



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2024

Pronounced on : 30.10.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.5572 of 2020andW.M.P.Nos.6529 of 2020 and 23580 of 2022

R.Dorairaj

... Petitioner

Vs.

1. Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai – 600 005,
represented by its Chairman.
2. The Chairman,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai – 600 005.
3. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai – 600 005.
4. The Chief Engineer, Tamil Nadu Water Supply and Drainage Board,
TWAD Complex, Mattuthavani Bus Stand (Opp.),
Ganesh Nagar, Madurai – 625 007.
5. The Joint Chief Engineer, Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai – 600 005.
6. The State of Tamil Nadu, represented by its Secretary to Government,



Municipal Administration and Water Supply Department,
Fort St. George,
Chennai – 600 009.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned orders dated 27.07.2015 passed by the 1st Respondent Board vide is Proceedings No. B.P.Ms.37 and subsequent orders dated 03.09.2015 passed by the 3rd Respondent vide his Proceedings No. P2/ 41797/ Pen/ HO/ 2015-1 and Proceedings No. P2/ 41797/ Pen/ HO/ 2015-3 respectively and orders dated 25.03.2019 passed by the 2nd respondent in his Letter No. 26451/ Estt. (DP)/ A2/ 2018 and quash the same and further direct the 1st Respondent to permit the Petitioner to retire on 31.12.2012 AN on Cum Retirement Gratuity and Encashment of Leave duly treating the period of absence under illegal dismissal from 08.02.2002 FN to 31.12.2012 AN as duty and to refund the recovered amount of pension and Death-cum-Retirement Gratuity from 08.02.2002 onwards made from the petitioner and to permit the petitioner and to draw arrears of pay and allowances, pension, Death-cum-Retirement Gratuity, Encashment of Leave Salary and all other attended and monetary benefits etc., after deducting the pension and death-cum-Retirement gratuity so far made with interest at 10% per annum for the belated payments within the time frame as fixed by this Hon'ble Court.

For Petitioner	: Mr.L.Chandrakumar for M/s.Law Square
For R3	: Mr.S.Ravindran, Senior Counsel assisted by Ms.S.Mekhala
For R6	: Mr.M.Murali, Government Advocate

ORDER

The brief facts that are relevant for disposal of the writ petition are as under:-

1.1. The petitioner, while working as 'Assistant Engineer' in the



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respondent Board, was subjected to disciplinary proceedings along with two other officers viz., Mr.R.Dorairaj and Mr.Ranganathan, resulting in imposing the punishment of dismissal from service through Board Proceedings bearing No.48/Estt(DP-I) wing, dated 07.02.2002. Similarly, other two officers were also imposed with the identical punishment. Aggrieved by the said order of dismissal, the petitioner and two others approached this Court by filing W.P.Nos.14154 to 14156 of 2002. A learned Single Judge of this Court, after having elaborately dealt with the matter, came to the conclusion that the punishment of dismissal from service imposed on the petitioner is not commensurate with the proven charges and held that the punishment of dismissal from service imposed on the petitioner and two others is extremely harsh and accordingly, the said writ petitions were partly allowed, quashing the impugned orders therein, insofar as the punishment that was imposed and accordingly, the matter was remanded to the respondent Board for imposing any other lesser penalty other than dismissal from service or withholding the entire pension and recovery from Death-cum-Retirement Gratuity of the petitioner.

1.2. Though, an appeal was filed by the respondent Board in



W.A.Nos.401 to 403 of 2014, the said writ appeals were dismissed by a learned Division Bench of this Court by a common order dated 16.04.2014 and the same was also confirmed by the Hon'ble Apex Court in SLP (C) Nos.13036 to 13038 of 2014 by an order dated 07.11.2014. It was thereafter, the respondent Board reconsidered the matter and passed a resolution dated 23.04.2015 imposing the punishment of "compulsory retirement".

