IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P. No.16893 of 2012

Dr.R.Leelavathi ... Petitioner

Vs.

The State of Tamil Nadu,
Rep. By its Secretary to Government,
Animal Husbandry, Dairy and Fisheries Department,
Secretariat, Chennai-9. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the Respondent relating to G.O.(D)No.70, Animal Husbandry, Dairying and Fisheries (AH1) Department dated 24.04.2012, quash the same and issue consequential direction to the Respondent to disburse the pensionary and retirement benefits of the petitioner within a limited time frame with 18% interest per annum on the delayed payments.

For Petitioner : Mr.M.Ravi

For Respondent : Mr.Vadivelu Deenadayalan
Additional Government Pleader

ORDER

While the petitioner was working as Director of Veterinary services in Animal Husbandry, Dairying and Fisheries Department of the Respondent State, she was subjected to disciplinary proceedings by placing her under suspension on 29.09.2000, while the date of superannuation of the petitioner was 30.09.2000. It was thereafter the Government through G.O.(2D)No.57 Animal Husbandry and Fisheries (AH1) Department dated 24.06.2005, ordered for disciplinary action against the petitioner and two others namely Dr.D.Ebenezer and Thiru.T.Kannappan under Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Accordingly, the charge memo dated 09.10.2006 was served on the petitioner containing 6 charges. Thereafter, an enquiry officer was appointed to enquire into the said charges and after having conducted an enquiry, the enquiry officer submitted his report dated 08.07.2010. The enquiry officer came to the conclusion that the charges 1 to 4 and 6 as not proved and insofar as charge No.5 is concerned, the enquiry held that the said charge is proved. It is thereafter the 1st Respondent furnished a copy of the enquiry report to the petitioner through letter dated 25.02.2011 and afforded an opportunity to the petitioner to submit a further representation on the report of the enquiry officer. While furnishing the said report of the enquiry officer, the 1st Respondent has agreed with the findings of the enquiry officer insofar as charge

No.5 is concerned and disagreed with the views of the enquiry officer insofar as charges 1 to 4 and 6 are concerned and also furnished the reason for deviation from the findings of the enquiry officer charge wise. In response to the same, the petitioner submitted her further representation on 25.03.2012 explaining the reasons to accept the findings of the enquiry officer. It is thereafter the impugned Government Order vide G.O.(D).No.70 Animal Husbandry, Dairying and Fisheries (AH1) Department, dated 24.04.2012, was issued imposing the punishment of "Pension cut of Rs.1,000 per month for a period of 2 years" on the petitioner while confirming the original conclusion expressed through letter dated 25.02.2011. It is aggrieved by the said order dated 24.04.2012, the petitioner approached this Court by filing the present writ petition seeking to quash the said order and also sought for a consequential direction to disburse the pensionary and retirement benefits of the petitioner with interest at 18% per annum on the delayed payments.

2. During the pendency of this writ petition, the petitioner filed another writ petition vide W.P.No.31374 of 2014 with the following prayer:

> *"Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondent to grant all retirement and pensionary benefits inclusive of DCRG, GPF/ Special PF, VI Pay Commission Arrears,*

Surrender of Unearned Leave, Earned Leave, Provisional Pension, arrears of Provisional Pension for a period from 13.03.2012 to September 2013 and the difference between regular pension and the provisional pension, all with interest @ 12% (compounded annually) along with penal interest as deemed fit by this Court w.e.f. 01.10.2000 till the date of actual payment of all the benefits due and payable to the petitioner.

3. The said writ petition was disposed of by a Coordinate Bench of this Court by an order dated 26.07.2022 directing the Respondent to pursue the proposal submitted for release of terminal benefits and to settle the benefits as expeditiously as possible without causing any further delay.

4. Heard Mr.M.Ravi, the learned counsel for the petitioner and Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the Respondent.

