



W.P.Nos.2313 of 2023 and 25420 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.09.2024

Coram

The HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

W.P.Nos.2313 of 2023 and 25420 of 2024
and
W.M.P. Nos.2381 to 2383 of 2023 and 284 of 2024
and 27792 of 2024

G.Vedanayagam

.. Petitioner in
both W.Ps

Vs

- 1.The Secretary to Government of Tamil Nadu,
Rural Development and Panchayat Raj,
Fort St. George, Chennai – 9.
- 2.The Commissioner of Rural Development,
Saidapet, Chennai – 15.
- 3.The Collector,
Kancheepuram District,
Kancheepuram.

.. Respondents
in both W.Ps

Prayer in W.P.No.2313 of 2023: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the third respondent in its Na.Ka.No.3667/2021/Pa.A1 dated 10.12.2022 and quash the same and consequently direct the respondents to include and promote the



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petitioner as Assistant Director of Rural Development for the panel year 2022-2023.

Prayer in W.P.No.25420 of 2024: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to fix the pay scale of the petitioner in the appropriate pay scale/pay band of Assistant Director of Rural Development with effect from 27.03.2023 and grant the same along with arrears and other attendant benefits including increments.

For Petitioner	:	Mr.V.Vijay Shankar in both WPs
For Respondents	:	Mr.P.Balathandayutham, Special Government Pleader in both WPs

COMMON ORDER

W.P.No.2313 of 2023 has been filed, challenging the impugned proceedings of the third respondent dated 10.12.2022 and for consequential direction to the respondents to include and promote the petitioner as Assistant Director of Rural Development for the panel year 2022-2023.

2. W.P.No.25420 of 2024 has been filed for the issue of writ of mandamus directing the respondents to fix the pay scale of the



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petitioner in the appropriate pay scale/pay band of Assistant Director of Rural Development with effect from 27.03.2023 and to pay the arrears and extend all other attendant benefits.

3. The background of this case and the issue involved were captured in the earlier order passed on 31.01.2023 and the same is extracted hereunder:

'Mr.D.Ravichander, learned Special Government Pleader, takes notice for the respondents.

2. A show cause notice came to be issued to the petitioner by the third respondent on 04.02.2021 under Rule17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The allegation against the petitioner is that though the tender for the construction of kitchen shed at the Panchayat Union Primary School was called for and finalised on 20.01.2021, the work was awarded only on 27.01.2021 instead of 22.01.2021. The petitioner, on receipt of the notice, gave his reply wherein he has taken a very specific stand that the last date for submission of the tender was 20.01.2021 and the tender was opened on 21.01.2021 and the work order was issued on 22.01.2021 to the lowest bidder.

3. The grievance of the petitioner is that the third respondent proceeded to pass an order on 10.12.2022 by



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imposing a penalty of cancellation of increments for three months.

4. On carefully going through the records, it is seen that the third respondent has not even dealt with the very specific stand taken by the petitioner to the effect that the work order was issued on 22.01.2021 and the penalty has been imposed against the petitioner. That apart, the matter was kept pending for almost 18 months and all of a sudden, the penalty was imposed and thereby, the opportunity of the petitioner to have his name included in the panel for promotion as Assistant Director in the Rural Development is at stake.

5. A prima facie case has been made out and there shall be an order of interim stay as prayed for.

6. The name of the petitioner shall be included in the panel for promotion to the post of Assistant Director in the Rural Development for the year 2022-23 and the same will be subject to the final result of the writ petition.

Post this case after four (4) weeks. In the mean time, the respondents are directed to file their counter.'

4. The respondents have filed a petition to vacate the interim order along with a counter affidavit. The third respondent has taken a stand that the petitioner submitted a reply as if he issued the work order on 22.01.2021 and whereas, on perusal of the records, it came to light that the work order was not issued till 27.02.2021. Therefore,



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it was found that there was a delay in executing the tender work and there were lapses on the part of the petitioner and the explanation was not found to be satisfactory and ultimately, the punishment order was passed imposing punishment of cancellation of increment for three months without cumulative effect.