1.3. It was thereafter, the Respondent No.3/ Managing Director issued B.P.Ms.No.37 (Estt.(DP) WING) dated 27.07.2015, referring to the Board resolution dated 23.04.2015, however, once again modifying the punishment of dismissal from service as *"penalty of recovery of 1/3rd pension and gratuity under Rule 39 of the Tamil Nadu Pension Rules, 1978"*. Accordingly, the pensionary benefits of the petitioner were sought to be released through Letter No.P2/41797/PEN/HO/2015-1 dated 03.09.2015 and Letter No.P2/41797/PEN/HO/2015-3 dated 03.09.2015. It is aggrieved by the manner in which the said B.P.Ms.No.37 (Estt.(DP) WING) dated 27.07.2015, and the consequential orders were issued, the petitioner submitted a representation to the Respondent No.2/ Chairman herein on 21.12.2017 and thereafter, approached this Court by filing W.P.No.26663 of



2018, complaining the inaction on the part of the Respondent No.2 in considering the said representation.

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1.4. This Court, by an order dated 11.10.2018, directed the Respondent No.2 herein to consider the representation dated 21.12.2017 submitted by the petitioner. It is thereafter, the Respondent No.2, after having considered the representation of the petitioner, passed an order in Letter No.26451/Estt.(DP)/A2/2018 dated 25.03.2019, rejecting the claim of the petitioner. It is aggrieved by the said orders issued in B.P.Ms.No.37 (Estt.(DP) WING) dated 27.07.2015, consequential letters dated 03.09.2015 and the orders passed by the Respondent No.2 dated 25.03.2019, the petitioner approached this Court by filing the present writ petition to quash the said orders and seeking a consequential relief to permit the petitioner to retire from service with effect from 31.12.2012 (AN) i.e., the actual date of superannuation of the petitioner instead of 08.02.2002 (FN) i.e., the original order of punishment of dismissal from service imposed on the petitioner.

2. Heard Mr.L.Chandrakumar, learned counsel for the petitioner, Mr.S.Ravindran, learned Senior Counsel assisted by Ms.S.Mekhala appearing



for the Respondent No.3 and Mr.M.Murali, learned Government Advocate
appearing for the Respondent No.6.

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3. Mr.L.Chandrakumar contended that the impugned B.P.Ms.No.37 (Estt.(DP) WING) dated 27.07.2015 has the effect of imposing the punishment of compulsory retirement with retrospective effect, which is not permissible in terms of Rule 56 of the Fundamental Rules read with G.O (Ms) No.41, Personnel and Administrative Reforms (FR-III) Department, dated 28.04.2015 and therefore, the petitioner is deemed to have retired from service only on attaining the age of superannuation on 31.12.2012 (AN). He also further contended that by virtue of the orders passed by this Court quashing the punishment of dismissal from service imposed through Board Proceedings dated 07.02.2002, the petitioner is deemed to have been reinstated into service and continued till attaining the age of superannuation on 31.12.2012 and therefore, he is also entitled for all pay and allowances from 07.02.2002 till 31.12.2012 and thereafter, entitled for full pension. Though, he made an attempt to find fault with the manner in which the enquiry was conducted and the findings of the Enquiry Officer, rightly refrained from pursuing such submissions in view of the fact that this court



has already considered the said aspects and interfered only with the punishment on the ground of disproportionality. He also further contended that in terms of Fundamental Rule 54-B, retrospective punishment is not permissible and the petitioner is to be treated as the one continued beyond the age of superannuation because of the pendency of disciplinary proceedings. Thus, he contended that the petitioner is entitled for arrears of pay from the year 2002 to 2012 and also for full pension, consequent upon the imposition of punishment of compulsory retirement.

4. On the other hand, Mr.S.Ravindran, learned Senior Counsel appearing for the Respondents 1 to 5 contended that, the question of retrospective punishment does not arise in the instant case, as this Court while quashing the penalty imposed on the petitioner, remanded the matter back for imposing appropriate punishment and thereby, whatever the alternative punishment that is imposed would come into effect from the date of original order of punishment dated 07.02.2002 and he also further contended that it is not a case where this Court find fault with the findings of the Enquiry Officer or the procedure that was followed in the matter of concluding the disciplinary proceedings. He also further contended that another writ petition



