IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

Coram:

THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P. No.24724 of 2012 and
M.P.No.2 of 2012

H.Mahadeva ... Petitioner

Vs.

1. Government of Tamil Nadu Rep.
   by Secretary to Government
   Handlooms, Handicrafts, Textiles and Khadi Department
   Fort St. George
   Chennai - 600 009

2. The Director of Sericulture
   Salem - 636 001

3. The Principal Accountant General (A.& E.)
   Tamil Nadu
   Chennai - 600 018 ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent made in G.O.Ms.No.71 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 24.06.201, quashthe same and consequentlyl direct the respondents herein to disburse all the retirement and pensionary benefits due to the petitioner with arrears at a rate of 10% per annum with interest for belated payment.

For Petitioner : Mr.I.Kabilan
for M/s.M.Ravi

For R1 & R2 : Mr.D.Gopal
Government Advocate

For R3 : M/s. Hema Murali Krishnan

ORDER

This writ petition has been filed challenging the order passed by the first respondent made in G.O.Ms.No.71 Handlooms, Handicrafts, Textiles and Khadi (G1) Department dated 24.06.2011 and to quash the same with a consequential direction to the respondents herein to disburse all the retirement and pensionary benefits due to the petitioner with arrears along with interest at a rate of 10% per annum for belated payment.

2. The learned counsel for the petitioner would submit that the petitioner entered service on 12.01.1961 as Junior Inspector in Sericulture and was promoted from one post to another in the hierarchy of the Department as Assistant Inspector, Inspector, Assistant Director and Deputy Director of Sericulture in February 1992. After rendering more than 34 years of dedicated service, when he was due to retire on 30.06.1995 on attaining the age of

superannuation he was placed under suspension and not permitted to retire from service.

3. The learned counsel would further submit that while he was serving as Deputy Director of Sericulture, Coonoor, the first respondent/Government placed him under suspension, in and by G.O.[2D].No.9, Handlooms, Handicrafts, Textiles and Khadi [G1] Department, dated 28.09.1993 on the ground that enquiry into grave charges against the petitioner was contemplated. It was alleged that an inspection by the Audit Wing of the Directorate of Sericulture of the accounts of the Assistant Director of Sericulture, Sivagangai, for the period from 25.11.1991 to 05.02.1992 revealed certain serious irregularities in the nature of tampering of records, registers, falsification and fabrication of records and serious financial irregularities in the purchase of farmyard manure, sand, red soil and polythene bag under Drought Prone Area Programme Scheme resulting in heavy loss of revenue to the Government to the tune of Rs.3.74 Lakhs. The petitioner preferred O.A.No.6403/1993 before the Tamil Nadu Administrative Tribunal (TAT), challenging the said order of suspension and obtained interim stay of the said order till 26.10.1993 vide order dated 12.10.1993. Thereafter, the first respondent, in G.O.[3D].No.10, Handlooms, Handicrafts, Textiles and Khadi [G1] Department, dated 01.12.1993, reviewed the order

of suspension and ordered revocation of his suspension from 07.10.1993 without prejudice to the disciplinary action.

4. The learned counsel would further submit that thereafter, after the lapse of one year and seven months, the second respondent, in his Roc.No.40681/E4/93 dated 02.05.1995, initiated Disciplinary Proceedings against him under Rule 17(b) of the Tamil Nadu Civil Services [Discipline & Appeal] Rules, in respect of the above said alleged irregularities, referred to supra, relating to the period of his office as Assistant Director of Sericulture, Sivagangai from 25.11.1991 to 05.02.1992, and issued a Charge Memo containing 24 charges in all and he was called upon to submit his explanation thereto. This Charge Memo, relating to the alleged irregularities of the year 1991-1992, was issued in May 1995, just one month prior to his retirement on 30.06.1995. However, the petitioner submitted his detailed explanation dated 10.05.1995 denying the charges and pointing out that all the charges are based on fabricated records and statements and have been framed after the lapse of more than one year and seven months of his suspension and it is only on account of personal vendetta of the respondents. The Joint Director of Sericulture, Kanchipuram was appointed as Enquiry Officer, in and by Pro.No.40681/DSE4/93 dated 31.05.1995 of the second respondent and the Enquiry Officer conducted enquiry into the matter on 10.06.1995,

16.06.1995, 17.06.1995, 19.06.1995, 20.06.1995 and 24.06.1995 even while he was in service and submitted his report to the second respondent on 26.06.1995 holding charges 1 to 3, 8, 11, 22 and 23 as proved and other charges as not proved. The proved charges related only to failure to follow rules and regulations and prescribed procedures, not involving loss to the Government, due to his negligence with dishonest motive.

