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W.P. No.6653 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.6653 of 2011

1.R.Viswanathan (Deceased)

2.Saroja

3.Vedhanayaki

4.V.Kannan

5.R.Vennila

... Petitioners

*P2 to P5 are substituted as LR's of deceased P1 as per order dated 05.03.2024 in W.M.P.No.6413 of 2024

Vs.

1.The Secretary to Government,
Government of Tamil Nadu
Home (SC) Department,
Fort St. George, Chennai – 600 009.

2.The Superintendent of Police
Thiruvarur District,
Thiruvarur.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the respondents, particularly the 1st respondent's G.O.Ms.No.600, Home Department, dated 05.05.1999 and quash the same and consequentially



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direct the respondents to pay full pension with all monetary benefits as per the petitioner's representation dated 21.01.2011.

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For Petitioners : Mr.R.Thanjan

For Respondents : Ms.R.L.Karthika
Government Advocate.

ORDER

It is an unfortunate case where the original petitioner approached the then Tamil Nadu Administrative Tribunal, on an earlier occasion by filing O.A.No.3926 of 2002 which was subsequently transferred to this Court and re-numbered as W.P.No.6914 of 2007. The said writ petition was dismissed for non-prosecution.

2. The brief facts that may be relevant for disposal of this writ petition are as under:

The 1st petitioner herein was appointed as Police Constable on 15.10.1965 in the Armed Reserve Police, and while he was working as such, he was subjected to disciplinary proceedings along with several other Constables on a solitary charge. The said charge reads as under:

“That while you (Accused Officer-17) were working as PC 650, Prohibition Enforcement Wing, Nannilam, Thanjavur East District, during 1988, HC 938 S.Ekambaram (Accused



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Officer-5), Gr.I PC 908 A.Vankatchalam (Accused Officer-6) and PC 295 R.Ramamoorthy (Accused Officer-8) have collected Weekly mamool of Rs.27,154/- from the Prohibition offenders of Nannilam Prohibition Enforcement Wing unit limit for not interfering in their business of illicit sale of I.D. Arrack and tapping of toddy on the oral instructions of A.Radhakrishnan, Inspector of Police (Accused Officer-2), G.Natarajan, Sub-Inspector of Police (Accused Officer-3) and G.K.Somasundaram, Sub-Inspector of Police (Accused Officer-4) and with the active connivance of R.Maruthapillai, Deputy Superintendent of Police (Accused Officer-1) and the said amount of Rs.27,154/- was kept for sharing by the Accused Officers 1 to 26 being the officials of Prohibition Enforcement Wing, Nannilam, Thanjavur East and thereby they had misused their official positions for personal gain and failed to maintain absolute integrity in Public service.”

3. It is thereafter, on conducting enquiry into the said charge, the 1st petitioner was imposed with the punishment of compulsory retirement from service through G.O.Ms.No.600, Home (SC) Department, dated 05.05.1999. Likewise, the other delinquent Constables were also imposed with the punishment of compulsory retirement by issuing different Government Orders



on 05.05.1999 itself. The other Constables, who were imposed with the punishment of compulsory retirement approached the then Tamilnadu Administrative Tribunal by filing O.A.No.3308 of 1999 and batch. The then Tamil Nadu Administrative Tribunal, after having enquired into the matter allowed the said batch of O.As by an order dated 22.03.2002. Paragraph No. 2 of the said order in O.A.No.3308 of 1999 and batch reads as under:

“The petitioners are all Constable numbering 11. They have been compulsorily retired from service by the impugned order. Identical charge memos were issued against the petitioners on 02.03.1990. Inquiry Report was submitted on 06.11.1995, finding the petitioners guilty and held charge proved. On 05.05.1999, the final order has been passed. The main charge is that the petitioners have received mamools from bootleggers. The money viz., Rs.27,154/- was found in a Telephone Booth and it was recovered from the Inspector of Police. According to the petitioner, there is no evidence at all, supporting the prosecution and the Inquiry Report is not sustainable.”

4. The then Tamilnadu Administrative Tribunal, having taken note of the above charge has been pleased to arrive at conclusion that the findings



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of the enquiry officer are not sustainable and the punishment imposed based on such findings are also held to be not sustainable and accordingly, allowed all the applications with service and monetary benefits. The operative portion of the said order reads as under:

“9. For the foregoing reasons, I am of the view that the findings of the Inquiry Officer is not sustainable and the punishment imposed based on the finding is also not sustainable. Hence, the petitions are allowed. The petitioners are entitled to service and monetary benefits.”