5. The learned counsel for the petitioner contended that the enquiry officer after having conducted an enquiry into the matter came to the conclusion that the charges 1 to 4 and 6 framed against the petitioner as not proved and insofar as charge No.5 is concerned, though the entire discussion on the said charge is in

favour of the petitioner the enquiry officer, erroneously recorded a finding on charge No.5 as proved. Thus, he contended that the conclusion arrived at by the enquiry officer on charge No.5 is contrary to the entire discussion as such the same is an error apparent on record. He also further contended that the 1st Respondent while furnishing a copy of the report, enquiry officer has recorded the conclusive findings holding that the charges 1 to 4 and 6 also as proved while disagreeing with the finding of the enquiry officer instead of recording the tentative conclusion and then affording an opportunity to the petitioner to submit his objections, thereby rendering the opportunity afforded against the finding of the enquiry officer as an empty formality. He also further contended that the Disciplinary Authority (hereinafter referred to as "DA") without application of mind and without perusing the discussion and findings of the enquiry officer accepted the final conclusion of the enquiry officer in respect of charge No.5 is concerned. He also contended that the reasons furnished by the DA for differing with the findings recorded by the enquiry officer are totally unsustainable and are nothing to do with the charges that are framed against the petitioner. He also further contended that there is nothing in the reasons furnished for the DA for deviating from the findings recorded by the enquiry officer. Thus, he contended that the DA has not applied his mind to the case and mechanically proceeded to differ with the findings recorded by the enquiry officer and blindly recorded the finding of the enquiry officer in respect of charge no.5, which was held as proved. Thus, he contended that the impugned order suffers from the vice of non-application of mind. He also further contended that inspite of the petitioner submitting a further representation dated 25.02.2011 against the report of the enquiry officer and the reasons furnished by DA for differing with the views of the Enquiry Officer on charges 1 to 4 and 6, the same was not at all considered and the impugned order was passed in a mechanical manner. He also placed reliance on an order passed by this Court in W.P.No.20796 of 2012 wherein a Coordinate Bench of this Court in respect of an identical order of punishment imposed on one of the co-delinquent employee of the petitioner namely T.Kannappan by order dated 27.03.2024 and contended that the case of the petitioner is also identically situated like the petitioner in the said writ petition. He also placed reliance on the decision of the Division Bench of this Court in W.A.No.1674 of 2017 dated 03.01.2023 and decision of the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank and others*** reported in ***(2009) 2 SCC 570*** to contend that the mere pendency of the judicial or criminal proceedings cannot be a ground to withhold the terminal benefits that are payable to the petitioner, and as such the petitioner is entitled for interest on the unpaid terminal benefits.

6. On the other hand, Mr.Vadivelu Deenadayalan, the learned Additional Government Pleader contended that the charges that are levelled against the petitioner are very grave in nature and also placed reliance on the report of the special officer dated 25.09.2000 wherein serious allegations were made against the petitioner by the Director of Vigilance and Anti-Corruption, Chennai. He also supported the impugned order contending that the DA is justified in deviating from the findings of the enquiry officer in respect of charges 1 to 4 and 6 and reasons for such deviation are very well furnished in the Annexure to the letter dated 25.02.2011. He also further contended that there is no delay in conclusion of the disciplinary proceedings and the role of the petitioner has come to light only when the enquiry was conducted in respect of co-delinquent and accordingly the proceedings were initiated against the petitioner herein. He also further contended that all the terminal benefits that are payable to the petitioner have already been paid after disposal of W.P.No.31374 of 2014 except DCRG amount, and the same was withheld because of the pendency of criminal proceedings against the petitioner in Crl.R.C. which is pending before this Court.

7. In reply, the learned counsel appearing for the petitioner contended that the petitioner was already discharged from the criminal case by virtue of orders

passed in Crl.M.P.No.848 of 2012 dated 25.06.2014 and the pendency of the criminal revision case before this Court can't be treated as pending criminal proceedings against the petitioner. Thus, he contended that the Respondent is not justified in withholding the terminal benefits of the petitioner after passing of the impugned order. He also further contended that the petitioner is entitled for terminal benefits from the date of superannuation in the year 2000 and the same were arbitrarily withheld for more than a decade. Therefore, the petitioner is entitled for payment of interest on the delayed payment of terminal benefits.