5. The learned counsel would further submit that a day prior to the date of his superannuation, on the ground of pendency of the Charge Memo dated 02.05.1995, the first respondent issued order of suspension G.O.[2D].No.15, Handlooms, Handicrafts, Textiles and Khadi [G1] Department, dated 29.06.1995. On the next day, the first respondent/Government issued another order in G.O.[2D].No.17, Handlooms, Handicrafts, Textiles and Khadi [G1] Department, dated 30.06.1995 not permitting him to retire from service on 30.06.1995 A.N. and retaining him in service until the enquiry into the grave charges of criminal misconduct pending against the petitioner is concluded and final orders are passed by the competent authority.

6. The learned counsel would further submit that thereafter after the lapse of nearly 3 years of the submission of Enquiry Report, the second respondent, in his Rc.No.40681/CD1/93-1 dated 08.06.1998, furnished a copy of the enquiry report for the further representation of the petitioner, which the petitioner submitted immediately thereafter. Since no final order was passed in the matter, the petitioner submitted several representations to the first respondent/Government, dated 07.06.2001, 19.07.2001, 19.09.2001, 29.01.2002, 12.04.2002 and 26.04.2002 and with reference to the petitioner's last representation dated 27.06.2002, the first respondent returned the same to the petitioner with an endorsement thereon - Endt.No.6122/G1/99-6 dated 02.07.2002 - informing the petitioner that the matter is under consideration.

7. The learned counsel would further submit that the following statement would show as to how there has been an inordinate and unexplained delay in each and every stage of the disciplinary proceedings:-

1. Alleged irregularities related to the years	- 1991 - 1992
2. Order of suspension	- 28.09.1993
3. Revocation of suspension	- 01.12.1993
4. Charge Memo issued	- 02.05.1995
5. Explanation submitted	- 10.05.1995
6. Enquiry Officer appointed	- 31.05.1995
7. Enquiry Report submitted	- 26.06.1995

8. Again placed under suspension - 29.06.1995
9. Not permitted to retire - 30.06.1995
10. Enquiry Report furnished to the petitioner - 08.06.1998
11. Further representation submitted by the petitioner - June 1998

8. The Government has issued instructions in Government Letter No.14974/93-1, P. & A.R. Department, dated 15.02.1983 that disciplinary cases against Government Servants on the verge of retirement shall be processed expeditiously at all levels and final orders of the Government obtained well in advance, i.e. at least six months prior to the date of retirement. These instructions have been further stressed in Government letter No.97772/N/94-1, P. & A.R. Department, dated 24.03.1995.

9. Further in G.O.Ms.No.439, P & A.R. Department, dated 27.07.1989, the Government have ordered that as a general principle, issue of suspension order on the date of retirement of a Government Servant should be avoided by examination of the case well in advance and arriving at a decision whether suspension is warranted.

10. In spite of such clear instructions and guidelines in the matter, the petitioner was placed under suspension on 29.06.1995 i.e., just a day prior to the date of his superannuation on 30.06.1995 A.N.

11. The learned counsel would further submit that as stated supra, the Disciplinary Proceedings has been initiated against the petitioner after an inordinate and unexplained delay of more than 4 years of the alleged occurrences and there had been delay at each and every stage of the proceedings. If the time limit prescribed by the Government for each and every stage of disciplinary proceedings had been scrupulously followed, the disciplinary proceedings against the petitioner could have been finalized long time back. Since no orders were passed in the disciplinary proceedings initiated as against the petitioner, the petitioner preferred a writ petition in W.P.No.12972 of 2006 challenging the order of suspension, not permitting to retire and also the charge memo issued on the petitioner on various grounds and also to issue a direction to the respondents to declare that the petitioner shall be deemed to have retired from service on 30.06.1995 A.N. without any condition. This Court by order dated 02.07.2010 was pleased to dispose of the above writ petition with a direction to the first respondent to pass final orders in the disciplinary proceedings pending against the petitioner within a period of 6 months from the date of receipt of copy of the order. This Court has also laid down a default clause that if no order is passed by the first respondent in the disciplinary proceedings within a period of six months, the disciplinary proceedings against the petitioner had to be treated as lapsed and

the petitioner would be deemed to have retired from service on the date of his superannuation i.e. on 30.06.1995 with all terminal benefits. Thereafter, the respondent filed a petition seeking extension of time to comply with the order passed by this Court dated 08.03.2011 and the time was extended till the end of June 2011 for passing final orders in the disciplinary proceedings.

