



W.P.No.25993 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.ARUL MURUGAN

W.P.No.25993 of 2015

D.Selvanayagam

...Petitioner

Vs

1.The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Chennai – 600 009.

2.The Director of Adi Dravidar Welfare,
Chepauk,
Chennai – 600 005.

3.The District Adi Dravidar and Tribal
Welfare Officer,
Perambalur – 621 212.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 27.01.2015 made in Na.Ka.No.C2/6423/2013 of the 2nd respondent and quash the same and direct the 2nd respondent to pay interest for the delayed payment of pensionary benefits.

For Petitioner

: Mr.A.E.Ravichandran



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For Respondents

For RR1 to 3

: Mr.Stalin Abhimanyu

Additional Government Pleader

ORDER

The Writ Petition is filed challenging the order of the second respondent dated 27.01.2015 made in Na.Ka.No.C2/6423/2013, imposing a punishment for recovery of a sum of Rs.1,14,418/- from the petitioner's Death-cum-Retirement Gratuity (DCRG) and to withdraw a sum of Rs.100/- for a period of 30 months from the petitioner's monthly pension and for consequential direction to the second respondent to pay interest for the delayed payment of pensionary benefits with costs.

2. It is the case of the petitioner that he was appointed as Junior Assistant in the Department of Adi Dravidar and Tribal Welfare by the Tamil Nadu Public Service Commission (TNPSC) under the control of the second respondent on 29.06.1987 and thereafter, he was promoted as Assistant in the year June 2001 and further, was promoted to the post of Superintendent in the office of the third respondent on 01.06.2011. The



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petitioner due was to superannuate on 31.05.2013. Prior to the said date, he was placed under suspension on 30.05.2013 and by another letter dated 31.05.2013, the second respondent did not allow the petitioner to retire from service and the services of the petitioner was retained under Fundamental Rule.56(1)(c) contemplating Disciplinary Proceedings under Rule 17(b) of Tamil Nadu Civil Service (Disciplinary and Appeal) Rules (herein after referred to 'Rules').

3. Pursuant to which on 31.05.2013, a charge memo was issued to the petitioner under Rule 17(b) and the following four charges were framed:

குற்றச்சாட்டு எண்.1.

2011-2012 ல் நடைபெற்ற கலந்தாய்வில் இலாடபுரம் துவக்கப்பள்ளி தலைமை ஆசிரியர் பணியிடம் காலிபணியிடமாக அறிவித்தது.

குற்றச்சாட்டு எண்.2.

அரசால் அனுமதி அளிக்கப்படாத இலாடபுரம் துவக்கப்பள்ளி தலைமை ஆசிரியர் பணியிடத்தில், 2011-2012ல் நடைபெற்ற கலந்தாய்வின் போது இலாடபுரம் துவக்கப்பள்ளி தலைமை ஆசிரியர் பணியிடம் நிரப்பப்பட்டது.

குற்றச்சாட்டு எண்.3.

உயர் அலுவலரான மாவட்ட ஆதிதிராவிடர் மற்றும் பழங்குடியினர் நல அலுவலருக்கு தவறான வழிக்காட்டுதல் ஏற்படுத்தி தந்தது.

குற்றச்சாட்டு எண்.4.

அரசு பணிக்கு குந்தகம் விளைவித்தது.



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4. The petitioner submitted his reply to the charges on 06.06.2013.

Not satisfied with the reply, an Enquiry Officer was appointed. Pursuant to the enquiry, a report was submitted by the Enquiry Officer on 04.11.2013. The enquiry report was furnished to the petitioner, pursuant to which a second show cause notice was issued on the petitioner on 04.11.2013. After, the petitioner submitted his reply to the second show cause notice on 18.11.2013, the second respondent by impugned order dated 27.01.2015 imposed the punishment for recovery of a sum of Rs.1,14,408/- from the DCRG for the monetary loss caused by the petitioner and to deduct a sum of Rs.100/- from the pension for a period of 30 months. Challenging the punishment imposed on the petitioner, he has preferred the above Writ Petition.

5. The learned counsel for the petitioner, Mr.A.E.Ravichandran, submitted that when there was no loss caused by the petitioner to the exchequer, the impugned order imposed for deducting a sum of Rs.1,14,408/- from the DCRG is not sustainable. The learned counsel further contended that in fact, the entire proceedings emanated only due to bias as the proceedings were initiated from a different Section than the



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one which deals with the service particulars of the concerned employee.