8. This Court has carefully considered the submissions made on either side and perused the entire materials placed on record.

9. As already noted above, in all, six charges were framed against the petitioner and out of the six charges, except charge No.5, other five charges were held as not proved by the enquiry officer. In respect of Charge No.5, the finding recorded by the enquiry officer reads as under:

"FINDINGS:

The accused officer was one among the members of the Tender Processing Committee. The charge that dismissing accepted the bill of the company, verification of actual customs duty, which could be verified only after finalisation of tender, could not be attributed against the Accused

Officer. The price at which the bidder buys the equipment form the manufacture would not be available to the committee members. The actual customs duty paid by the bidder, is known only when the equipment is imparted and bill of entry is made available. At the stage of processing and finalising the tender that could not be verified. Hence the member of Tender Processing Committee could not be blamed not the custom duty paid. Hence this charge is unsustainable."

10. From a perusal of the above, it is evident that the enquiry officer has arrived at a conclusion that the member of the Tender processing Committee could not be blamed and held that that the charge is unsustainable. However, while recording this conclusion, the enquiry officer erroneously held the said charge as proved. From the above, it is apparent that, the enquiry officer instead of holding the charge as not proved by mistake appears to have held as proved. But, the Respondent/DA without even perusing the findings of the enquiry officer simply has gone by the conclusion recorded by the enquiry officer and accepted the said conclusion and held that the charge No.5 framed against the petitioner as proved. This itself shows a sheer non-application of mind of the Respondent /disciplinary authority. Inspite of the petitioner bringing the said fact to the attention of the DA by submitting a further representation dated 25.04.2012, the same was not taken note of by the DA while passing the

impugned order of punishment.

11. Then, coming to charges 1 to 4 and 6 in respect of which the DA has disagreed with the finding of the enquiry officer, it is necessary to notice the charges and the reasons for disagreement recorded by the DA:

S.No.	***Charges***	***Reasons for disagreement***
1.	That the said Dr.R.Leelavathy, while serving as Additional Director General Manager, World Bank Scheme and discharging her duties as a member of Tender Processing Committee (TPC) during the year 1997-98 and 1998-99 with regard to the purchase of certain equipments and instruments under the Tamilnadu Agricultural Development Project Scheme with World Bank assistance have actuated by corrupt and dishonest motive in collusion with the other members of the Committee, *omitted to verify the bid documents properly and to reject the bid documents of the Companies which did not fulfil the conditions stipulated in the guidelines prescribed by the World Bank and thereby caused the selection of ineligible Companies to supply such equipments to the Animal Husbandry Department. Thus she have failed to maintain absolute integrity and devotion to duty and conducted herself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.*	The procedure was not followed for procurement of drugs under World Bank assistance. The Accused officer also one among the member with Purchase Committee. The procedure was there. Hence, the charge is held as “proved”.
2	Dr.R.Leelavathy (now under suspension) while serving as Additional Director and General Manager, World Bank Scheme and discharging her duties as a member of Tender Processing Committee (TPC) during the year 1997-98 with regard to the purchase of certain equipments and instruments under Tamil Nadu Agricultural Devolpment Project Scheme with World Bank assistance have actuated by corrupt and dishonest motive and in collusion with the other members of *the Committee failed to recommend for the rejection of the bid documents of M/s.Scientific and General*	She has not raised any objection against accepting the bid documents of the company. Hence, the charge is held as “proved”.

