



W.P.No.20365 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.20365 of 2021 and
W.M.P.Nos.21618 & 21619 of 2021

V.Subramania Sivam

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.

2.The Commissioner of Revenue Administration,
Chepuak, Chennai 600 005.

3.The District Collector,
Erode District, Erode.

4.The Revenue Divisional Officer,
Gobichettipalayam,
Erode District.

5.The Tahsildar,
Gopichettipalayam Taluk,
Erode District.

6.The Principal Accountant General (A&E),
Tamil Nadu, Chennai 600 018.

... Respondents



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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 fourth respondent relating to Na.Ka.No.309/2009/B1, dated 16.02.2021 to quash the same and to issue consequential directions to the fourth respondent (1) to regularize the period of suspension from 13.06.2000 to 31.05.2001 as duty for all purposes; (2) to fix the petitioner's pay on that basis; and to grant all benefits to the petitioner with interest on the delayed payment within a limited time frame.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.Abishekmurthy for R1 to R5
Mr.Vijayashankar for R6

ORDER

This Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the fourth respondent relating to Na.Ka.No.309/2009/B1, dated 16.02.2021 and quash the same and issue consequential direction to the fourth respondent to regularize the period of suspension from 13.06.2000 to 31.05.2001 as duty for all purposes; to fix the petitioner's pay on that basis; and to grant all benefits to the petitioner with interest on the delayed payment within a limited time frame.



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2. Heard Mr.M.Ravi, learned counsel for the petitioner, Mr.Abishekmurthy, learned counsel for the respondents 1 to 5 and Mr.Vijayashankar, learned counsel for the 6th respondent.

3. The petitioner who was aggrieved over the order of dismissal from service, had filed a Writ Petition in W.P.No.30236 of 2008 and the said Writ Petition was allowed by this Court on 23.08.2010 and the order of dismissal was set aside and the petitioner was reinstated into service from 01.06.2001 to 30.06.2010 with entitlement of all consequential monetary and service benefits. Aggrieved over the same, the respondents filed an appeal in W.A.No.2484 of 2012 and the same was partly allowed by this Court on 16.04.2021 by modifying the order of the learned single Judge by restricting the entitlement of the salary between 01.06.2001 to 30.06.2010 at 50% only. The relevant paragraphs are extracted hereunder:

“13. The said judgment dated 16.07.2019, rendered by a Division Bench of this Court in Writ Appeal No.2710 of 2018, filed against the order dated 26.06.2018 passed in Writ Petition No.14173 of 2013, applies to the facts of this case. Though pendency of the criminal case is not a bar for



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the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018,



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without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition.

14. For all these reasons, we set aside the order dated 27.03.2019 made in WP No. 17616 of 2018. The Writ Appeal is allowed. No costs. Consequently, the connected CMP No. 15504 of 2019 is closed.”

4. The said order has been implemented subsequently by the 4th respondent *vide* his proceedings dated 13.02.2013 on attainment of superannuation of the petitioner. However, it is ordered that the petitioner is permitted to retire without prejudice to the criminal case pending before the Chief Judicial Magistrate, Namakkal in C.C.No.9 of 2002.

5. Mr.M.Ravi, learned counsel for the petitioner submitted that the criminal case has also ended in acquittal on 04.11.2017. However, the 4th respondent has issued the charge memo on 16.02.2021, on the same allegations made in the criminal case. The occurrence has taken place in



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the year 1992 and the charge memo has been issued after 19 years. The Disciplinary action has been initiated parallely to the criminal proceedings which were pending against the petitioner. As per Rule 9 (2) (b) of Tamil Nadu Pension Rules, 1978, if the departmental proceedings are not instituted while the Government servant was in service, no such proceedings can be instituted any time later. The Rule 9 (2)(b) of the Tamil Nadu Pension Rules reads under:

“(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment.

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the Procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

6. The learned counsel for the respondents 1 to 5 submitted that just because the petitioner got acquittal in criminal proceedings, he



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cannot claim that no disciplinary action can be taken against him. Since the disciplinary action can also be pallellely initiated against the petitioner, the charge memo has been served upon the petitioner.

7. The learned counsel for the petitioner further submitted that the earlier disciplinary proceedings initiated against the petitioner has got nothing to do with the allegations involved in the criminal case because the period of occurrence is different from that of the charges for which the disciplinary proceedings have been already taken. So far as Rule 17(b) of Tamil Nadu Civil Services (Disciplinary & Appeal) Rules is concerned, that can be taken only against those employees who continued to be in service. The rule itself would say that such action can be initiated only against the member to the service or the person holding civil post under the State and against whom the major penalties are proposed in the disciplinary action to be initiated against him.

8. It is also submitted by the learned counsel for the petitioner that despite the petitioner was allowed to retire, he was not given with any retirement benefits and the orders of this Court in this regard in W.P.No.30236 of 2008 dated 23.08.2010 and W.A.No.2484 of 2012 dated



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16.04.2021 are also not implemented.

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9. In the instant case, the petitioner attained the age of superannuation as early as on 30.06.2010 and the employee-employer relationship is seized to have exist from then onwards. The order of allowing the petitioner to retire has been given without prejudice to the criminal case pending before the Chief Judicial Magistrate, Namakkal in C.C.No.9 of 2002. The criminal case also ended in acquittal. The charge against the petitioner in the criminal proceedings is that the petitioner had demanded and obtained bribe from several persons to execute his official duties. None of the witnesses were seen to have supported the case of the prosecution. In the charge memo, the allegations seem to have been made in respect of the incidents said to have taken place in the year 1998.

10. It is needless to state that as per Rule 9(2)(b), no departmental proceedings can be initiated against the employee who is retired from service in respect of any event that took place more than four years before. The allegations now made in the charge sheet pertains to the year 1998. The petitioner got retirement on 30.06.2010. So the allegations



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made in the charge sheet are pertaining to the incidents that are taken place more than four years before and further 17(b) charges cannot be issued against the retired employee. Since the charge memo has been given in utter violation of the above rules, is liable to be set aside.

11. In the result, this Writ Petition is allowed and the order of the fourth respondent passed in Na.Ka.No.309/2009/B1 dated 16.02.2021 is set aside. The respondents are directed to implement the orders passed by this Court in W.P.No.30236 of 2008 dated 23.08.2010 and W.A.No.2484 of 2012 dated 16.04.2021 and pass appropriate orders by settling the terminal benefits of the petitioner without any further delay along with interest at the rate of 6%, if any, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes /No
Internet : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes /No
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To

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Revenue Department,
Secretariat, Chennai 600 009.
- 2.The Commissioner of Revenue Administration,
Chepuak, Chennai 600 005.
- 3.The District Collector,
Erode District, Erode.
- 4.The Revenue Divisional Officer,
Gobichettipalayam,
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R.N.MANJULA, J.

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