12. Subsequently, the first respondent under G.O.(2D).No.4 dated 15.03.2011 passed an order revoking the order of suspension and permitted the petitioner to retire from service with effect from 30.06.1995 without prejudice to the disciplinary cases pending against him and the first respondent also sent a letter No.13417/G1/2007-11 dated 15.03.2011 proposing to impose a cut in pension of Rs.500/- per month for a period of 3 years and to recover a sum of Rs.96,206/- i.e Rs.67,320/- from DCRG and the remaining Rs.28,886/- on 12 monthly installments from his monthly pension.

13. The petitioner made a representation dated 21.03.2011 to the first respondent herein raising his objections for passing such an order and the first respondent after consulting the TNPSC, passed the final order in G.O.Ms.No.71, Handlooms, Handicrafts Textiles & Khadi (G1) Department, dated 24.06.2011 confirming the punishment proposed to be inflicted on the petitioner without considering any of the objections raised by him. Aggrieved by the order passed by the first respondent on 24.06.2011, the petitioner has

come forward with the present writ petition.

14. The counter affidavit filed by the respondents dated 22.07.2013, would show that the respondents are well aware of the instructions in the Government letters and Government orders referred to by the petitioner and as the petitioner was involved in a group case along with 16 other staff of the Department of Sericulture, it needed considerable time to arrive at a decision to finalise the disciplinary case against the petitioner before the date of his retirement and hence he was placed under suspension.

15. The learned Government Advocate appearing for the respondents submitted a copy of the written instructions from the Director of Sericulture, Nethaji Nagar, Hasthampatti, Salem - 636 007 in Rc.No.13233/CD1/2020 dated 23.01.2024 in which, the details of monetary and attendant benefits paid to the petitioner namely Thiru.H.Mahadeva, Deputy Director of Sericulture (Retd) are furnished as follows:-

Sl.No.	***Particulars***	***Details of Amount Settled in Rs.***	***Reference***
1	General Provident Fund (Final Closure)	Rs.1,88,844/- settled through DD.No.1474470/637	Regional Deputy Director of Sericulture, Vellore letter Na.Ka.No.795/A/1996, dated 07.05.1996.
2	Encashment of 240 days surrender	Rs.63902/-	Director of Sericulture, Salem Pro.No.12672/DSE1/2010-1 dated 30.06.2011
3	Encashment of 90 days	Rs.23970/-	Director of Sericulture, Salem Pro.No.12672/DSE1/2010-1

Sl.No.	Particulars	Details of Amount Settled in Rs.	Reference
			dated 30.06.2011
4	Special Provident Fund cum Gratuity	Rs.9308/-	Director of Sericulture, Salem Pro.No.9271/AB1/2009 dated 18.07.2011
5	Sanction of Pension and Pensionary Benefits with effect from 01.07.1995	Pension: Rs.1899/- Retirement Gratuity: Rs.110517/	Chennai, Accountant General letter No.P03/10305233/4/ R0305233/4/R0305233/520 dated 25.01.2012
6	Death-Cum-Retirement Gratuity DCRG	Amount of Rs.14311/- settled to the petitioner after deducting Rs.96206/-	Accountant General A&E, Chennai Letter No.PO9/ 10305233/4/PPO No.RO305233, dated 25.01.2012.

16. The learned Government Advocate appearing for the respondent would further submit that the punishment was imposed on the petitioner for the charges that were held proved and the Government/first respondent herein has followed all the procedures laid down in TNCS (D&A) rules scrupulously and had passed a speaking order.

17. The learned Government Advocate appearing for the respondents would further submit a copy of the written instructions from the Director of Sericulture, Nethahi Nagar, Hasthampatti, Salem - 636 007 in Rc.No.13233/CD1/2020 dated 29.01.2024 and the relevant paragraph is extracted hereunder:-

"4. It is submitted that, according to rule 9(A) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules where more than one Government servant of the same Department are involved, the competent authority to initiate disciplinary proceedings and impose any of the penalties shall be authority in that department in respect of the Government servant who holds the higher post. Based on the above opinion, action had been taken for framing of charges against involved in this disciplinary group case (totally 17 officials involved in this case) at Government level.

This disciplinary proceedings case against the petitioner herein was a group case comprising one Deputy Director of Sericulture and 16 other staff as accused including the petitioner. As the case was serious in nature involving huge monetary implications of (Rs.12.85 Lakhs) a thorough scrutiny of the case, before passing final orders, is needed on the 17 total number of accused officers in this Disciplinary.

Further it is submitted that this Disciplinary case has to be thoroughly scrutinized in consultation with the advisory Depratments (i.e) Personnel and Administrative Reforms Department and Finance Department. Taking into consideration, the various disciplinary procedures to be followed in respect of all the officials individually which would entail delay, Government was proposed to pursue action under rule 12(2)(ii) of the tamil Nadu Civil Service (Discipline &

Appeal) Rules and issued orders simultaneously in respect of all the 17 accused Government official involved in this group case."