S.No.	Charges	Reasons for disagreement
	Traders, Chennai for its failure to produce the proper authorisation letter from the manufacture etc., as required in World Bank guidelines and failed to properly scrutinize the bid documents of the said company wherein the total price for two Embryo Freezer, including the customs duty has been quoted as Rs.42,97,140/- while the actual cost of the said Embryo freezer was only Rs.18,34,286/- and the customs duty for the same was Rs.8,71,286/- only she dishonestly placed order with the said company for the supply of the above Embryo Freezers and also said accepted the bill of that company raised for the above said amount without making any negotiations to safeguard the financial interest of the Government and thereby she facilitated the said company to obtain unlawful and abnormal profit of Rs.15,91,568/- which worked out to 86,76% of the cost of the equipment in this transaction. Thus she have failed to maintain absolute integrity and devotion to duty and conducted herself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.	
3.	Dr.R.Leelavathy (now under suspension) while serving as Additional Director and General Manager, World Bank Scheme and discharging her duties as a member of Tender Processing Committee (TPC) during the year 1997-98 and 1998-1999 with regard to the purchase of certain equipments and instruments under Tamil Nadu Agricultural Development Project Scheme with World Bank assistance have actuated by corrupt and dishonest motive and in collusion with the other members of the Committee *have without properly scrutinizing the bid documents of M/s.Optima Biotech, wherein the price for the supply of semen analyzer was quoted as Rs.38,46,960/- inclusive of purported customs duty of Rs.10,44,000/- and Sales Tax of Rs.1,47,960/- when the actual customs duty was Rs.6,85,284/- only accepted the said bid documents and placed orders for the supply of the said semen analyser and also accepted the bill of*	Though the responsibility of making negotiationswith the company is not the role of the member, the Accused officer should have furnished her suggestions against accepting the bid documents of the company. There is no record to show that she had voiced her opposition to the bid documents on the ground that the rate quoted by the company was exorbitant. Hence, the charge is held as "proved".

S.No.	Charges	Reasons for disagreement
	the company without making any negotiations to safeguard the financial interest of the Government and thereby facilitated M/s.Optima Biotech to obtain unlawful pecuniary advantage of Rs.3,58,716/- in this transaction. Thus, she have failed to maintain absolute integrity and devotion to duty, failed to act in her best judgement in this transaction and conducted herself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.	
4.	Dr.R.Leelavathy, (now under suspension) while serving as Additional Director and General Manager, World Bank Scheme and discharging her duties as a member of Tender Processing Committee (TPC) during the year 1997-1998 and 1998-1999 with regard to the purchase of certain equipments and instruments under Tamil Nadu Agricultural Development Project Scheme with World Bank assistance have actuated by corrupt and dishonest motive and in collusion with the other members of the Committee *have without properly scrutinising the bid documents of M/s.Instruments De Medicines Veterinaire, France (IMV) on the reason of absence of effective competition in accordance with the guidelines given by the World Bank, accepted the bid documents for purchasing Bio Freezer from the said company. Thus, she have failed to maintain absolute integrity and devotion to duty, failed to act in her best judgment in this transaction and conducted herself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.*	Though finalizing the bid was not the role of the member, the accused officer should have furnished her suggestions against accepting the bid documents of the company. Hence, the charge is held as “proved”.
6.	Dr.R.Leelavathy (now under suspension) while serving as Additional Director and General Manager, World Bank Scheme and discharging her duties as a member of Tender Processing Committee (TPC) during the year 1997-1998 and 1998-1999 with regard to the purchase of certain equipments and instruments under Tamil Nadu	Though getting exemption from customs duty is not the duty of the members of the committee, she is also responsible collectively as she was also one among the members in the Purchase

S.No.	Charges	Reasons for disagreement
	Agricultural Development Project Scheme with World Bank assistance have in gross negligence of her official duty omitted to take appropriate steps to get customs duty exemption while purchasing 1588 liquid nitrogen containers through World Bank loan during the year 1998-1999 from M/s.IBP Company Limited. Thus she have failed to maintain absolute integrity and devotion to duty, failed to act in her best judgment and conducted herself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.	Committee.

