



W.P(MD)No.9501 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 06.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9501 of 2023

and

W.M.P.(MD)Nos.8475 and 8477 of 2023

K.Chithiravelu

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Rural Development Department,
Secretariat, Chennai – 9.

2.The Commissioner,
Panchayat Raj and Rural Development Department,
Panagal Building, Saidapet,
Chennai – 600 015.

3.The District Collector,
Office of the District Collector,
Pudukottai District.

4.A.G.Sethuraman,
The Executive Engineer (RD),
Tamil Nadu Coastal Sustainable Livelihoods Society,
100, Anna Salai, Guindy,
Chennai – 600 032.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings of 3rd respondent in Na.Ka.P6/4017/2017 (Dev.) dated 08.02.2018 and to quash / cancel the impugned order which is apparently against and gross violation of the Section 401.10 and 301.10 of Volume II of Equipment and Test Procedures, Quality Assurance Handbook for Rural Roads released by the National Rural Roads Development Agency, Ministry of Rural Development, Government of India and direct the respondents 2 and 3 herein to consider the petitioner for promotion to the post of Assistant Executive Engineer (RD) for the year of 2023-24 by including his name in the panel for promotion without reference to the above prolonged pendency of the enquiry proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1973 is deliberately illegal and unconstitutional and it would put the petitioner in irreparable loss and untold hardship for more than 8 years.

For Petitioner : Mr.Ramesh Mahadev

For Respondents : Mr.T.Vilavan Kothai,
Addl. Government Pleader for R1 to R3.



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ORDER

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Even before commencing his arguments, the learned counsel for the petitioner on instructions submitted that the scope of this writ petition can be confined to testing the validity of charge memo. He states that the petitioner can be given liberty to raise other aspects separately. This liberty is granted.

2.The petitioner challenges the impugned charge memo on the grounds set out in the affidavit filed in support of the writ petition.

3.The respondents 1 to 3 have filed counter affidavit and the learned Additional Government Pleader took me through its contents. His foremost contention is that the Writ Court will not be justified in interfering at the stage of charge memo. He also would point out that enquiry has already commenced and that it is likely to be concluded in the near future. Since factual aspects are involved, according to him, the writ petition itself is not maintainable. He pressed for dismissal of the writ petition.



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3.I carefully considered the rival contentions and went through the materials on record. The writ petitioner is working as Assistant Engineer in Panchayat Union Office, Kunnandaar Kovil, Pudukottai District. The subject matter of impugned charge memo relates to the period 2013 – 2014 when the petitioner was working in Panchayat Union Office, Viralimalai, Pudukottai District. During the relevant time, road works were carried out in Panikkankovil Village. The charge memo reads that the measurement was not properly taken by the petitioner and that the petitioner had acted in collusion with the contractor and that as a result, loss to the tune of Rs.3,055/- was caused to the Government.

4.The charge memo was issued way back on 08.02.2018. We are now in June 2023. A full five years had elapsed in the meanwhile. There is absolutely no justification for not concluding the enquiry in the meanwhile. The petitioner has not come to the Court immediately. The petitioner is also not responsible for the delay in concluding the enquiry.

5.The amount involved is rather small. The cost of holding enquiry will be several times than the loss caused to the Government. I



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fail to understand as to why major penalty proceedings were initiated for such a small sum of Rs.3,055/-.

6.Coming into the merits of the matter, my attention is drawn to Section 401.10 of Quality Assurance Hand Book for Rural Roads reads that the thickness of the compacted layer shall be measured at a few place and average should be taken. In this case, according to the petitioner, the average was 83.44 mm. Even according to the department, the average should be 75 mm. In this case, super check was ordered to be conducted twice under the aegis of the vigilance. Even according to them, on one occasion, the average was 83.41 mm and on the second occasion, it was 84.14 mm. Both are above the average prescribed by the department.

7.I, therefore, fail to see any element of misconduct on the part of the writ petitioner. There is also zero material in support of the allegation that the petitioner was hand in glove with the contractor. For the aforesaid reasons, namely, (a) the fact that even according to the department, only a small sum of Rs.3,055/- was involved (b) no material to show that the petitioner was hand in glove with the contractor and



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(c) the super check done by the department themselves revealed that the thickness of the layer was above average prescribed in the contract, I hold that there is no cause of action for initiating disciplinary action against the writ petitioner. The impugned charge memo is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

06.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Principal Secretary,
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G.R.SWAMINATHAN, J.

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