18. Heard both sides and perused the materials available on record.

19. Admittedly in this case, the alleged occurrence took place in the year 1991 - 1992 and the charge memo was issued after three years on 02.05.1995. Subsequently, an enquiry was conducted and the enquiry report was also submitted on 26.06.1995. The petitioner was placed under suspension on 29.06.1995, as he was due to retire on 30.06.1995, on attaining the age of superannuation and not permitted to retire from service. After the lapse of nearly 3 years of the submission of Enquiry Report, the second respondent, in his Rc.No.40681/CD1/93-1 dated 08.06.1998, furnished a copy of the enquiry report for the further representation of the petitioner, which the petitioner submitted immediately thereafter and no final order was passed in the matter. Hence the petitioner approached this Court by way of filing W.P.No.12972 of 2006 and this Court by order dated 02.07.2010 directed the first respondent to pass final orders in the disciplinary proceedings pending against the petitioner, within a period of six

months from the date of receipt of a copy of that order. Thereafter, the respondents filed a petition seeking extension of time to comply with the order passed by this Court dated 08.03.2011 and this Court was pleased to extend the time till the end of June 2011 for passing final orders in the disciplinary proceedings. Subsequently, the first respondent under G.O.(2D).No.4 dated 15.03.2011 passed an order revoking the order of suspension and permitted the petitioner to retire from service with effect from 30.06.1995 without prejudice to the disciplinary cases pending against him and the first respondent also sent a letter No.13417/G1/2007-11 dated 15.03.2011. Thereafter the impugned order was passed by the first respondent on 24.06.2011.

20. In the case on hand, there is a delay in each and every stage and the same is evident from paragraph 7 of the affidavit filed in support of the writ petition by the petitioner and the same is extracted hereunder:-

"1. Alleged irregularities related to the years	**- 1991 - 1992**
2. Order of suspension	- 28.09.1993
3. Revocation of suspension	- 01.12.1993
4. Charge Memo issued	**- 02.05.1995**
5. Explanation submitted	- 10.05.1995
6. Enquiry Officer appointed	- 31.05.1995
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8. Again placed under suspension - 29.06.1995
9. Not permitted to retire - 30.06.1995
10. Enquiry Report - 08.06.1998
11. Further representation submitted - June 1998"

21. Though, the enquiry report was submitted in the year 1995, the impugned order was passed in the year 2011 belatedly after a lapse of 16 long years and the reasons given in the counter affidavit for the delay were that the petitioner was involved in a group case along with 16 other staff of the Department of Sericulture and it needed considerable time to arrive at a decision to finalise the disciplinary case against the petitioner before the date of his retirement and hence he was placed under suspension. This reason cannot be countenanced by this Court and though there are 16 persons involved, the first respondent has taken 16 years to pass the impugned order. The impugned order was passed in the year 2011 when the enquiry report was submitted in the year 1995.

22. In view of the aforesaid discussion, reasons/grounds, the impugned order passed by the first respondent is liable to be quashed and the same is hereby quashed. Since the impugned order has been quashed, the amount which has been recovered based on the impugned order dated 24.06.2011,

shall be returned to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. In regard to the other benefits, the petitioner is claiming 10% interest, but, this Court is not inclined to grant 10% interest but however, considering the delay in the payments, this Court directs the respondents to pay interest 7% p.a. for the belated payments as per the written instructions dated 23.01.2024 issued by the second respondent which is extracted hereunder:-

Sl. No.	*Particulars*	*Details of Amount Settled in Rs.*	*Reference*
1	General Provident Fund (Final Closure)	Rs.1,88,844/- settled through DD.No.1474470/637	Regional Deputy Director of Sericulture, Vellore letter Na.Ka.No.795/A/1996, dated 07.05.1996.
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6	Death-Cum-Retirement Gratuity DCRG	Amount of Rs.14311/- settled to the petitioner after deducting Rs.96206/-	Accountant General A&E, Chennai Letter No.PO9/10305233/4/PPO No.RO305233, dated 25.01.2012.

23. In the result, this writ petition is allowed with the above directions. Consequently, connected Miscellaneous Petition is closed. No costs.

31.01.2024

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation Case : Yes/No

To

1. The Secretary to Government
   Handlooms, Handicrafts, Textiles and Khadi Department
   Fort St. George
   Chennai - 600 009

2. The Director of Sericulture
   Salem - 636 001

3. The Principal Accountant General (A.& E.)
   Tamil Nadu
   Chennai - 600 018

J.SATHYA NARAYANA PRASAD.J

kmm

W.P. No.24724 of 2012

31.01.2024