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6. The learned counsel for the petitioner further contended that when the second respondent was to impose a punishment, then as per Rule 9 of Tamil Nadu Pension Rules, 1978, the authority ought to have consulted the TNPSC before imposing such punishment and as the same was not complied with, the impugned order is illegal and unsustainable. The learned counsel further submitted that, the petitioner was at the verge of retirement and the marriage of his daughter was scheduled and only due to the situation at that time, he had accepted that he committed a mistake and that cannot be put as against the petitioner for imposing a punishment of recovery, when admittedly no loss has been caused to the exchequer and he therefore sought for indulgence of the Court.

7. Per contra, Mr.Stalin Abhimanyu, learned Additional Government Pleader appearing for the respondents submits that, since the petitioner has transferred one of the Teacher from a Primary School where the post was not in existence, as it was upgraded to Middle School, the petitioner was placed under suspension. As he was due to retire, he



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was retained in service and charge memo was issued. It is the further contention that only pursuant to the enquiry conducted, all the four charges were held proved, hence, the Disciplinary Authority only after affording an opportunity to the petitioner by issuing a second show cause notice has imposed the punishment, which is perfectly in order.

8. The learned Additional Government Pleader further contended that the question of consulting the TNPSC does not arise in the present case since the petitioner himself had accepted the punishment imposed and only in the event of a disagreement, the question of consultation with the TNPSC arises and he has prayed for dismissal of the Writ Petition.

9. Heard the rival submissions advanced by the learned counsel on either side and perused the materials available on record.

10. The fact that the petitioner worked as Superintendent in the office of the third respondent from 01.06.2011 is not in dispute. The petitioner being a Superintendent was entrusted with the conduct of counselling for the transfer of Teachers and Head Masters in the



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Perambalur District. Initially Adi Dravidar Tribal Welfare Primary School in Ladapuram Village was upgraded as Middle School by order dated 25.10.2005 and the same by G.O.MS. No.121, Adi Dravidar Welfare Department dated 05.10.2010 has also been upgraded as High School. Due to the upgradation of the School, no post of Primary School Head Master was available from 05.10.2010 and in such circumstances, general counselling was held for the year 2011-2012 for the transfer of Teachers and Head Masters.

11. The petitioner who was working as the Superintendent without ascertaining the actual vacancies and the posts available in the concerned Schools, had shown the post of Primary School Head Master as available in the Ladapuram Adi Dravidar Welfare School. Due to the mistake committed by the petitioner, one Tmt.Kalaiaarasi who was working as Headmaster in T.Kalathur Government Adi Dravidar Primary School was transferred and posted as Primary School Head Master in Ladapuram Adi Dravidar Welfare School by proceedings dated 08.09.2011 for the year 2011-12. The fact remains that no such post was in existence and while so, due to the apparent mistake committed by the petitioner,



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Tmt.Kalaiarasi had been wrongly transferred from T.Kalathur to Ladapuram School where no such post was available as on that date.

12. In view of the transfer and proceedings made by the petitioner the said Tmt.Kalaiarasi had worked in the transferred School i.e., Ladapuram Adi Dravidar Welfare School from 16.09.2011 to 30.12.2011 wherein also, she has been paid with all pay and allowances for the said post which was not in existence due to this act of the petitioner. Apart from Tmt.Kalaiarasi having been made to work in the Ladapuram Adi Dravidar Welfare School in a non existent post, further, the place where she was earlier working in T.Kalathur Government Adi Dravidar Primary School was also made vacant. In view of the apparent mistake committed by the petitioner, as the petitioner was due to be superannuated on 31.05.2013, by order dated 30.05.2013, he was placed under suspension. Further by order dated 31.05.2013, the petitioner was retained in service under Rule 56(1)(c) of the Fundamental Rules in view of the Disciplinary proceedings being contemplated.

13. Subsequently, a charge memo was issued on 31.05.2013 itself,



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framing the aforesaid four charges. The petitioner had submitted his reply on 06.06.2013 and pursuant to the reply, the second respondent has appointed an Enquiry Officer and after conducting the enquiry, the enquiry officer had submitted a report to the appointing authority on 24.10.2013. The enquiry report was forwarded to the petitioner and second show cause notice was issued on 04.11.2013 and after obtaining his reply, additional particulars were called for from the District Collector, Perambalur on 04.08.2014. After receiving the particulars, by proceedings dated 10.09.2014, the suspension and retention order issued as against the petitioner was withdrawn and the petitioner was allowed to retire by proceedings dated 30.10.2014, subject to the disciplinary proceedings. Based on the enquiry report, the Disciplinary Authority after receiving letter of petitioner on 05.01.2015 by the impugned order dated 27.01.2015 has ordered the recovery of a sum of Rs.1,14,408/- being loss to the Government and punishment of Rs.100/- per month of his monthly pension amount.

