



W.P.No.9393 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 12.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.9393 of 2015

and

M.P.Nos.1 & 2 of 2015

V.Gnanamoorthy

....Petitioner

Vs

1. Government of TamilNadu,
Rep. By Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.

2. The Director of School Education,
Chennai – 600 006.

3. The District Educational Officer,
Namakkal.

4. The Assistant Elementary Educational Officer,
Rasipuram, Namakkal District.

....Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus calling for the records of the 4th respondent relating to Pro.Na.Ka.No.644/A/2009 dated 16.03.2015 to quash the same and to issue consequential directions to the respondents to permit the petitioner to retire on 31.03.2015 AN and not to recover the amount covered by the impugned order from the DCRG payable to the petitioner till the disposal of W.P.No22225 of 2008.



WEB COPY



W.P.No.9393 of 2015

For Petitioner : Mr.J.Muthu Kumar
for Mr.V.Thirupathi

For Respondents : Mrs.E.Ranganayaki
Additional Government Pleader

ORDER

The Writ Petition has been filed challenging the order of the 4th respondent dated 16.03.2015 in respect of the recovery of a sum of Rs.64,461/- from the petitioner's retirement benefits.

2. According to the petitioner, he was appointed on compensation ground as Office Assistant on 01.12.1972 in the Rural Development Department. After his probation was declared on 01.12.1972, he was transferred to Education Department on 01.06.1981 and has been working as Office Assistant in Panchayat Union Elementary School, Sikalamthapuram, Rasipuram Taluk, Namakkal District. While in service, disciplinary proceedings were initiated against him under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Based on the enquiry, vide G.O.(ID) No.369, School Education Department dated 13.11.2007, penalty of “Stoppage of increments for two years with cumulative effect” was passed as against the petitioner. Against which,



W.P.No.9393 of 2015

petitioner had filed Writ Petition before this Court in W.P.No.22225 of 2008. Pending Writ Petition, since the petitioner was due to attain superannuation, the impugned order came to be passed by the 4th respondent directing for the recovery of a sum of Rs.64,461/- from the retirement benefits of the petitioner due to the cancellation of benefits granted for the period from 01.01.2008 to 01.10.2009, in view of the punishment imposed against him. Challenging the impugned order, petitioner has preferred the present writ petition.

3. Mr.J.Muthukumar, learned counsel for the petitioner submitted that, even though the impugned order came to be passed based on the punishment imposed as against the petitioner for stoppage of increment for two years, subsequently the writ petition filed by the petitioner challenging the punishment came to be allowed on 28.07.2021. It is his further contention that, once the punishment has been set aside, the consequential order passed by the 4th respondent in respect of recovery of a sum of Rs.64,461/- from the retirement benefits of the petitioner is unsustainable. Thus, he prays for allowing the Writ Petition.



W.P.No.9393 of 2015

4. Mrs. E.Ranganayaki, learned Additional Government Pleader appearing for the respondents contended that, this order of recovery came to be passed in view of the punishment imposed against him and since, eventhough he had preferred a Writ Petition, there was no interim order passed at that time and since he was due to retire, the consequential recovery order came to be passed. Thus, he prays for dismissal of this Writ Petition.

5. Heard both sides and perused the materials available on records.

6. The petitioner while in service had been issued with charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and pursuant to the enquiry, vide G.O.(ID) No.369, School Education Dept., dated 13.11.2007, imposed punishment of “stoppage of increments for two years with cumulative effect “ as against the petitioner. Petitioner had challenged the punishment in W.P.No.22225 of 2008 and this Court by an order dated 28.07.2021 allowed the Writ Petition and set aside the order of punishment imposed against the petitioner. Para(3) of the order is extracted hereunder:



W.P.No.9393 of 2015

The duties of the Office Assistant is only a minial work.

He is not expected to work as a Clerk, preparing bills as well as submitting the hundis at the Treasury Office. From the evidence, it is also inferred that the Assistant Elementary Educational Officer has directed the petitioner to do the work in his office and in obedience to the order of his superior, the petitioner has carried out the work. Otherwise, he has nothing to do with the misconduct alleged against the Assistant Elementary Educational Officer. The findings of the Enquiry Officer mostly revolve around the misconduct committed by Assistant Elementary Educational Officer, and holds the charges proved. Incidentally, the charge against the petitioner was also held proved for dereliction of duty. In fact, this petitioner was not the competent person or holding the office of a clerk. He does not have the expertise or responsibility to discharge the functions of the concerned clerk. He obeyed the orders of the Superior and prepared the bills. As such, he cannot be made liable for not discharging the duties of the clerk. Therefore, for obeying the orders of the superior, the petitioner cannot be punished for the charge of misconduct, as such, is not proved against the petitioner, as he has no role or intention in committing this misconduct. Therefore, imposing the punishment of stoppage of increment for a period of two years with cumulative effect is not sustainable as against the petitioner. Therefore, this Court is inclined to



W.P.No.9393 of 2015

set aside the order of punishment issued vide G.O.Ms.(1D)

No.369 dated 13.11.2007 and accordingly, it is set aside.

7. Admittedly, the present impugned order for recovery of a sum of Rs.64,461/- came to be passed only in view of the punishment imposed as against the petitioner. When once the Writ Petition filed by the petitioner challenging the punishment imposed came to be allowed and the punishment has been set aside, necessarily the consequential impugned order passed for recovery of a sum of Rs.64,461/- cannot be sustained.

8. In view of the above, the Writ Petition is allowed and the impugned order is set aside. The respondents are directed to refund the sum of Rs.64,461/- to the petitioner if it has already been adjusted, within a period of four weeks from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.

12.09.2024

Index :Yes/No

Neutral Citation : Yes

Speaking order : Yes

Sma



W.P.No.9393 of 2015

To
WEB COPY

1. Government of TamilNadu,
Rep. By Secretary to Government,
School Education Department,
Secretariat, Chennai – 600 009.
2. The Director of School Education,
Chennai – 600 006.
3. The District Educational Officer,
Namakkal.
4. The Assistant Elementary Educational Officer,
Rasipuram, Namakkal District.



WEB COPY



W.P.No.9393 of 2015

G.ARUL MURUGAN, J

Sma

W.P.No.9393 of 2015

12.09.2024