12. From a perusal of the above charges and the reasons for deviation furnished by the DA, it is clear that the reasons furnished by the DA have nothing to do with the charges framed against the petitioner. In case if the DA intends to deviate from the findings of the enquiry officer as noted in the report of the enquiry officer, the DA has to give its reasons for deviating from the views taken by the enquiry officer. But in the instant case, the DA instead of furnishing reasons for deviating from the views taken by the enquiry officer has instead proceeded to record independent findings alien to the charges framed against the petitioner and recorded the conclusion that the charges 1 to 4 and 6 as proved. This itself shows the non-application of mind by the DA once again. The DA not even chose to refer to the conclusion arrived at by the Enquiry Officer on these charges. Further, the DA while furnishing a copy of the enquiry officer's

report has already recorded the conclusive finding holding that all the charges as proved against the petitioner including the charges that are held as not proved by the enquiry officer even before the opportunity to submit any further representation was afforded to the petitioner. Once the DA has already concluded and recorded the conclusive finding on the charges as proved, the very purpose of providing an opportunity to the petitioner to make further representation on the report of the enquiry officer and reasons for deviating from the findings of the enquiry officer is nothing but an empty formality.

13. The legal position in this regard is settled and the DA in the event of deviating from the findings recorded by the enquiry officer, have to record its *prima facie* conclusions and then shall afford an opportunity to the delinquent employee and after receipt of the representation from the delinquent can take final decision. But in the present case, the said mandatory procedure has not been complied with by the DA and the conclusions that were arrived at by the DA even before affording opportunity to the petitioner were confirmed by the DA by issuing the impugned order.

14. Thus, the impugned order is subjected to illegality and resulting in arbitrariness. In this connection, it will be relevant to refer to the Division Bench

decision of this Court in W.A.No.1674 of 2017, wherein it was held as under:

"8. It is therefore clear that the Disciplinary Authority when it decides to differ from the conclusions of the Enquiry Officer has to record the fact that it proposes to differ, the tentative reasons for such difference and call upon the Delinquent Officer to explain as to why it should not differ. Then it will be open to the Delinquent Officer to persuade the Disciplinary Authority to agree with the conclusions of the Enquiry Officer. If the Disciplinary Authority records its conclusion, as has been done in the present case the further opportunity contemplated becomes an empty formality.

9. The Appellate Authority had also not considered this question and it had merely dismissed the Appeal by a non speaking order. The question as to whether the opportunity that is to be given after the Disciplinary Authority records its decision to differ from the Enquiry Officer's findings has not been addressed by the Writ Court also. Though, the Writ Court had pointed out that the Disciplinary Authority has differed, the Writ Court had found that such difference is justified on the basis of the evidence. The actual import of the judgment of the Hon'ble Supreme Court in Punjab National Bank and Others v. Kunj Behari Misra, is to the effect that while it is open to the Disciplinary Authority to differ from the findings of the Enquiry Officer, it shall not conclude and render a finding on the charges without giving an opportunity to the delinquent employee. This aspect, we find, has not been highlighted before the Writ Court resulting in the Writ Court dismissing the Writ Petition.

10. Even though this question has not been dealt with by the Writ Court, we find that once the law laid down by the Hon?ble Supreme Court is very clear and emphatic, the requirements set out therein cannot be waived or given up by the parties. We are therefore left without any other alternative but to interfere and to set aside the order of the Writ Court as well as the order of the Authorities imposing the punishment only on the sole ground that the Disciplinary Authority had chosen to conclude that the charges are proved without giving an opportunity to the delinquent employee. The opportunity that has been given after 07.05.2012 had in fact become an empty formality since the decision to conclude that the charges have been proved has been reached on 07.05.2012."

15. The contention of the learned Additional Government Pleader placing reliance on special report, needs to be mentioned only to reject the same. The said special report is dated 25.09.2000 and it is only thereafter a charge memo dated 09.10.2006 was issued to the petitioner. Therefore, the contention of the said report are irrelevant and the scope of disciplinary proceedings can't go beyond the charges framed against the petitioner. Further said special report is also not part of the proceedings before the Enquiry Officer.