14. When the petitioner being Superintendent has shown the post of Primary School Head Master as available in Ladapuram Adi Dravidar



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Welfare School, had issued orders for the transfer and posting of Tmt.Kalaiaarasi from T.Kalathur Government School to Ladapuram School, for which, the petitioner in the reply to the charge memo had admitted to the fact that the school had already been upgraded to High School as early as in 2010 itself and that due to mistake, the same has been made without ascertaining the proper particulars as on that date. When the petitioner himself had admitted to the lapses committed by him, the fact that the teacher was transferred to a post which was non-existent as on 08.09.2011 stands amply established and it is only the stand of the petitioner that due to this act, no revenue loss has occurred to the Government.

15. It is the submission of the learned counsel for the petitioner that when even though the transfer was made and the teacher was allowed to work and salary was paid to the teacher, it was not paid in excess but however it was within the sanctioned strength of teachers available to that School, therefore there had been no revenue loss to the Government. It is also the contention of the petitioner that when the second respondent proposed to impose punishment under Rule 9, the



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Tamil Nadu Public Service Commission had not been consulted and therefore, the procedures contemplated has not been followed and thereby, the impugned order is liable to be interfered with.

16. At this juncture, it is the useful to extract, Rule 9 (1) (a) of the Tamil Nadu Pension Rules, 1978.

“9. Right of Government to withhold or withdraw pension.

(1)(a) The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any Co-operative Society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961;”

[Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a pensioner, the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension but a copy of the orders passed by the Government in such cases shall be sent to the said Commission.]

17. From the above Rule, it is clear that withdrawing or



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withholding the pension may be effected irrespective of the fact as to whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government. Further, if the petitioner does not agree to such withholding or withdrawal of the pension, TNPSC shall be consulted by the Government. From the materials available on record, it can be seen that the second respondent in view of the proposed punishment to recover the sum of Rs.1,14,408/- being loss to the Government and the punishment of Rs.100/- per month for a period of 30 months was forwarded to the petitioner and his concurrence was sought as to whether he accepts or refuses the same. By a letter dated 05.01.2015, the petitioner has categorically expressed his willingness to accede the above proposed punishment of the second respondent. When the petitioner by letter dated 05.01.2015 expressed his willingness to accept the proposed punishment, then as contended by the learned Additional Government Pleader and as per the Rule extracted above, the need for consulting the TNPSC does not arise, in view of the consent expressed by the petitioner for the punishment imposed.

18. The further contention of the petitioner is that the proceedings



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have been initiated by a different Section, therefore the punishment cannot be sustained and this proceedings have emanated only due to some bias. It could be seen that the second respondent Director of Adi Dravidar Welfare Department, who is the Head of the Department by order dated 30.05.2013 has placed the petitioner under suspension and also by order dated 31.05.2013 had not allowed the petitioner to retire from service under Fundamental Rule 56 (1)(c) in view of 17(b) charges contemplated as against the petitioner and further fact that by proceedings dated 30.10.2014, the petitioner has been allowed to retire subject to Disciplinary Proceedings initiated and it has been accepted by the petitioner.

19. When the Head of the Department has issued the above proceedings, the argument of the learned counsel for the petitioner that all these proceedings have emanated from a different Section and there is bias cannot be sustained.

20. In view of the admitted lapses committed by the petitioner, the charge memo has been issued framing four charges and after receipt of



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reply, the enquiry has been conducted in a proper and fair manner and the enquiry Authority has concluded the enquiry and furnished a report. Thereafter, by issuing a second show cause notice and obtaining the reply, the second respondent had issued the punishment for the proven charges. When the enquiry has been found to be proper and conducted in a fair manner, decision of the Disciplinary Authority to impose appropriate punishment for the proven charges is sustainable and need not be interfered with.

21. In view of the above deliberations, the punishment imposed on the petitioner shall stand confirmed and accordingly, the Writ Petition is dismissed. No costs.

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Index:Yes

Speaking order/Non-speaking order

rkp



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To

- 1.The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Chennai – 600 009.
- 2.The Director of Adi Dravidar Welfare,
Chepauk,
Chennai – 600 005.
- 3.The District Adi Dravidar and Tribal Welfare Officer,
Perambalur – 621 212.



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G.ARUL MURUGAN,J.

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