



WEB COPY

W.P.(MD)No.7797 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.01.2023

PRONOUNCED ON : 07.11.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.7797 of 2017

and

W.M.P.(MD)Nos.6060, 6061 of 2017 and 2754 of 2018

M.S.Vijaya

... Petitioner

vs.

- 1.The State of Tamil Nadu,
represented by its Principal Secretary,
Rural Development and Panchayat Raj
Department (E1),
Secretariat, Chennai-9.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Preasar Paalaa Salai,
Chennai-600 003.



W.P.(MD)No.7797 of 2017

WEB COPY

3.The Commissioner,
Office of the Commissioner of Rural
Development and Panchayat Raj,
Chennai-15.

4.The District Collector,
Dindigul District, Dindigul.

5.The District Collector,
Theni District, Theni.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in G.O.Ms.(P)No.107 Rural Development and Panchayat Raj (E1) Department dated 08.03.2017 (served to the petitioner only on 10.04.2017) and to quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.R.Suresh Kumar
Government Advocate



W.P.(MD)No.7797 of 2017

WEB COPY

ORDER

This writ petition is filed for writ of Certiorari, to quash the impugned order passed in G.O.Ms.(P)No.107 Rural Development and Panchayat Raj (E1) Department dated 08.03.2017 by the 1st respondent.

2. The brief facts as stated in the affidavit are that initially, the petitioner was appointed as Typist in the year 1972, promoted as Assistant in the year 1985, then promoted as Executive Officer (small savings) and then promoted as Block Development Officer and finally promoted as Assistant Project Officer (Rural) on 2006 and retired from service on 31.01.2009 on attaining the age of superannuation. She has rendered nearly about 37 years of service. While the petitioner was working as Assistant Project Officer, the 3rd respondent issued a charge memo dated 04.08.2008 alleging that the petitioner did not call for tender for the purchase of tube light and street light fittings and all other charges are incidental to the main charge. In the charge memo, the respondents have not



W.P.(MD)No.7797 of 2017

WEB COPY

stated any witnesses and relied on three documents. The petitioner submitted an explanation on 04.09.2008, thereafter, an enquiry officer was appointed and the charges were held to be proved.

3. The contention of the petitioner is that the documents which are not listed in the charge memo were referred by the enquiry officer without serving the copies to the petitioner and without giving prior information. Likewise, the charge memo has not stated any witness, but the respondents had called for witnesses and they were also examined during the course of the departmental enquiry. Moreover, the enquiry officer has not considered the petitioner's explanation and has simply reiterated the charges and has held that the charges are proved. Subsequently, the enquiry officer submitted a report on 18.06.2009 and a copy was served to the petitioner, wherein the petitioner had submitted further explanation.

4. In the meanwhile, the petitioner attained the age of superannuation on



W.P.(MD)No.7797 of 2017

WEB COPY

31.01.2009 and she was also allowed to retire without prejudice to the pending departmental proceedings vide G.O.Ms.No.47 dated 29.01.2009. Though she was allowed to retire, she was not given any retirement benefits but was given provisional pension. The 1st respondent vide his letter dated 13.05.2010 directed the petitioner to submit his explanation for the proposed punishment of recovery from DCRG amount. The petitioner has submitted her explanation on 15.06.2010 denying the charges and prayed not to impose punishment. The respondents have not passed any orders, but after a lapse of 4 years, another notice dated 21.04.2015 was issued to acceptance of the proposed punishment to which the petitioner submitted an explanation dated 01.06.2015. Even thereafter also, no action was taken for a period of 2 years. Thereafter, the 1st respondent vide his proceedings in G.O.Ms.(P).No.107, Rural Development and Panchayat Raj (E1) Department, dated 08.03.2017 (served to the petitioner only on 10.04.2017) has imposed the punishment of recovery of entire DCRG amount and further a sum of recovery of Rs. 12,070/- from her pension.