16. In the light of the above, the impugned order is liable to be set aside on

the ground of violation of principles of natural justice for want of affording an opportunity to the petitioner to respond to the report of the enquiry officer and the reasons recorded by the DA.

17. Then coming to the contentions of the learned counsel for the petitioner by placing reliance on a decision of the Coordinate Bench of this Court in W.P.No.20796 of 2012, this Court has carefully perused the entire order passed by this Court in W.P.No.20796 of 2012. The petitioner in the said writ petition is one Thiru.T.Kannappan against whom disciplinary proceedings were initiated by the Respondent State along with the petitioner by issuing G.O.(2D).No.57 dated 24.06.2005. The petitioner herein as well as said Mr.Kannappan are the members of the Tender processing Committee and the disciplinary proceedings were initiated against the petitioner and the said Kannappan on the irregularities that were alleged to have been committed by them during the process of the tender evaluation. The disciplinary proceedings were stated to have been conducted against the petitioner and the said Mr.Kannappan simultaneously and the impugned order came to be passed against the petitioner as well as said Mr.Kannappan on 24.04.2012. The coordinate bench having considered the case of the said Mr.Kannappan wherein identical impugned order was passed, recorded the various findings at paragraph

20 and the said order reads as under:

"20. The impugned order has to be quashed on the following grounds/reasons:

1.The petitioner served as Financial Adviser and Chief Accounts Officer in the Directorate of Animal Husbandry, i.e from 25.06.1997 to 21.12.1998.

2.The misconduct relates to the year 1997~1998.

3.Date of order of D.V.A.C. enquiry dated 24.02.1999.

4.The D.V.A.C report is dated 03.03.2003.

5.Charge memo was issued on 19.10.2006 under Section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

6.The charge memo is issued after an inordinate delay of 8 years.

7.No order in violation of Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to conduct a common enquiry was served to the petitioner.

8.The Enquiry Officer submitted his report dated 08.07.2010 holding that the charges levelled against the petitioner were not proved. The Enquiry Officer is also a Senior I.A.S. Officer.

9.In the letter dated 25.02.2011, the report of the Enquiry Officer was communicated to the petitioner and it was also mentioned that the disciplinary authority (first respondent) disagrees with the findings of the Enquiry Officer, but the letter was not signed by the 1st respondent.

10.There is no proper reasoning for disagreement on the *finding of the Enquiry Officer.*

11.The bid notice for the purchase of the equipment for the year 1997~1998 and 1998~1999 was prepared on 03.12.1996 much before the petitioner joined his duty in the Directorate of Animal Husbandry, i.e. on 25.06.1997.

12.The tender conditions were finalized by the Director of Animal Husbandry.

13.The bid was finalized by the 1st respondent (Disciplinary Authority) and the Director of Animal Husbandry.

14.The petitioner is only a member of the tender committee.

15.The Disciplinary Authority is the Chairman of the tender finalizing committee.

16.No order or decision can be arrived at by the Authority who is a party to the proceedings.

17.The Disciplinary Authority (1st respondent) has not produced any additional documents or evidence to overrule the findings of the Enquiry Officer.

18.The letter was sent by the 1st respondent to the Secretary, TNPSC on 23.04.2012 for its views and the same was obtained on the next day itself, i.e. on 24.04.2012.

19.Reason for deviation from the findings of the Commissioner for Disciplinary Proceeding:~

The Accussed Officer should not shrink his responsibility as a Financial Advisor. If he had carefully scrutinized the document, he could have detected the mistake. Hence, the charge is held as Proved.

20.The petitioner retired on 31.03.2011.

21.The Enquiry Officer report dated 08.07.2010, the letter intimated to the petitioner disagreeing with the findings of the Enquiry Officer on 25.02.2011 and the letter sent to TNPSC for opinion on 23.04.2012 after a delay of one year from the date of superannuation of the petitioner on 31.03.2011.