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filed by the wife of Late.A.Appavu, who is also one of the delinquent officers, and subjected to disciplinary proceedings along with the petitioner herein, approached this Court by filing W.P.No.16385 of 2016, questioning an identical order vide B.P (Ms) No.36, dated 27.07.2015 and this Court, after examining the matter in detail, dismissed the said writ petition by an order dated 19.04.2023 and as such, the said order has direct bearing on the present writ petition and as such, the present writ petition is also liable to be dismissed. He also further contended that Fundamental Rules 54-B and 56, as well as G.O (Ms) No.41, Personnel and Administrative Reforms (FR-III) Department, dated 28.04.2015 have no application to the case on hand, as it is a case where the disciplinary proceedings were concluded originally as early as in the year 2002 and it is only pursuant to an order of remand passed by this Court, the present impugned B.P.Ms.No.37 (Estt.(DP) WING) dated 27.07.2015 came to be passed.

5. This Court has carefully considered the submissions made on either side and also perused the entire material on record.

6. Admittedly, the findings that are recorded on the twin charges that



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are framed against the petitioner by the Enquiry Officer as well as the disciplinary authority have become final. There is not much contest on the quantum of punishment of compulsory retirement imposed on the petitioner through the impugned Board Proceedings dated 27.07.2015. It is an admitted fact that the original order passed by the disciplinary authority dated 07.02.2002 was not quashed by this Court in its entirety in the earlier round of litigation, but it is only the punishment that was quashed on the ground of disproportionality. Thus, it cannot be said that the said proceedings dated 07.02.2002 is a non-existing order. Once the said proceedings and the guilt of the petitioner has become final, to the extent of finding the petitioner guilty of the charges levelled against him, the question of petitioner being automatically reinstated into service and continuing in service till the date of attaining the age of superannuation does not arise.

7. The Fundamental Rules 54-B and 56 and G.O (Ms) No.41, Personnel and Administrative Reforms (FR-III) Department, dated 28.04.2015 would only deal with the situation where the delinquent employee was allowed to continue after attaining the age of superannuation by extending his service and then final orders are passed at a later point of time.



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But that is not the case on hand. As already noted above, the disciplinary proceedings that were initiated against the petitioner were already concluded as early as in the year 2002 itself. But, for the orders passed by this Court remanding the matter on the ground of disproportionality of punishment, the proceedings would have attained finality. Therefore, in the considered view of this Court, the contentions of the learned counsel for the petitioner placing reliance on Fundamental Rules 54-B and 56 and G.O (Ms) No.41, Personnel and Administrative Reforms (FR-III) Department, dated 28.04.2015 does not stand for legal scrutiny. Hence, the contention that the punishment of compulsory retirement is imposed with retrospective effect cannot be accepted as this Court, while remanding the matter back to the respondents, permitted the respondents to impose the punishment other than dismissal from service and one which does not deprive the petitioner of full pension and amounts towards Death-cum-Retirement Gratuity etc., Thus, on imposing the punishment of compulsory retirement through Board Proceedings, the original punishment of dismissal from service etc., shall stand substituted with the new punishment of "compulsory retirement". Therefore, the contention of imposing the punishment retrospectively, is liable to be rejected.



8. Yet another ground for not agreeing with the contentions of the learned counsel for the petitioner is the order dated 19.04.2023 passed by this Court in W.P.No.16385 of 2016, whereby an identical contest made by the wife of the another delinquent officer was negatived by this Court by observing as under:-

“16. The case on hand is squarely applicable to the above mentioned cases. In the order passed in the writ petition, this Court only directed to impose a lesser punishment on the ground that the order of dismissal is harsh and not commensurate to the proved charges. However, that does not mean that the officials have been exonerated from the disciplinary proceedings or the charges against them are not proved. In other words, the husband of the petitioner was not given a clean chit by this Court, while passing the order in the writ petition. What was observed by this Court is that the punishment of dismissal from service is relatively harsh and it requires modification. Therefore, in compliance with such observation made by this Court, in the wisdom of the disciplinary authority, the punishment of compulsory retirement was imposed together with recovery of amount from the pensionary benefits. While so, this Court does not find any merit in



the grounds urged in this writ petition. In any event, there is no violation of the order passed by this Court in the order while modifying the punishment into compulsory retirement and the penalty of recovery of 1/3 rd of pension and gratuity under Rule 39 of the Tamil Nadu Pension Rule. Hence, this Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.”