5. The other ground that has been raised in the counter affidavit is that the petitioner has an efficacious alternative remedy before the second respondent and without availing that remedy, the present writ petition is not maintainable. Accordingly, the respondents have sought for dismissal of W.P.No.2313 of 2023.

6. During the pendency of the writ petition in W.P.No.2313 of 2023, pursuant to the interim orders passed by this Court, name of the petitioner was included in the panel year 2022-2023 and he was also promoted to the post of Assistant Director of Rural Development. The petitioner assumed charge on 27.03.2023. Despite assuming charge and discharging his duties, the petitioner was not paid the pay scale/pay band of Assistant Director and he was continued to be paid lower pay scale. Aggrieved by the same, the petitioner has filed W.P.No.25420 of 2024 seeking for appropriate direction.



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7. Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mr.P.Balathandayutham, learned Special Government Pleader for the respondents.

8. The short issue that arises for consideration in the present writ petitions is as to whether there was negligence/misconduct on the part of the petitioner warranting imposition of punishment.

9. The third respondent issued administrative sanction on 09.01.2021 for construction of a new kitchen shed in the panchayat union primary school in Thiruvallur District under the scheme. Tender was invited and it was found that the petitioner failed to issue the work order within time and there was a delay in the commencement of the work. In view of the same, a show cause notice was issued on 04.02.2021 to the petitioner to initiate action under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 on the ground that there was a delay in issuing the work order. The averment made in the show cause notice is that the petitioner was specifically directed to issue work order on 22.01.2021 whereas till 27.01.2021, the tender was not even finalised.



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10. The petitioner gave a reply to the show cause notice on 15.02.2021. The petitioner took a very specific stand that the tender was finalised on 21.01.2021 and the work order was also signed on 22.01.2021. However, some pressure was exerted from the side of the Chairman of the panchayat union to give the contract in favour of his supporter. The petitioner was attempting to resolve the dispute. The petitioner had mentioned this in the reply. Apart from that, the petitioner has also mentioned that the work order was signed on 22.01.2021 and it was also issued to the successful bidder.

11. The third respondent was not convinced with the reply given by the petitioner and he has passed an order dated 25.07.2022 imposing the punishment of cancellation of increment for three months without cumulative effect.

12. The petitioner aggrieved by the above order, filed an appeal before the second respondent. The second respondent through proceedings dated 26.11.2022 set aside the order passed by the third respondent and remanded the matter back to the file of the third respondent with a direction to conduct *de novo* proceedings.



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13. After the matter was remanded back to the file of the third respondent, the present impugned proceedings dated 10.12.2022 was issued. Curiously, the present impugned proceedings that was issued is verbatim the same proceedings that was issued by the third respondent earlier on 25.07.2022. It is clearly cut, copy, paste of the earlier proceedings.

14. The main ground that was urged by the learned counsel for the petitioner is that there was absolutely no negligence or misconduct on the part of the petitioner warranting the imposition of punishment against the petitioner. Learned counsel submitted that the punishment itself came to be imposed only to stop the petitioner from getting his name included in the panel for promotion to the post of Assistant Director. The learned counsel further contended that even assuming that there was some delay in issuing the work order, ultimately the work was completed on time and it has become operational and therefore, no loss was caused to the Government due to the alleged delay in issuing the work order. The learned counsel in order to substantiate his submission relied upon the judgment of the Hon'ble Supreme Court in **Union of India and Others Vs. J.Ahmed** reported



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in **(1979) 2 SCC 286.**

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15. Per contra, the learned Special Government Pleader appearing on behalf of the respondents submitted that the petitioner came up with a false explanation for the show cause notice issued by the third respondent. The petitioner had taken a stand that he had already issued the work order on 22.01.2021. However, it was found that the work order was not given and the tender was not finalised till 27.01.2021. Hence, the stand taken by the petitioner is totally unsustainable. It was further contended that the explanation submitted by the petitioner was not satisfactory and therefore, only a minor penalty was imposed against the petitioner which does not warrant interference of this Court.