W.P.(MD)No.7797 of 2017

WEB COPY

5. The contention of the petitioner is that the impugned order is wholly illegal on the sole ground that it is cryptic and non-speaking order. The respondents have not considered independently and has simply accepted the views of the enquiry officer. As per Rule 18(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, 1955, the punishment order should contain reasons based on which the delinquent was found guilty. Since independent reasons were not assigned, the punishment is illegal. Moreover, due to protracted disciplinary proceeding, there is a huge inordinate and unexplained delay in concluding the departmental proceedings. A charge memo was issued as early as on 04.08.2008 and the disciplinary proceedings was concluded only on 08.03.2017 i.e., with an inordinate delay of 9 years and the same was not explained. Once the petitioner is allowed to retire, the respondents can only recover from the pension and there cannot be any recovery from DCRG. As per Rule 9 of the Tamil Nadu Pension Rules, the only punishment that could be imposed after allowing to retire from service is recovery from pension. Therefore, the petitioner submitted that the impugned order is illegal and the petitioner prayed to allow this writ petition.



W.P.(MD)No.7797 of 2017

WEB COPY

6. The respondents 1, 3 to 5 have filed a counter affidavit along with vacate stay petition wherein it has been stated that the departmental proceeding was initiated by issuing charge memo, dated 04.08.2008 under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in respect of 9 charges against the petitioner. In continuation of the said proceedings on attaining the age of superannuation, by order dated 29.01.2009 the petitioner was permitted to retire, but without prejudice to the disciplinary proceedings pending against the writ petitioner. Thereafter on completion of enquiry the final order was passed on 08.03.2017 in G.O.No.107, wherein it is held charges are proved, consequently the out of loss Rs.8,47,151/-, a sum of Rs.4,85,942/- was adjusted from her Death-cum Retirement Gratuity and to recover a sum of Rs.12,070/- for 20 months and Rs.11,170/- for 30th month as 30 installments from her pension to adjust the balance of Rs.3,81,209/-. The entire enquiry was conducted as per the documents available in the office of the petitioner and orders passed by the petitioner during the course of her tenure as Assistant Project Officer. The petitioner has submitted the explanation stating that she has passed the orders



W.P.(MD)No.7797 of 2017

WEB COPY

based on the resolution passed by the District Panchayat, dated 17.08.2007 and on the pressure given by the Chairman and members of the District Panchayat, which is not acceptable. The said explanation would indicate that the petitioner has not denied the charges and has stated that the said orders was passed upon pressure from the Chairman and members of the District Panchayat Union. Hence, this also indicates that the petitioner has not followed the instructions given by the District Collector, dated 03.09.2007. As per the explanation submitted by the petitioner the administrative sanction was given by the District Collector on 09.09.2007. The District Collector has granted approval with the following remarks "get priority list of necessary works water tank, water supply. Anganwadi Centers and culverts a Village Panchayats have sufficient lights". But the petitioner alleged that when she inspected the said file in File No:42/2007/A1 she was shocked on seeing PL.C.G.O.No.138/2007(R.D). The petitioner stated that the said line was included in the observations made by the District Collector on 03.09.2007. As per the case of the petitioner the administrative sanction of the Collector was given on 09.09.2007 and on 10.09.2007 she has issued work order



W.P.(MD)No.7797 of 2017

WEB COPY

for the work to a sum of Rs. 50,00,000/- as per file No.28/2007/A1. From the reply of the petitioner as pre resolution No.61 the District Panchayat Union tender was called for supply of Tube Lights in the notice Board on 09.08.2007 and invoices were accepted by the District Panchayat. As per the said tender the work orders were issued to lowest tender. To the contra, admittedly the District Collector has granted administrative sanction on 09.09.2007 and also instructed to follow the tender rules strictly. But the reply of the petitioner clearly stated that she has finalized the work tender even before getting administrative sanction from the District Collector on 09.09.2007 and issued work order the very next day on 10.09.2007. It clearly shows the petitioner has hurriedly granted work order the very next day itself without strictly following the tender rules. Therefore, it is clear that the petitioner has violated the instructions given by the District Collector. The petitioner was allowed to retire without prejudice to the departmental proceedings by virtue of G.O.Ms.No.47 Rural Development and Panchayat Raj (E1) Department dated 29.01.2009, but the petitioner has not challenged the same and subjected herself to the departmental proceedings till it



W.P.(MD)No.7797 of 2017

WEB COPY

attains finality. Therefore, the petitioner cannot express his grievance at this point of time. On mere perusal of the District Collector's instruction dated 03.09.2007 clearly shows there is no insertion in the said order as claimed by the petitioner and on perusal of the administrative sanction order dated 09.09.2007 the District Collector's instructions is clear and was returned by the District Collector himself to follow the tender rules strictly. The petitioner has not stated in her reply that she had followed the tender procedures after the administrative sanction given by the District Collector. Hence it clearly confirms the petitioner's involvement and in non-adherence to the direction of the District Collector in performing the duty casted upon her. Moreover, the petitioner has not stated in her reply that she has followed the tender procedures after the administrative sanction given by District Collector.