9. During the course of hearing, this Court, having taken note of the contents of the impugned Proceedings, directed for production of a copy of the Board Proceedings, dated 23.04.2015, through which the punishment of 'compulsory retirement' was imposed on the petitioner by the Board of Management. Accordingly, a copy of the same is placed before this Court.

10. The operative of the B.P.Ms.No.37 (Estt.(DP) WING) dated 27.07.2015 reads as under:-

“Therefore the matter was placed before the Board Meeting held on 23.04.2015 for taking a final decision in this regard.

The Board in Its Resolution No. 5.12 dated



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23.04.2015 after carefully examining the files and connected records relating to the charges framed against Thiru R. Dorairaj, Assistant Engineer (u/s) in respect of the irregularities committed in the execution of works of the Udagamandalam Water supply improvements scheme, HADP Division, Ooty has Resolved as follows:-

The Board has **RESOLVED** to modify the punishment already awarded in B.P.Ms.No.48/ dt.07.02.2002 as "Compulsory Retirement."

Accordingly, the earlier punishment of dismissal from service and also to file civil suit to recover Rs.2,49,124/- being the loss to the Board awarded to Thiru R. Dorairaj, Assistant Engineer in B.P. Ms. No.48/dt. 07.02.2002 has been modified as "penalty of recovery of 1/3rd of pension and gratuity under Rule 39 of Tamilnadu Pension Rule".

From the perusal of the above, it is evident that the modified punishment that was imposed on the petitioner by modifying B.P (Ms) No.48, dated 07.02.2002 is "compulsory retirement". However, the Respondent No.3/ Managing Director, while issuing the impugned Board Proceedings, once again claimed to have modified the original punishment of dismissal from service as "penalty of recovery of 1/3rd pension and gratuity under Rule 39



of the Tamil Nadu Pension Rules, 1978”.

11. The resolution that was passed by the Respondent No.1 Board reads as under:-

*“The Board has **RESOLVED** to modify the punishment already awarded to Tvl.A.Appavoo, A.E.E., in B.P.Ms No.42/ dated 07.02.2002, Thiru R.Dorairaj, A.E., in B.P.Ms No.48/dated 07.02.2002 and B.S.Renganathan, E.E., in B.P.Ms.No.41/dt.07.02.2002 as Compulsory Retirement.”*

From the above, it is evident that the punishment that was imposed on the petitioner is only 'compulsory retirement'. There is nothing indicated in the said Board's resolution with regard to exercise of power under Rule 39 of the Tamil Nadu Pension Rules, 1978.

12. Rule 39 of the Tamil Nadu Pension Rules, 1978 reads as under:-

“39. Compulsory retirement pension.

(1) A Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity,



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W.P.No.5572 of



or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement.

Note. - ^Deleted

(2) Whenever in the case of a Government servant the Government passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these rules, the Tamil Nadu Public Service Commission shall be consulted before such order is passed.

Explanation. - In this sub-rule, the expression 'pension' includes gratuity.

(3) A pension granted or awarded under sub-rule (1) or as the case may be under sub-rule (2) shall not be less than the limit specified in sub-rule (5) of rule 43.”

From the above, it is evident that, as and when a Government Servant was compulsory retired from service as a measure of punishment, he may be granted by the authority competent to impose such penalty, pension or gratuity, or both at the rate not less than 2/3 and not more than full compensation pension or gratuity or both, admissible to him on the date of his



compulsory retirement.

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13. From the above, what is clear is that, it is only the authority competent to impose such penalty is competent to exercise the power under Sub-Rule (1) of Rule 39 of the Tamil Nadu Pension Rules, 1978.

14. In the instant case, admittedly, the authority competent to impose the penalty is only the Board of Management of respondent Board. Admittedly, the respondent Board of Management has not passed any order under Rule 39 of the Tamil Nadu Pension Rules, 1978. If the authority competent to impose the penalty, has not chosen to exercise power under Rule 39 of the Tamil Nadu Pension Rules, 1978 and reduce the pension and other benefits payable to the Government Servants while imposing the punishment of compulsory retirement, whether the Respondent No.3 herein is competent to exercise power under Rule 39 of the Tamil Nadu Pension Rules, 1978 or not is the question that needs to be addressed by this Court.

