

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

HON'BLE SRI JUSTICE PULLA KARTHIK

W.P.Nos.1698 of 2013 & 33061 of 2014

COMMON ORDER:*(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

Since the issue involved in both these Writ Petitions is one and the same, they are being disposed of by way of this common order.

2. Heard the learned Special Government Pleader appearing for the petitioners.

3. For the sake of convenience, the facts in W.P.No.1698 of 2013 are hereunder discussed.

4. W.P.No.1698 of 2013 is filed aggrieved by the orders of the Tribunal in O.A.No.9434 of 2009 dt.20-09-2011.

5. It has been contended by the petitioners that the 1st respondent is a retired Executive Officer Grade-III and while he was working as an Executive Officer, the disciplinary authority has initiated disciplinary proceedings by issuing a charge memo

on 18-06-1993 alleging that there is misappropriation of funds at the instance of the 1st respondent. As the disciplinary proceedings could not be concluded, the 1st respondent has approached the Tribunal by filing O.A.No.9434 of 2009 challenging the charge memo dt.18-06-1993 and the Tribunal was pleased to set aside the charge memo vide orders dt.20-09-2011 on the ground that there was inordinate delay in concluding disciplinary proceedings without appreciating any of the contentions raised by the petitioners.

6. Learned Special Government Pleader for the petitioners has contended that there were many reasons for not concluding disciplinary proceedings initiated against the 1st respondent and the Tribunal ought not to have set aside the orders of disciplinary authority issued in the form of charge memo dt.18-06-1993. Therefore, appropriate orders may be passed by setting aside the orders of the Tribunal and allow the Writ Petitions.

7. Learned Special Government Pleader for the petitioners hasd further contended that after disposal of O.A., the

petitioners have finalized the disciplinary proceedings by issuing a punishment order on 07-09-2011 for recovery of an amount of Rs.4,35,642/- and the said amount was sought to be recovered from the salary and terminal benefits of the 1st respondent and the 1st respondent has challenged the said punishment orders by filing O.A.No.1806 of 2012 and the Tribunal has also set aside the said punishment orders vide orders dt.24-07-2014. Challenging the said orders, W.P.No.33061 of 2014 is filed.

8. Learned Special Government Pleader for the petitioners has further contended that as admittedly, the charge leveled against the 1st respondent was held to be proved in domestic enquiry as the 1st respondent was involved in misappropriation of Government funds, the disciplinary authority i.e. State after retirement of the 1st respondent has rightly imposed a punishment of recovery from the terminal benefits of the 1st respondent. The Tribunal has not appreciated any of these facts and not taken into account the charge held to be proved in the enquiry and that, the Tribunal ought not to have set aside the orders of punishment. Therefore, appropriate orders may be

passed in both the Writ Petitions by setting aside the impugned orders passed by the Tribunal in the O.As and allow both the Writ Petitions.

9. This Court having considered the submissions made by the learned Special Government Pleader for the petitioners is of the considered view that the disciplinary proceedings were finalized just before the Tribunal has set aside the charge sheet and passed final orders in imposing punishment of recovery from the salary and pensionary benefits of the 1st respondent. Further the Tribunal has already relied upon a judgment of the Supreme Court in **P.V.Mahadevan v. M.D., Tamil Nadu Housing Board**¹ and came to a conclusion that there was inordinate delay in concluding the disciplinary proceedings against the 1st respondent.

10. As admittedly the charge memo was issued on 18-06-1993 and the 1st respondent has also retired from service on 31-07-2006 which would mean that the disciplinary proceedings were continued even after retirement of the 1st respondent.

¹ 2005 (5) SLR page 384

Therefore, the Tribunal was justified in setting aside the charge memo dt.18-06-1993 and once the charge memo was set aside by the Tribunal, the petitioners could not have imposed a punishment of recovery from the salary and terminal benefits of the 1st respondent. Therefore, this Court is not inclined to interfere with the orders of the Tribunal and both the Writ Petitions are liable to be dismissed.

11. Accordingly, both the Writ Petitions are dismissed.
No costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK, J

Dt.08.02.2023
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