22.The punishment imposed on the petitioner by the impugned order on 24.04.2012 after a delay of nearly 2 years from the date of the enquiry report on 08.07.2010.

23.In regard to Charge No.1 even the Disciplinary Authority admitted the petitioner was in camp, but subsequently he has not perused the file, hence, partially proved.

24.The comparative statement is taken back immediately in the chamber of the 1st respondent.

25.The charge was held proved by the Competent Authority on 21.01.2011 according to para 8 of the counter affidavit, but the opinion of the TNPSC was sought for only on 23.04.2012 after a delay of more than one year and after a delay of one year from the date of superannuation of the petitioner on 31.03.2011.

26.The D.V.A.C. in its report has recommended to include the name of the then Secretary to Government, Mr.Mohan Verghese Chunkath, I.A.S. but the Government did not agree for the same and it is also stated in the counter affidavit that as Secretary to Government, he might have formally passed an order in the tender and the same cannot be countenanced by this Court for the reason he was also the Chairman of the tender proceeding committee.

27.The tender conditions were finalised by the Director and the Disciplinary Authority (1st respondent) with the World Bank at New Delhi.

28.The reasoning given by the Disciplinary Authority in differing from the finding of the Enquiry Officer is only based on presumption and assumption and the same is crystal clear and evident on perusal of the records.

29. .....

30.There is a delay in each and every stage of the proceedings

1. Report of DVAC 2003 (period of occurrence 1998~1999 (Delay of 4 years)

2. Charge memo dated 19.11.2006 (Delay of 8 years)

3. Appointment of Enquiry Officer on 12.06.2009 (delay of 3 years)

4. Enquiry Officer report on 08.07.2010 TNPSC opinion 24.04.2012 (delay of 2 years)

31.order after 14 years."

18. The above finding recorded by a Coordinate Bench of this Court applies to the petitioner herein as well on almost all the Courts. The said order was passed as early as 27.03.2022 and as on today no appeal is stated to have been filed.

19. In the light of the above, practically all of the issues that are raised in

the present writ petition can be said to be covered by the above said order and the impugned order is liable to be set aside by following the order passed in W.P.No.20796 of 2012 and also on reasoning mentioned in paragraphs supra.

20. Then, coming to the claim of the petitioner for payment of the terminal benefits with interest for the delayed payment is concerned, the same needs to be examined independently. As already noted above, the petitioner has approached this Court by filing W.P.No.31374 of 2014 seeking a direction to the Respondent to release all retirement and pensionary benefits and the writ petition was already disposed of by order dated 26.07.2022.

21. Mr.Vadivelu Deenadayalan, learned Additional Government Pleader for the Respondent brought to the notice of this Court that the terminal benefits that are payable to the petitioner were released in favour of the petitioner during the pendency of this writ petition during the years 2001 to 2014 and it is only the DCRG amount to a tune of Rs.3.7 lakhs has not been paid by virtue of the criminal proceedings wherein the petitioner was discharged from the charges levelled against the petitioner.

22. The learned counsel for the petitioner placed reliance on the order

passed by the learned Division Bench of this Court in W.P.No.18949 of 2014 wherein it was held that the pendency of the criminal revision case or an appeal filed against the acquittal against the criminal proceedings cannot be put against the petitioner thereby withholding the benefits that are payable to the delinquent employee wherein it was held as under:

> *"18. In Balak Singh Thakur v. State of Madhya Pradesh reported in 2014 SCC Online MP 1036, the claim of the petitioner therein for settlement of wages of suspension period, was rejected on the ground that against the order of acquittal recorded in a case, under the Prevention of Corruption Act, an appeal has been preferred in the High Court. Before the Madhya Pradesh High Court, it was contended that having been acquitted in a criminal case, pendency of criminal appeal, cannot be put against the claim of the petitioner therein for wages. The respondents therein contended that since an appeal was preferred against the acquittal, the petitioner therein was still under the cloud and hence, not entitled to finalisation of suspension period. Considering the said contentions, the Madhya Pradesh High Court held that objections of the respondents were not unjustified.*
>
> *19. Reverting to the case on hand, perusal of the judgment in ACB Case No.3/2006, dated 31.03.2008, on the file of the Special Judge and Presiding Officer of Fast Track Court, Vadodara, shows that the petitioner was acquitted on merits and that the Court, after considering all the facts, held that there is no cogent and reliable evidence and that the complainant himself was not clear. The Court*

has further held that averments made by the prosecution cannot be accepted and resultantly, when there was no evidence, the petitioner is entilted to be acquitted.

