment card has been produced before this Court.

5. The respondents have not filed any counter affidavit till date.

6. This Court is not in appreciation of the manner in which the Government has dealt with the case of the petitioner.



W.P.No.30155 of 2023

Initially when the Enquiry Officer-s Report had stated that the petitioner was not found guilty of having given or received bribe and Tamil Nadu Public Service Commissioner had subsequently recommended for imposing lesser punishment, the Disciplinary Authority had chosen to impose major punishment of compulsory retirement. The order of punishment was a non-speaking order and a copy of the Tamil Nadu Public Service Commission-s Report has not been provided to the petitioner. In this background, this Court had quashed the punishment and fixed time limit of eight weeks for passing final orders.

7. As stated above, eight weeks period had ended in the month of May 2021. The further action has been initiated by the first respondent only on 06.06.2022 which is after more than a year which is in total violation of the time limit stipulated by this Court. The Hon-ble Division Bench of this Court in the case of State of Tamil Nadu, Personnel and Administrative Reforms Department, Chennai and Another vs. T.Ranganathan (W.A.Nos.1478 of 2008 and 266 of 2009 dated 05.03.2010) has held that, when the time limit prescribed by this Court is not adhered to, all consequential actions would necessarily be rendered as illegal. The relevant portion of the order reads as follows:~



WEB COPY



W.P.No.30155 of 2023

We are conscious of the fact that if there is non-cooperation of the delinquent officer to comply with the time limit fixed by the Court/Tribunal to complete the enquiry and pass final orders in disciplinary proceedings, the Department cannot be blamed. In such contingency it is for the Department to point out the non-cooperation on the part of the delinquent officer in finalising the proceeding and the hardships faced by the Department in not strictly adhering to the time schedule due to the fault of the delinquent officer or for any valid reason and get appropriate orders seeking extension of time. At this juncture, it is relevant to point out that even if the time granted originally to complete the enquiry is over, nothing prevented the Department from filing an appropriate application after expiry of the time. It is now well settled in law that application seeking extension of time can be filed and the Court are having inherent powers to grant further time, even though the original time granted got expired, based on the principles of invoking the inherent powers to meet the ends of justice. In this case, there is no whisper about the non-cooperation of the petitioner in conducting the enquiry and completing the enquiry within the time. Hence the Department is bound to comply with the directions issued by the Tribunal in O.A.No.1535 of 2003.

8. In the instant case, the petitioner had been continuously



W.P.No.30155 of 2023

approaching the respondents through various representations seeking for reinstatement in view of their inaction in assigning him duties, before and even after expiry of eight weeks prescribed by this Court and no action has been taken on the petitioner-s representations also. It is rather unfortunate that the petitioner has been made to unnecessarily wait for the respondents to comply with the directions of this Court which could have caused serious prejudice to him.

9. This is not an isolated case on the part of the Government in failing to adhere to the time limits stipulated by this Court to comply with certain directions. This Court is being flooded with contempt petitions consistently, mostly on the ground that the directions are not complied within the stipulated time. It is also a routine affair on the part of the Government to comply with directions whenever a contempt notice is issued or contempt proceedings are initiated. The sanctity of the orders of the High Court has been impaired quite often when such time bound orders are violated. The respondents also do not often seek for extension of the time limit before this Court and take things for granted and sit over orders which requires compliance as in the present case. By applying the ratio laid down by the Hon-ble Division Bench of this Court as stated supra, I am of the view that the moment the time limits stipulated by this Court



W.P.No.30155 of 2023

had expired on 30.06.2021, the entire disciplinary proceedings thereafter would stand vitiated. In this background, though the petitioner has sought for issuance of a Writ of Mandamus to consider his representations for implementation of the orders of this Court dated 22.03.2021 passed in W.P.No.15149 of 2018, this Court deem it fit to invoke the powers vested in it under Article 226 of the Constitution of India and accordingly, mould the relief into one of issuance of a Writ of Certariori for the purpose of quashing the disciplinary proceedings, which already stands vitiated.

10. In the light of the above observations and findings, the entire disciplinary proceedings initiated against the petitioner in case No.1 of 2011 dated 23.01.2014, on the file of the second respondent herein is quashed. Consequently, the first respondent herein shall pass appropriate orders, assigning duties to the petitioner and by extending continuity of service and all other attendant and monetary benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the petitioner will not be entitled for arrears of salary for the period of his non~employment.

11. The Writ Petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.



W.P.No.30155 of 2023

WEB COPY

3. A perusal of the aforesaid extract would reveal that the charges against the petitioner herein as well as the co-delinquent P.Jayamurthy are one and the same. When the case of the co-delinquent was accepted by this Court and the punishment was set-aside, the petitioner would also be entitled for the same benefit. Accordingly, the impugned order in G.O(2D) No.239, Revenue and Disaster Management Department, Service Wing, Service 10(1) Section dated 28.07.2023 is hereby quashed. Consequently, the first respondent herein shall pass appropriate orders, notionally retiring the petitioner from service on the date of his superannuation and accordingly, grant and disburse all the retirement benefits, including pensionary benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the petitioner will not be entitled for arrears of salary for the period of his non-employment. No costs.

08.11.2023

Index:Yes/No

Speaking order/Non-speaking order
rka



W.P.No.30155 of 2023

WEB COPY

To

1. The Government of Tamil nadu,
Rep. by its Additional Chief Secretary to Government,
Revenue and Disaster management Department,
Service Wing,
Service (10(1)) Section
Secretariat, Fort St. George,
Chennai 600 009
2. The District Collector,
Villupuram, Villupuram District.
3. The Adi Dravidar Welfare Officer,
Adi Dravidar Welfare Department,
Villupuram, Villupuram District.



WEB COPY



W.P.No.30155 of 2023

M.S.RAMESH,J.

rka

W.P.No.30155 of 2023

08.11.2023