



W.P.No.10777 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.03.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.10777 of 2020 and
W.M.P.No.13091 of 2020

AR.K.Prabu

...

Petitioner
Vs.

1.The Principal Secretary to Government,
Public Works Department,
Fort St.George, Secretariat, Chennai 600 009.

2.The Engineer-in-chief (WRD) &
Chief Engineer, PWD (General),
Chepauk, Chennai -5.

3.The Chief Engineer,
Water Resources Department,
Madurai Region, Madurai.

... 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 first respondent in G.O (4D) No.34 dated 23.04.2020 and consequential order passed in G.O.(D) No.164, dated 08.10.2021 and quash both orders and consequently direct the respondents to permit the petitioner to honourably retire with effect from 28.02.2018 AN and to sanction full pension, commutation, Gratuity and other terminal benefits along with interest.

(Prayer amended as per order dated 21.02.2024 in W.M.P.No.29505 of 2021 in W.P.No.10777 of 2020)



WEB COPY



W.P.No.10777 of 2020

For Petitioner : Mr.V.Vijayashankar
For Respondents : Mr.K.H.Ravikumar, GA

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in G.O (4D) No.34 dated 23.04.2020 and consequential order passed in G.O.(D) No.164, dated 08.10.2021 and quash both orders and consequently direct the respondents to permit the petitioner to honourably retire with effect from 28.02.2018 AN and to sanction full pension, commutation, Gratuity and other terminal benefits along with interest.

2. Heard Mr.V.Vijayashankar, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate for the respondents.

3. The allegations made against the petitioner and others is that while executing the rehabilitation of Pallapatti Old Anaicut, Kottankulam Anaicut across Palar at Pallapatti Village and Kottankulam Kanmai surplus courses of Kottampatti Village in Melur Village of Madurai



W.P.No.10777 of 2020

District, the work has been carried out in a substandard manner and the payments have been made to the Contractors to the tune of Rs.90,71,000/- without considering the quality of the work and thereby caused huge financial loss to the Government.

4. The Enquiry Officer who conducted the enquiry have given a report stating that the charges have not been proved. However, the third respondent disciplinary authority had not chosen to agree with the enquiry report and he recorded a dissent note after giving notice to the petitioner and others to make their submission and thereafter, the punishments have been imposed. So far as the petitioner is concerned he was imposed with the punishment of removal from service. So far as the charge is concerned, those charges are identical to the charges given to the other three officers who have been holding the post of Assistant Engineers. Excepting the petitioner, for other three officers, lesser punishment was imposed for withholding the increment for a period of two years with cumulative effect. The review petition preferred by the petitioner and others was also rejected.



W.P.No.10777 of 2020

5. The learned counsel for the petitioner submitted that when identical charges were given to the similarly placed officers, there should not be any comparative severity in the matter of punishment for the petitioner alone.

6. However, the learned Government Advocate for the respondents submitted that the petitioner being an Executive Officer and who is also the Division-in-charge, is responsible for the execution and management of all works within his division.

7. But in the order of punishment dated 23.04.2020 given by the first respondent, there is no specific reason stated as to why a different punishment has been imposed upon this petitioner by imposing the capital punishment of removal from service and in fact, the Enquiry Officer himself submitted a report stating that the charges are not proved.

8. In fact in the order of punishment passed against the other officers also, there is no reason stated for imposing the lesser punishment



W.P.No.10777 of 2020

against them. When similarly placed persons were enquired together on similar set of charges, but different punishments are awarded, then clear reasons should be stated as to why the capital punishment of removal from service has been imposed for one person alone. Using substandard products for Government construction is no doubt a fraud and it causes loss to the Government. But it has to be shown that the petitioner alone was responsible for the said misconduct and that he had wantonly favoured some individuals by settling their bills without making due scrutiny.

9. In support of his submission, the learned counsel for the petitioner drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of *Anand Regional Coop.Oil Seedsgrowers' Union Ltd., Vs. Shaileshkumar Harshadbhai Shah, reported in 2006 (6) SCC 548*, the relevant paragraphs of the said judgment are extracted hereunder:

"27. There is, however, another aspect of the matter which cannot be lost sight of. Identical allegations were made against seven persons. The Management did not



WEB COPY

take serious note of misconduct committed by six others although they were similarly situated. They were allowed to take the benefit of the voluntary retirement scheme.

28. The first respondent might not have opted therefor. However, having regard to the peculiar facts and circumstances of this case, he should be, in our opinion, treated on a similar footing. In view of the fact that the first respondent has succeeded in the Labour Court and the learned Single Judge as also the Division Bench; we are of the opinion that having regard to the overall situation, the interest of justice would be subserved if the award of the Labour Court dated 31.01.2003 as affirmed by the High Court is substituted by a direction that the first respondent shall also be given the benefit of voluntary retirement scheme from the month in which the other workmen were given the benefit thereof."

10. The learned counsel for the petitioner submitted that the petitioner should also be treated on similar footing with the other persons who have been imposed with the lesser punishment.



W.P.No.10777 of 2020

11. In fact, in the above judgment cited by the learned counsel for the petitioner, permission was granted to the delinquent to go on Voluntary Retirement. The first respondent had chosen to remove the petitioner from service without stating any specific reason. Hence, I feel the order of punishment passed against the petitioner should be re-visited by the first respondent and an order should be passed afresh, without disturbing the status-quo of removal of service till such orders are passed.

12. In view of the above stated reasons, this Writ Petition is allowed and the order passed by the first respondent in G.O.(D) No.164, dated 08.10.2021 is set aside and the first respondent is directed to revisit the order passed by him in the review petition filed by the petitioner in the light of the above judicial pronouncement and pass orders afresh within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
gsk

13.03.2024



WEB COPY



W.P.No.10777 of 2020

R.N.MANJULA, J.

gsk

To

- 1.The Principal Secretary to Government,
Public Works Department,
Fort St.George, Secretariat, Chennai 600 009.
- 2.The Engineer-in-chief (WRD) &
Chief Engineer, PWD (General),
Chepauk, Chennai -5.
- 3.The Chief Engineer,
Water Resources Department,
Madurai Region, Madurai.

W.P.No.10777 of 2020 and
W.M.P.No.13091 of 2020

13.03.2024