20. While that be the clear finding recorded in the judgment, acquitting the petitioner, under the premise of appeal, being filed and pending, against the order of acquittal, the petitioner cannot be deprived of the regularisation of the suspension period, endlessly. Disposal of the appeal may take a long time. The petitioner is stated to have retired from service. There is no certainity that the State would be satisfied, even if the appeal in the High Court fails. If the State chooses to prefer a further appeal to the Hon'ble Supreme Court, the Department may again contend that the appeal is pending before the Apex Court. Thus, if the arguments of the respondents 2 and 3 have to be accepted, then there is no finality to the judgment of acquittal. In the light of the discussion and decisions considered, the further contention of the learned counsel that Vigilance has not given a clearence, cannot be countenanced.

21. Though by placing reliance on a decision of the Hon'ble Apex Court in Garikapti Veeraya v. N.Subbiah Choudhry reported in AIR 1957 SC 540, learned counsel for respondents 2 and 3 contended that appeal is a continuation of the proceedings and that Vigilance has not given a clearance to the case of the petitoiner, this Court is not inclined to accept the same. In the light of the discussion and decisions, stated supra, merely because the appeal is pending, it is not open to the respondents 2 and 3, not to regularise the period as duty. It has to be regularised."

23. The same is the view taken by the Hon'ble Apex Court in the case of ***Roop Singh Negi vs. Punjab National Bank and others*** reported in ***(2009) 2 SCC 570.*** Thus, the ground on which the DCRG amount is withheld by the Respondent is totally unsustainable in the light of the law declared by this Court as well as the Hon'ble Apex Court.

24. In the light of the above, the impugned order cannot be sustained in law both on facts as well as on the ground of procedural irregularities and the same is liable to be set aside and the same is accordingly set aside. Though the petitioner was placed under suspension on the verge of retirement and continued in service for the purpose of conclusion of disciplinary proceedings ultimately on conclusion of the disciplinary proceedings the petitioner is treated to have been retired on 30.09.2000 but all the terminal benefits payable to the petitioner were paid only belatedly after passing of the impugned order. Thus, the petitioner is deprived of enjoying the amounts that are due and payable to her towards the terminal benefits, as on 30.09.2000.

25. No doubt the impugned order is set aside mainly on the ground of procedural irregularities but the petitioner cannot be blamed for such procedural

mistakes or errors committed by the Respondent. When the Respondent initiated the disciplinary proceedings against the officer in the rank of Director, the Respondent should have taken all the care and ought to have taken steps to conclude the proceedings at the earliest possible. But for the reasons best known, the Respondent has taken 12 long years for concluding the disciplinary proceedings which caused great prejudice to the petitioner. Under the circumstances, this Court cannot stay its hand without compensating the petitioner appropriately. Accordingly, the impugned order is quashed and the Respondent is directed to pay all the terminal benefits that are payable to the petitioner with interest at 6% per annum from 30.09.2000 till the date on which such amounts are actually paid. The Respondent is further directed to pass consequential order settling the terminal benefits to the petitioner as expeditiously as possible in terms of this order within a period of 8 weeks from the date of receipt of a copy of this order. Accordingly, the writ petition is allowed. No costs.

18.10.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mka

To:
The Secretary to Government,
Animal Husbandry, Dairy and Fisheries Department,
Secretariat, Chennai-9.

MUMMINENI SUDHEER KUMAR, J.

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W.P. No.16893 of 2012

18.10.2024