



W.P. No.26935 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HONOURABLE **Mr. JUSTICE MUMMINENI SUDHEER**
KUMAR

W.P. No.26935 of 2017
and W.M.P.Nos.28719 & 28720 of 2017

R.Elangovan

.. Petitioner

Versus

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Public Works Department,
Fort St. George,
Secretariat,
Chennai – 600 009.

2. The Engineer-in-Chief (Buildings) and
Chief Engineer (Buildings),
Chennai Region,
Public Works Department,
Chepauk,
Chennai – 600 005.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus, calling for the records
of the first respondent pertaining to the orders issued in G.O.(D) No.349,
Public Works (E2) Department dated 23.09.2017 and quash the same and
consequently direct the respondents to grant to the petitioner all attendant



W.P. No.26935 of 2017

benefits, including promotion, seniority, pay and increment and place the petitioner status quo ante to the order of suspension issued vide G.O.(D)

No.301, Public Works (E2) Department, dated 23.08.2011.

For Petitioner : Mr.Richardson Wilson
for M/s. Wilson Associates

For Respondents : Mr.M.Murali
Government Advocate

ORDER

This writ petition has been filed challenging the order passed by the first respondent in G.O.(D) No.349, Public Works (E2) Department dated 23.09.2017 and to direct the respondents to grant to the petitioner all the attendant benefits, including promotion, seniority, pay and increment.

2. While the petitioner was working as Assistant Executive Engineer, disciplinary proceedings were initiated against him and he was placed under suspension through G.O.(D) No.301 Public Works Department dated 23.08.2011 and thereafter, a charge memo dated 19.11.2013 containing two charges was issued against him. The said charges reads as under:

“ Charge No.1:

That Thiru R.Elangovan, Assistant Executive Engineer (Under Suspension) PWD, who is well aware of the Government Servants Conduct Rules, in his former capacity as the Assistant Engineer and Assistant Executive Engineer of P.W.D., by abuse of his official



W.P. No.26935 of 2017

position, had registered his family members as contractors in the name and style of Vijayamani Contractors Private Limited, Madurai, as Class I Contractor in Public Works Department and participated in tenders and executed the works through the above said firm, in the divisions and circles of Water Resources Organisation / Public Works Department for a total agreement value of Rs.2773.85 Lakhs, during the years 2005-06, 2006-07, 2009-10, 2010-11 and 2011-12, had failed to intimate the fact of registration of his family members as Contractors in the Public Works Department to the Competent Authority or to obtain the sanction of the Competent Authority and thus violated the Rule 6(2) and 8(1) of Tamilnadu Government Servants Conduct Rules 1973.

Charge No.2:

That Thiru R.Elangovan, Assistant Executive Engineer (Under Suspension) PWD in his former capacity as Assistant Engineer, PWD and Assistant Executive Engineer, PWD, by violating the Government Servants Conduct Rules, in the above said manner has failed in his duties and responsibilities as warranted under Rule 20 of Tamilnadu Government Servants Conduct Rules, 1973.”

3. Thereafter, an Enquiry Officer was appointed and after conducting elaborate enquiry, the Enquiry Officer submitted his report dated 20.01.2014 holding that the charges levelled against the petitioner are not proved. The operative portion of the said Enquiry Officer report reads as under:

“ (10). According to the established procedure, the findings



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W.P. No.26935 of 2017

of the inquiry officer should be based on evidence adduced during the oral inquiry. Accordingly, I have gone through all the documents available, the evidence adduced by the witnesses and the relevant provisions of Tamil Nadu Government Servants Conduct Rules, 1973 and thus come to the following conclusions:

i) Tmt.R.Parvathiammal is not a member of the family of Thiru. R.Elangovan.

ii) Tmt.R.Parvathiammal is the sole proprietor of Vijaymani Contractor Private Limited except the participation of Thiru.E.Vijayaraja in Vijaymani Contractor Private Limited is for a sum of Rs.1000/- only as a gift and there is no evidence that he is engaged in trade or business. The said share for Rs.1000/- (Rupees One thousand only) as gift alone is the investment in share which is a movable property for which no intimation / prior notice is necessary according to the provisions of conduct rules.

iii) Thiru.R.Elangovan has no role in the Vijaymani Contractor Private Limited. He has not participated in any tenders and executed any works on behalf of the company.

iv) Thiru.E.Vijayaraja has not engaged himself in any trade or business.

v) There is no financial loss to government and the delinquent officer has not earned any pecuniary benefits.

