



W.P.(MD).No.16608 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.16608 of 2023

R.Chandrasekaran

... Petitioner

Vs.

1.The Secretary to Government,
Public Works (E1) Department,
The Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

2.The Engineer-in-Charge,
Water Resource Department,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Chief Engineer,
Water Resource Department,
Ezhilagam, Chepauk,
Chennai-600 005.

4.The Chief Engineer(General),
Ezhilagam, Chepauk,
Chennai-600 005.

5.The Chief Engineer,
Water Resource Department,
Madurai.

... Respondents

(R5 is suo motu impleaded by this Court, dated 01.09.2023)



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in G.O.(3D) No. 191 Public Works (E1) Department, dated 05.08.1996 and impugned proceedings no. CII(3)/16105/94,342 dated 29.05.2003 issued by the 4th respondent and quash the same and consequently direct the respondents revoking suspension order of petitioner and allow him to retire from service with all monetary and retirement benefits.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The present writ petition has been filed to call for the records relating to the impugned order passed by the 1st respondent in G.O.(3D) No. 191 Public Works (E1) Department, dated 05.08.1996 and impugned proceedings no. CII(3)/16105/94,342 dated 29.05.2003 issued by the 4th respondent and quash the same and consequently direct the respondents revoking suspension order of petitioner and allow him to retire from service with all monetary and retirement benefits.



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2. The petitioner was appointed as Supervisor by the 4th respondent in the Public Works Department on 27.12.1972. He joined duty on 06.01.1973. After completion of 1 year, he was posted as Junior Engineer. In the meanwhile, the petitioner was placed under suspension from 05.08.1996 onwards for the pendency of a criminal case against him in Crime No.3 of 1995. On attaining his age of superannuation on 31.05.2003, shockingly he was not permitted to retire from service vide impugned proceedings of the 4th respondent, dated 29.05.2003. The said criminal case which was registered as against the petitioner culminated in S.C.No.5 of 2003 on the file of the Chief Judicial Magistrate, Tirunelveli and later, transferred before the Special Court for Prevention of Corruption at Tirunelveli and renumbered as Spl.C.No.6 of 2014 and the same is still pending under trial for the past 20 years.

3. However, an order of suspension which was challenged by similarly placed co-delinquents before the Tamil Nadu Administrative Tribunal in a batch of cases, wherein the learned Tribunal had set aside the order of suspension passed by the respondent department. Challenging the said order, the respondent department filed batch of writ petitions before this Court, in which the order of learned Tribunal was upheld. However, liberty was given to



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the respondent department to decide whether the order of suspension is required to be continued on the facts and circumstances of the case. Likewise, similarly placed co-delinquents filed writ petitions before this Court in W.P(MD)Nos.10811 and 10904 of 2014 challenging the order of suspension and retaining in service without allowing to retire. This Court was pleased to allow those writ petitions by its order, dated 09.02.2015 setting aside the impugned order. Similar orders were passed by this Court in another writ petition in W.P(MD)No.6452 of 2008, dated 15.10.2009 and the same was confirmed by the Hon'ble Division Bench of this Court in W.A(MD)No.585 of 2010, dated 27.09.2010 and Hon'ble Supreme Court in SLP.No.2821 and 2822 of 2014 confirmed the orders passed in the writ appeal on 26.02.2014.

4. The respondent department filed another writ appeal in W.A(MD)Nos. 1218 and 1219 of 2015 before the Hon'ble Division Bench of this Court as against the order passed by this Court in W.P(MD)Nos.10811 and 10904 of 2014 and the same was also dismissed on 17.12.2019. Pursuant to the same, similarly placed co-delinquents like the petitioner was issued with G.O. (2D).No.84, dated 26.12.2020 by the 1st respondent and he was allowed to retire from service thereby revoking his suspension based on the order passed in



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W.P(MD)Nos.10811 and 10904 of 2014, dated 09.02.2015 and W.A(MD)Nos. 1218 and 1219 of 2015, dated 17.12.2019. However, the respondents did not follow the same principle while dealing with the suspension and retirement of the petitioner and the impugned orders came to be passed. Challenging the same, this writ petition came to be filed.

5. The learned Additional Government Pleader fairly conceded that all the co-delinquents of the petitioner in the same case have already approached this Court and the suspension orders were quashed by this Court and the appeals preferred by the department were also been dismissed. For better appreciation, the relevant portion of the order passed by this Court in W.P(MD)Nos.10811 and 10904 of 2014 is extracted as follows:

“3. The common grievance of the petitioners in both the writ petitions, is that even though the order of suspension came to be passed as early as on 07.10.1996, such suspension order is continuously in operation for all these years and such prolonged suspension causes great hardship to these writ petitioners. It is their further grievance that even though such suspension order was passed in the year 1996, till this date, the Department has not issued any charge memo and conducted the departmental



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proceedings. The petitioners further contended that in the case of codeinquents in respect of the same set of allegations, this Court interfered with the order of suspension in W.P(MD)No.6452 of 2008, dated 15.10.2009, by setting aside the same and the said order has been conferred by the Honourable Division Bench of this Court in W.A.(MD)No.585 of 2010 dated 27.09.2010.

16. Accordingly, by following the above said orders passed by this Court as well as by the Honourable Apex Court, these writ petitions are allowed and the impugned orders are set aside. Since this Court sets aside the order of suspension as well as the consequential orders not permitting them to retire, it follows that the first respondent has to pass appropriate G.Os revoking the suspension order and allow the petitioners to retire on attaining their respective age of superannuation. Needless to say, once such order is passed, the respondents are bound to disburse the retirement benefits to the petitioners without any further delay. Accordingly, the first respondent is directed to pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.”

6. The writ appeal filed by the department in W.A(MD)No.1218 and 1219 of 2015 was also dismissed on 17.12.2019 and the relevant portion of which is extracted as follows:



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“19.2. The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

19.3.Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;

19.4 Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para (d) above, would be in those cases where the codelinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co-delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two,



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not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable.”

7. Considering the fact that the case of co-delinquents of the petitioner had been dealt by the Hon’ble Division Bench and the Hon’ble Apex Court as well, all the Courts have in unison delivered verdict in favour of the co-delinquents. This Court is of the considered view that in terms of doctrine of equality, the petitioner is also entitled to the same reliefs as granted by the Hon’ble Division Bench and the Hon’ble Apex Court in the case of the co-delinquents. In view of the same, the impugned order in G.O.(3D).No.191, Public Works (E1) department, dated 05.08.1996 and the impugned proceedings no. CII(3)/16105/94,342, dated 29.05.2003 are hereby quashed. The respondents are consequently directed to revoke the suspension of the petitioner and allow him to retire from service with all monetary benefits and terminal benefits. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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8. With the above said observations, this Writ Petition stands allowed.

No costs.

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NCC : Yes / No
Index : Yes / No
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To

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L.VICTORIA GOWRI, J.

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