16. This Court has already taken into consideration the fact that the present impugned proceedings dated 10.12.2022 is verbatim the earlier proceedings issued on 25.07.2022. Not a single word has been changed from the earlier proceedings and the present proceedings has been issued in a mechanical fashion.

17. The second respondent while remanding the matter back to



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the file of the third respondent had set aside the earlier proceedings and directed the third respondent to conduct *de novo* proceedings.

However, the third respondent, even without issuing notice to the petitioner, after the orders were passed by the second respondent, straight away proceeded to issue the impugned proceedings dated 10.12.2022. That only shows that the third respondent was more interested in confirming his earlier proceedings and the third respondent was not even inclined to issue notice to the petitioner and ask for his explanation before issuing the latter proceedings after remand.

18. The respondents have raised the ground of maintainability since the petitioner has an alternative remedy of filing appeal before the second respondent. The alternative remedy is only a self-imposed restriction placed by the Court while exercising its jurisdiction under Article 226 of The Constitution of India. In an appropriate case, in spite of availability of alternative remedy, this Court can always exercise its jurisdiction. This is more so in a case where there is violation of principles of natural justice. The third respondent failed to take note of the fact that the very same proceedings that was issued earlier on 25.07.2022 was set aside by the second respondent and the matter



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was remanded to the third respondent. The minimum that was required on the part of the third respondent was to issue notice to the petitioner and conduct *de novo* proceedings as directed by the second respondent. The petitioner was not even aware about the order passed in the appeal and the petitioner was straight away served with the impugned proceedings dated 10.12.2022. The proceedings issued by the third respondent is not only violative of principles of natural justice but also suffers from total lack of application of mind. It also shows that the third respondent was pre-determined in this case and wanted to confirm his earlier proceedings.

19. The petitioner has taken a very specific stand that the tender was finalised on 21.01.2021 and the work order was also signed on 22.01.2021. The typed set of papers filed on the side of the respondents shows that the work order was in fact signed by the petitioner on 22.01.2021. Unfortunately, there was some local issue where the Chairman of the panchayat union was exerting pressure on the petitioner to award the work in favour of his supporter. The petitioner had to manage this situation and therefore there was some lapse of time in ultimately starting the work. This small delay did not ultimately result in any delay in the completion of the work or it did



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not cause any loss to the public exchequer. Therefore, this Court is not able to find any negligence or misconduct on the part of the petitioner. This specific stand that was taken by the petitioner was not even considered by the third respondent.

20. In the light of the above discussion, this Court finds that the impugned proceedings of the third respondent dated 10.12.2022 is an error of law apparent on the face of the order which requires the interference of this Court. Accordingly, the impugned proceedings of the third respondent dated 10.12.2022 is hereby quashed.

21. The petitioner was promoted to the post of Assistant Director of Rural Development during the pendency of the writ petition. However, the complaint made by the petitioner is that he has not been paid with the pay scale/pay band of the Assistant Director of Rural Development and he is continued to be paid lesser salary. There is no reason as to why the petitioner should be deprived of the pay scale/pay band of the Assistant Director of Rural Development with effect from 27.03.2023 when he assumed charge. Just because the writ petition was pending, that does not mean that the petitioner can be denied/deprived of the appropriate pay scale/pay band along with



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all attendant benefits.

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22. In the result, both the writ petitions stand allowed and the impugned proceedings of the third respondent dated 10.12.2022 is hereby quashed. There shall be a further direction to the respondents to fix the pay scale of the petitioner in the appropriate pay scale/pay band of Assistant Director of Rural Development with effect from 27.03.2023. The arrears of pay shall be paid to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Effecting from November 2024 onwards, the petitioner shall be paid the appropriate pay scale/pay band of the Assistant Director of Rural Development. It goes without saying that the petitioner will be entitled for the other attendant benefits to which he was entitled during this interregnum period. The arrears of pay shall be calculated upto October, 2024. No costs. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No
Neutral Citation:Yes/No
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