7. The counter affidavit further states that the contention that the enquiry officer has not considered the explanation is denied and the punishment order passed by the 1st respondent clearly shows the reason and finding arrived in the



W.P.(MD)No.7797 of 2017

WEB COPY

enquiry proceedings. The petitioner was granted sufficient opportunity and there is no violation of principles of natural justice. When the tender bid was pasted in the District Panchayat Office on 09.08.2007 and bids were received and available in the file whereas the District Collector granted administrative sanction on 09.09.2007 and was also instructed to follow the tender rules strictly. The petitioner has granted the sanction the very next day and the reason stated by the petitioner that the Chairman pressurized her cannot be accepted. Therefore, the punishment imposed on the petitioner is in accordance to law and deserves no interference. Hence, the respondents prayed to dismiss the writ petition.

8. Heard Mr.H.Mohammed Imran, Learned Counsel appearing for the petitioner and Mr.Veera Kathiravan, Learned Additional Advocate General assisted by Mr.R.Suresh Kumar, the Learned Government Advocate appearing for the respondents and perused the records.

9. The first contention of the petitioner is that the charge memo has not



W.P.(MD)No.7797 of 2017

WEB COPY

stated any witness and has only listed three documents. However, during the enquiry proceedings, the respondents produced witness, but the petitioner was not granted sufficient time to prepare to examine the witness and the petitioner was taken for surprise. Moreover, apart from the three documents shown in the charge memo, the respondents have relied on other documents without serving a copy of such documents to the petitioner. On perusing the enquiry report the enquiry officer has not relied on any of the documents including the documents shown in the charge memo. The enquiry officer has simply dealt with the submission of the petitioner and has come to the conclusion. There is no reference to the documents cited in the charge memo. Infact the enquiry cannot be considered as enquiry at all. The enquiry report proceeds as if the petitioner had accepted the charges. Therefore, this Court is of the considered opinion that the enquiry is not conducted properly by adhering to the rules and regulations.

10. The next contention of the petitioner is that the charge memo was issued as early as 04.08.2008 and the enquiry report was submitted on



W.P.(MD)No.7797 of 2017

WEB COPY

18.06.2009, but the respondents have not acted on the enquiry report for a prolonged period. The petitioner had attained superannuation on 31.01.2009 and as on date of filing the writ petition the petitioner was 66 years old and as on date, she is 72 years old. The respondents had called for further explanation from the petitioner on 13.05.2010, then the petitioner submitted representation on 15.06.2010, thereafter also the respondents had not passed any final order. Then the petitioner submitted representation on 01.06.2015. The respondents had sought TNPSC opinion, wherein TNPSC had rendered its opinion on 12.08.2016. Thereafter the respondents had passed the impugned order on 08.03.2017. The above narration of events clearly indicates from the date of enquiry report 18.06.2009 until the impugned order dated 08.03.2017 i.e. nearly eight years the respondents have not passed any order and hence the impugned order is passed with inordinate delay. The respondents have not explained the prolonged delay in the counter affidavit, the counter only states that the petitioner alleges inordinate delay, absolutely there is no reason stated for the inordinate delay. Hence the plea of belated passing of the order, deserves to be considered.



W.P.(MD)No.7797 of 2017

WEB COPY

11. The next contention of the petitioner is that the respondents have passed a very cryptic order. The respondents have elaborately narrated the charge memo, explanation of the petitioner, enquiry officer's finding, opinion obtained from TNPSC. However, the respondents have passed one paragraph order that the respondents accept the enquiry report and hence the punishment is imposed. The respondents have not dealt with each and every charge wherein the petitioner was charged with 9 charges and the proper reasoning was not stated. Hence, this Court is of the considered opinion that the order is a non-speaking order.