5. Aggrieved by the said order dated 22.03.2002, the State approached this Court by filing the W.P.Nos.37354 to 37544 of 2004. However, the learned Division Bench, by an order dated 04.11.2006 dismissed the said batch of writ petitions and directed the respondents to implement the orders passed by the then Tamilnadu Administrative Tribunal. Pursuant to the said order, the respondent State issued various Government orders implementing the orders passed by then Tamilnadu Administrative Tribunal as confirmed by this Court, by issuing G.O.(2D).523 Home (Police.2) Department dated 08.08.2007. Similarly, several other identical orders were issued granting benefit of reinstatement with all service benefits



including 50% of back wages.

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6. While that being so, the 1st petitioner herein who is also charged with very same charge, instead of challenging the order of compulsory retirement has chosen to challenge the subsequent orders issued in G.O.Ms.No.925 Home (SC) Department dated 24.09.2001, whereby the pension that was granted in favour of the 1st petitioner was reduced to two-third under Rule 39(1) of the Tamil Nadu Pension Rules, by filing O.A.No.3926 of 2002 and the said O.A after being transferred to this Court was re-numbered as W.P.No.6914 of 2007 and came to be dismissed for non-prosecution in the month of March-2014. While so, the petitioner having come to know about the orders passed by the then Tamilnadu Administrative Tribunal in O.A.No.3308 of 1999 and batch and the orders passed by this Court in W.P.No.37534 of 2004 and batch, approached this Court by filing the present writ petition challenging original order of punishment imposed upon him through G.O.No.600, Home (SC) Department, dated 05.05.1999.

7. The learned counsel for the petitioners contended that the 1st petitioner herein is also similarly situated like the petitioners in O.A.Nos.3308



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of 1999 & batch and the charge that was framed against all the Constables is one and the same, and the very same charge was held to have been not proved by the then Tribunal and confirmed by this Court. He also further contended that the said orders passed by the then Tamilnadu Administrative Tribunal and this Court are accepted by the respondents and therefore, they ought to have revoked the punishment that was imposed on the 1st petitioner as well. He also contended that the 1st petitioner is also entitled for the same relief that was granted to the similarly situated persons in the above referred cases and entitled for extending the similar benefits that were extended to others.

8. On the other hand, Ms.R.L.Karthika, learned Government Advocate contended that the writ petition is liable to be dismissed only on the ground of delay and laches and the 1st petitioner has chosen to challenge the order dated 05.05.1999 by filing the present writ petition in the year 2011 i.e., after a lapse of 12 years. She also further contended that the petitioner have not chosen to challenge the impugned order herein, in the year 1999 and immediately thereafter, chosen to challenge G.O.Ms.No.925 dated 24.09.2001 whereby, the pension that is being paid to the petitioner was reduced and even at this stage, he is not entitled to challenge the order dated 05.05.1999 in this



present writ petition.

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9. This Court has carefully considered the submissions made by either side and also perused the entire material on records.

10. The petitioner filed the present writ petition in the year 2011 i.e., when he was aged 66 years. During the pendency of the writ petition, the 1st petitioner passed away and his legal representatives were brought on record as petitioners 2 to 5. When the punishment of compulsory retirement was imposed on the petitioner, the petitioner was aged about 54 years. Undoubtedly, the petitioner was paid full pension as there was not mentioned in the G.O.Ms.No.600 dated 05.05.1999 about reserving right to pass consequential order under Rule 39 of Tamil Nadu Pension Rules by the Superintendent of Police. But subsequently, by issuing G.O.Ms.No.925 dated 24.09.2001, reduced the said pension to two-third by passing the order under Rule 39 of Tamil Nadu Pension Rules. Though petitioner challenged the said Government Order in G.O.Ms.No.925 dated 24.09.2001, the said writ petition came to be dismissed for default as noted herein above.



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11. It is settled law that once punishment of compulsory retirement was imposed without reserving right to pass consequential order under Rule 39 of Rules, the delinquent employee is entitled for full pension for the service that was rendered by him. In the instant case, no such reservation is made while passing G.O.Ms.No.600 dated 05.05.1999. The Government subsequently passed orders in G.O.Ms.No.925 dated 24.09.2001 without even putting the petitioner on notice and reduced his pension to two-third.