Hence there is no obligation on the part of Thiru.R.Elangovan to intimate the fact of registration of Vijaymani Contractor Private Limited as Contractor in the Public Works Department to the competent authority or to obtain the sanction of competent authority under Rule 6(2) & 8(1) of Tamil Nadu Government Servants Conduct Rules, 1973.”



W.P. No.26935 of 2017

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4. It is thereafter the Disciplinary Authority having disagreed with the conclusions arrived at by the Enquiry Officer, communicated the reasons for such disagreement and afforded an opportunity to the petitioner and thereafter passed a final order through Government Order in G.O.(D) No.244 Public Works (E2) Department dated 28.08.2014, imposing the punishment of withholding of increment for a period of six months without cumulative effect on the petitioner.

5. It is aggrieved by the said order dated 28.08.2014, the petitioner had approached the Madurai Bench of this Court by filing Writ Petitions in W.P.(MD) Nos.8127 & 8128 of 2016 and the said writ petitions were also allowed by a learned single Judge of this Court by order dated 03.04.2017 on the ground that the order of punishment is cryptic in nature and accordingly remanded the matter back to the first respondent. The relevant portion of the said order passed by this Court reads as under:

“ .. 9. Except stating that further representation of the petitioner and connected records are considered, there is no discussion or consideration of the case of the petitioner on merits. The order of the first respondent is, therefore, cryptic and without



W.P. No.26935 of 2017

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reasons. Hence, the impugned order cannot stand and therefore, it is set aside. Since the consequential order in the review petition is also cryptic, without assigning any reason, this Court set aside the order impugned in the writ petitions. However, the respondents are given liberty to pass orders afresh, after considering the further representation and explanations offered by the petitioner and giving a personal hearing to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. The order impugned in W.P.(MD) No.8128 of 2016 is also consequential to the impugned order, vide G.O.(D) No.244 Public Works (E2) Department, dated 28.08.2014. Since G.O.(D) No.244 Public Works (E2) Department, dated 28.08.2014 is quashed, this Court set aside the consequential order, giving liberty to the respondents to pass appropriate orders depending upon the final order that may be passed pursuant to the direction of this Court in W.P.(MD) No.8127 of 2016.”

6. It is pursuant to the said order, the first respondent having afforded an opportunity of personal hearing to the petitioner, passed the impugned order in G.O.(D)No.349 Public Works (E2) Department dated 23.09.2017 imposing the very same punishment of withholding of increment for a period of six months without cumulative effect on the petitioner. It is aggrieved by the said order dated 23.09.2017, the petitioner has once again approached this Court by filing the present writ petition.

7. Heard Mr.Richardson Wilson, the learned counsel appearing for the



W.P. No.26935 of 2017

petitioner and Mr.M.Murali, the learned Government Advocate appearing for the respondents and also perused the entire material available on record.

8. From the perusal of the materials available on record especially the report of the Enquiry Officer it is noticed that the Enquiry Officer after examining various witnesses and after considering the documentary evidence, came to a conclusion that the charges framed against the petitioner are not proved and also further concluded that the petitioner has not violated the conduct rules as alleged in the charges. Elaborate reasons have been furnished by the Enquiry Officer in his report which runs to several pages. However, as it is seen from the impugned order the first respondent having observed that the company which was registered in the name of the mother of the petitioner when he was in the department and his son had been a shareholder in the company which was executing works in the department and no intimation was given by the petitioner to the competent authority about the registration of family member as a contractor, held that Charge No.1 is proved. Thereby, the impugned punishment came to be imposed on the petitioner.