12. The petitioner further contended that as per the Rule 9 of the Tamil Nadu Pension Rules, the respondents are not empowered to deduct any amount from DCRG. On perusing the Rule 9, the Rule empowers the respondents to deduct the gratuity as well. Therefore, the said plea of the petitioner is not having any legality and the said plea is declined.

13. On the basis of the above said observation, the case ought to be



W.P.(MD)No.7797 of 2017

WEB COPY

remitted back to the respondent to consider each charge and passing speaking order. But as stated supra as on date the petitioner is 72 years old, hence this court is not inclined to remit the case to the respondent for reconsideration. Hence this Court proceeds to consider the case on merits.

14. A contention of the petitioner is that the petitioner was granted an additional charge of handing the purchase of street light materials and other projects and has stated she was in charge from 08.08.2007 to 16.09.2007 and again from 22.10.2007 to 04.11.2007. In the first spell of her in-charge period the said project was handled. According to the petitioner File No.28 was the handled by the earlier incumbent and based on the said file the resolution No.61 was passed by the elected Panchayat members and the notice seeking estimate was affixed in the notice board on 09.08.2007 itself. The petitioner has handled the File No.42, based on the resolution 60 she had sought approval from the District Collector, wherein the District Collector had granted approval with directions to comply with the rules. At this juncture the elected Panchayat Councils especially



W.P.(MD)No.7797 of 2017

WEB COPY

the Chairman had pressurized her to affix signature since already the resolution was passed, moreover it is granting street light to the Panchayat Wards. When the petitioner had submitted that there is pressure then the entire liability of loss cannot be fastened on the petitioner. Of course the petitioner should not succumb to the political pressure or the elected members pressure. But once the petitioner is pleading such ground then the respondents ought to have consider the same. Necessary steps ought to be taken to cancel the entire process. As rightly pointed out by the petitioner the next person who took charge was busy takes steps to initiate disciplinary proceedings but he had time to recommend to cancel the project before the supply of materials to the panchayat, but the respondents had not taken any steps to do so. It is perineal problem between the elected members vs government employees. The government employee should be granted with power to cancel the tender or granting project if there is any pressure from the elected members. If this is granted then the government employee would handle or could handle the project to the benefit of the government without fear or pressure from the elected members.



W.P.(MD)No.7797 of 2017

WEB COPY

15. It is the specific case of the petitioner that the husband of chairman had interfered in the process. It is another problem with the panchayat elections. In order to grant 33% reservation to the women, certain panchayat wards were reserved for women. But the elected women are not functioning at all, it is only the husband of the elected member is acting as defacto chairman. The petitioner ought to have stopped this project when there was pressure from the chairman i.e., husband of chairman and reported the same to the District Collector and recommended to cancel the project. Unfortunately, she had succumbed to the pressure and ended up in disciplinary proceeding and lost her 37 years of carrier. Since there is no system to protect such people, it would be unfortunate if the entire loss is fastened on her. When there was an opportunity to cancel the project, the subsequent incumbent failed to cancel the project. Therefore, this Court is inclined to modifying the punishment and hence the impugned order is quashed. The respondents shall deduct Rs.50,000/- alone from DCRG. The balance amount of DCRG shall be paid to the petitioner. As far as deduction of pension is concerned, the same is quashed. The respondents shall not deduct any



W.P.(MD)No.7797 of 2017

WEB COPY

amount from the pension. If the respondent had deducted any amount over and above Rs.50,000/- the same shall be refunded. This order shall be complied within a period of four weeks from the date of receipt of a copy of this order.

16. With the above said observation and directions, the writ petition is allowed in above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

07.11.2023

Tmg



W.P.(MD)No.7797 of 2017

WEB COPY

To

- 1.The Principal Secretary,
State of Tamil Nadu,
Rural Development and Panchayat Raj
Department (E1),
Secretariat, Chennai-9.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Preasar Paalaa Salai,
Chennai-600 003.
- 3.The Commissioner,
Office of the Commissioner of Rural
Development and Panchayat Raj,
Chennai-15.
- 4.The District Collector,
Dindigul District, Dindigul.
- 5.The District Collector,
Theni District, Theni.



WEB COPY



W.P.(MD)No.7797 of 2017

S.SRIMATHY, J

Tmg

W.P.(MD)No.7797 of 2017

07.11.2023