12. Be that as it may, the question that would arise for consideration in this present writ petition is as to whether the petitioner can be extended the same benefit that was granted in favour of the other similarly situated Constables in O.A.No.3308 of 1999 & batch and W.P.No.37534 of 2004 & batch or not against whom similar/identical charge was framed.

13. No doubt, there is inordinate delay in 1st petitioner approaching this Court by filing the present writ petition challenging the order dated 05.05.1999. No doubt the 1st petitioner had prosecuted the litigation challenging the reduction of pension orders issued by the Government in G.O.Ms.No.925 dated 24.09.2001 but the said writ petition was unfortunately,



as noted above was dismissed for non-prosecution. The 1st petitioner, is stated to be person suffering with cancer and also met with road accident, could not approach the Tribunal and ultimately, because of lack of sufficient financial resources, has not challenged the impugned order dated 05.05.1999 at the relevant point of time, and has accepted the punishment of compulsory retirement and contested only on the quantum of pension that was paid to him. However, the said pension for which he was entitled to was reduced to two-third, by G.O.Ms.No.925 dated 24.09.2001. He challenged the said order, and the said writ petition came to be dismissed for non-prosecution.

14. Admittedly, the similarly situated persons against whom, the very same charge was framed of collecting mamools of Rs.27,154/- was held to have been not proved in the common enquiry that was conducted against the 1st petitioner and others. It is not the case of the respondents, that the enquiry that was conducted against the petitioner is different to that of the enquiry that was conducted in respect of 11 Constables, who approached the Tribunal and succeeded therein. Admittedly, the enquiry that was conducted against all Constables for having been collected mamools of Rs.27,154 is one and the same. The aspect of delay and laches would become relevant only in



cases where the position of the opposite party is changed irreversibly because of the long lapse of time. But that is not the case on hand.

15. As the very same charge was held to have been not established and the punishment that was imposed basing upon the very same enquiry, was set aside by the Tribunal and confirmed by this Court, this Court is of the considered view that the case of the 1st petitioner is also should be treated on par with all the petitioners in the other batch of cases and 1st petitioner cannot be excluded only on the ground of delay and the aspect of delay can be suitably balanced while granting relief to the petitioner in the present writ petition. In the light of the above and for the reasons that were assigned in the order passed by Tribunal in O.A.Nos.3308 of 1999 & batch dated 22.03.2002, which was confirmed by the Division Bench of this Court in W.P.No.37354 of 2004 & batch by order dated 04.11.2006, the impugned order is liable to be set aside.

16. Then, next question that would fall for consideration is as to what relief can be granted to the petitioner who approached this Court belatedly i.e., after the period of 12 years. As noted above, the above said batch of



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O.As were allowed by the then Tamilnadu Administrative Tribunal with all service and monetary benefits while ordering reinstatement, with all service and monetary benefits and the said order was modified by this Court, by denying 50% of the back wages by order dated 04.11.2006. Thus, the petitioners in the said batch of writ petitions were given all the service and monetary benefits except 50% of the back wages. Considering the fact, the 1st petitioner has approached this Court only after a long lapse of time, the 1st petitioner can be denied some of the benefits that were extended in the said batch of writ petitions.

17. In the light of the above, the impugned order is set aside with the following directions:

The respondents are directed to treat that the 1st petitioner has continued in service on being reinstated into service with effect from the date on which he was compulsorily retired from service and shall be treated to have been continued in service till attaining the age of superannuation. Accordingly, the respondents are directed to calculate and extend all the terminal benefits that are payable to the 1st petitioner including the pension and other benefits, and pay all such benefits together with arrears of pension



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to the petitioners 2 to 6 within a period of three (3) months from the date of receipt of a copy of this order. Further, it is made clear that the petitioners 2 to 6 are entitled only for the terminal benefits but not for any back wages.

18. Accordingly, the writ petition is partly allowed. The connected miscellaneous petitions, if any shall stand closed. No costs.

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Index : Yes/No
Speaking Order : Yes/No
dpa

To

1.The Secretary to Government,
Government of Tamil Nadu
Home (SC) Department,
Fort St. George, Chennai – 600 009.

2.The Superintendent of Police
Thiruvarur District,
Thiruvarur.

MUMMINENI SUDHEER KUMAR,J.

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