15. As seen from the resolution passed by the respondent Board dated



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23.04.2015, it is evident that the respondent/ Board, neither exercised power under Rule 39 of the Tamil Nadu Pension Rules, 1978 nor reserved such power to be exercised at a later point of time, either by the Board or by any other authority. The Respondent No.3, who is the Managing Director of the respondent Board, issued the consequential proceedings pursuant to the resolution dated 23.04.2015 passed by the respondent Board. However, while issuing the consequential Board proceedings, the Respondent No.3, having noted the contents of the resolution passed by the Board, has chosen to pass further orders purportedly modifying the original penalty, as the penalty of recovery of 1/3rd pension and gratuity under Rule 39 of the Tamil Nadu Pension Rules, 1978. As already noted above, the power under Rule 39 of the Tamil Nadu Pension Rules, 1978 is only available with the authority who is competent to impose the penalty. Admittedly, the Respondent No.3 herein is not the competent authority to impose the penalty on the petitioner. Therefore, the Respondent No.3 is under obligation to act strictly in terms of the resolution passed by the respondent Board dated 23.04.2015, but cannot transgress beyond the same. But, in the instant case, the Respondent No.3 has gone beyond the scope of the resolution passed by the respondent Board and issued the impugned Board proceedings dated 27.07.2015 and also issued the



consequential impugned letters, recovering 1/3rd of the pension of the petitioner and gratuity amount etc.,

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16. As this Court has come to the conclusion that the Respondent No.3 has acted beyond the scope of the resolution dated 23.04.2015 passed by the Respondent Board and is lacking any such power to pass such proceedings in contravention and in excess of the Board resolution, the impugned proceedings, to the extent of imposing the penalty of *“recovery of 1/3rd pension and gratuity under Rule 39 of the Tamil Nadu Pension Rules, 1978”* is liable to be declared as illegal, arbitrary and as the one passed without competence.

17. It is also settled legal position that unless, the competent authority to impose the penalty, reserves the right under Rule 39 of the Tamil Nadu Pension Rules, 1978 to be passed at a later point, while the imposing the punishment on conclusion of the disciplinary proceedings, such a power under Rule 39 of the Tamil Nadu Pension Rules, 1978 is not available even to the authority competent to impose the punishment and this Court has held as such in catena of decisions. The issue, whether the Respondent No.3 acted



in terms of the resolution passed by the Board or not in respect of Mr.Appavu or not has not come up for consideration in W.P.Nos.16385 of 2016 and hence, the same was not considered by this Court while passing the order dated 19.04.2023 in the said writ petition.

18. In the light of above, the impugned Board proceedings, to the extent of ordering for “*recovery of 1/3rd of the pension and gratuity under Rule 39 of the Tamil Nadu Pension Rules, 1978*”, is liable to be quashed and the same is accordingly quashed. Consequently, the consequential impugned letters dated 03.09.2015 are also liable to be quashed.

19. In the light of the conclusions arrived at above and the findings recorded by this Court, this Court does not find any error or illegality in the conclusions arrived at by the Respondent No.2, while issuing the impugned Letter dated 25.03.2019 and the same does not need any interference by this Court.

20. Accordingly, the respondents are further directed to recalculate the pension and other benefits payable to the petitioner by implementing the



punishment of compulsory retirement with effect from 07.02.2002 and pay all the amounts that are payable to the petitioner including arrears of pension with interest at the rate of 6% per annum as expeditiously as possible at any rate within a period of three months from the date of receipt of a copy of this order.

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

30.10.2024

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Chairman, Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai – 600 005.
2. The Managing Director, Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chepauk, Chennai – 600 005.
3. The Chief Engineer, Tamil Nadu Water Supply and Drainage Board,
TWAD Complex, Mattuthavani Bus Stand (Opp.),
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4. The Joint Chief Engineer, Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai, Chempauk, Chennai – 600 005.

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MUMMINENI SUDHEER KUMAR, J.

skr

5. The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St. George, Chennai – 600 009.

Pre-Delivery Order made in
W.P.No.5572 of 2020



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W.P.No.5572 of



30.10.2024