9. No doubt the said company which was registered in the name of the



W.P. No.26935 of 2017

mother of the petitioner was registered while the petitioner was working in the department and his son also appears to be a shareholder in the company.

As seen from the report of the Enquiry Officer, it is only in case if any family member of the petitioner is a Contractor working in Public Works Department in which the petitioner is employed, the petitioner is under obligation to intimate the said fact to the department or should obtain a prior permission before enrolling the family member as Contractor. The Enquiry Officer having gone into this aspect and discussed in elaborate and came to a conclusion that the mother of the petitioner did not fall within the definition of “Family” as defined under the Tamil Nadu Government Servants Conduct Rules, 1973.

10. So far as the issue that the son of the petitioner being a shareholder in the said company is concerned, the Enquiry Officer having referred to the above rules came to the conclusion that there is no obligation on the part of the petitioner to give intimation to the department about his son being gifted with shares worth Rs.1,000/- and only in case if a gift is received by the son of the petitioner valuing more than Rs.5,000/-, the petitioner is under obligation to intimate such gift to the competent authority. Thus the Enquiry Officer came to a conclusion that the petitioner has not violated any of the



W.P. No.26935 of 2017

conduct rules and also recorded the finding that the mother of the petitioner had not executed any works on behalf of the company within the jurisdiction of the petitioner herein at any point of time nor there was any involvement of the petitioner in execution of the said works nor any favours are extended in favor of the said company either by the petitioner or the petitioner has influenced any of the department officials. As a matter of fact several other departmental officials were also examined and thus categorically stated that the petitioner never involved in contract works that were executed by the company of the petitioner's mother.

11. As against the said detailed findings that are recorded by the Enquiry Officer basing upon the oral and documentary evidence, the first respondent while passing the impugned order jumped into a conclusion without placing reliance on any material but only on assumptions and presumptions. It is not open to the first respondent to discord the detailed findings of the Enquiry Officer without assigning sufficient reasons. Except recording his conclusions the first respondent has not assigned any reasons for differing with the findings of the Enquiry Officer. For the very same reason, this Court has already interfered with punishment on an earlier occasion and remanded the matter back to the first respondent for



W.P. No.26935 of 2017

reconsideration. In spite of the same, the first respondent had once again acted in the very same manner and jumped to a conclusion holding that the Charges Nos. 1 and 2 are proved against the petitioner by discarding the elaborate and detailed findings of the enquiry officer. In view of the same, the impugned order cannot be sustained.

12. As the matter is already remanded back to the first respondent by this Court once and the first respondent has once again committed the very same mistake and also taking into consideration the fact that the punishment imposed on the petitioner is also a minor punishment and the petitioner had already attained the age of superannuation and retired from service on 31.05.2022, this Court is not inclined to remand the matter back once again to the first respondent and is of the considered view that the matter should be closed at this stage.

13. In so far as consequential relief for consideration of case of the petitioner for promotion is concerned, as is seen from the materials available on record and as submitted by the learned counsel for petitioner the case of the petitioner was already considered for promotion to the post of 'Superintendent' and during the pendency of the writ petition he was retired



W.P. No.26935 of 2017

from service in the said cadre. Therefore, no consequential relief relating to consideration of the case for promotion need be made in this writ petition.

14. In the result, this Writ Petition is allowed and impugned order passed by the first respondent in G.O.(D) No.349, Public Works (E2) Department dated 23.09.2017 is hereby quashed and the respondents are directed to grant the petitioner all the consequential benefits within a period of two months from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

22.07.2024

Index:Yes / No
Speaking order / Non speaking order
Neutral Citation Case: Yes / No
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W.P. No.26935 of 2017

MUMMINENI SUDHEER KUMAR, J.

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Copy To:

1. The Principal Secretary to Government,
State of Tamil Nadu,
Public Works Department,
Fort St. George, Secretariat, Chennai – 600 009.
2. The Engineer-in-Chief (Buildings) and
Chief Engineer (Buildings),
Chennai Region, Public Works Department,
Chepauk, Chennai – 600 005.

W.P. No.26935 of 2017

22.07.2024