



W.A(MD)Nos.308 and 309 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

W.A(MD)Nos.308 and 309 of 2021

and

C.M.P(MD)Nos1066 & 1068 of 2021

and

C.M.P(MD)Nos.7745 & 7746 of 2022

1.The State of Tamil Nadu rep. by
The Principal Secretary to Government,
Public Works Department,
Secretariat,
Chennai – 600 009.

2.The Engineer-in-Chief (Buildings),
Office of the Engineer-in-Chief (Buildings),
Chief Engineer (Buildings),
Chennai Region & Chief Engineer (General),
Chepauk, Chennai – 600 005.

3.The Chief Engineer (Buildings),
Public Works Department,
Madurai Region, Madurai.

4.The Superintending Engineer,
Public Works Department,
Building (Construction & Maintenance) Circle,
Tirunelveli.

.... Appellants/Respondents



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P.Manisekaran

Vs.

... Respondent/Petitioner

Common Prayer:- Writ Appeals are filed under Clause 15 of Letter Patent to allow these Writ Appeals and to set aside the order dated 20.01.2020 passed by this Court in Writ Petition(MD)Nos.10710 and 10711 of 2018.

In Both Appeals:

For Appellants : Mr.A.Baskaran
Additional Government Pleader
For Respondent : Mr.K.Vadivelu

COMMON JUDGMENT

(Judgment of this Court was delivered by P.VADAMALAI, J.)

These Writ Appeals are preferred by the respondents in W.P.(MD)Nos.10710 and 10711 of 2018 challenging the orders dated 20.01.2020 passed by the learned Single Judge of this Court quashing the impugned order passed by the 1st respondent therein and entitling the petitioner therein to retirement benefits and directing the appellants herein to disburse the retirement benefits within a period of two weeks from the date of receipt of order passed in Writ Petitions.



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2. The facts are minimal and they are stated below:

(i) The respondent Mr.P.Manisekaran was working as Executive Engineer in the appellant department. He was due to superannuation on 30.04.2018. During his tenure, "Construction of Workshop and Class Room for hearing and speech impaired students in the Government ITI Campus" in Government ITI Nagercoil was ordered to be constructed by the appellants. The respondent was the supervising authority. It was alleged that the respondent made a fraudulent payment of Rs.3,900/- to the contractor who had not executed the installation of one 0.5 HP Mono Block Motor in the campus. Based on discreet enquiry report of the Special Chief Engineer (PWD), dated 26.04.2018, the appellants passed impugned charge memos and placed the respondent under suspension also not permitting him to retire on superannuation. Hence, the respondent moved Writ Petitions before this Court under Article 226 of the Constitution of India to quash the charge memo, suspension order and to direct the appellants to settle the retirement benefits.

(b) Before the learned Single Judge, the respondent herein placed reliance on a letter of the Principal of Government ITI, Nagercoil, dated



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07.05.2018 that one Half HP Mono Block Motor was installed in Marine Engine Fitter Department and also relied on G.O.(MS)No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007.

(c) The appellants as respondents in Writ Petitions contended that the respondent herein was involved in serious irregularity of financial misappropriation and also based on the report of the Investigating Agency, charge memo was passed and the respondent was placed suspension.

3. The learned Single Judge took the view that the alleged work was commenced on 10.08.2015 and completed on 10.02.2016, whereas the impugned order was made after three years which has absolutely no reference or justification as to what prompted the appellants to wait for almost three years therefrom, to initiate action for the alleged failure to check and measure the construction work. The charge memo issued is also against the guidelines of G.O.(Ms). No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007. The learned Single Judge passed an order on the above facts and also relied on the **Hon'ble Supreme Court in the case of P.V.Mahadevan vs. Managing Director, Tamil Nadu**



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Housing Board, reported in 2005 (4) CTC 403 and the decision of this Court in the case of M.Nainar Mohammed vs. The State of Tamil Nadu reported in 2017 (5) CTC 536.

4. The order of the learned Single Judge is now under challenge, at the instance of the respondents in the Writ Petitions.

5. The learned Additional Government Pleader strongly canvassed the case of the appellants by arguing that the learned Single Judge ought to have considered Paragraph No. 5(ii) of the G.O.(Ms).No.144, Personnel and Administrative Reforms (N) Department dated 08.06.2007, which reads as follows:

"5(ii) If an irregularity or an offence committed by the Government Servant comes to the notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government Servant to retire from service without prejudice to the disciplinary



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case pending against him or to place him under suspension, based gravity of the irregularity committed by him."

But, the learned Single Judge ought not to have observed that the appellants have not followed the guidelines of the said G.O.

6. It is further contended by him that the 2nd appellant reported in his letter No.CII(3)/2240/2018-2, dated 28.04.2018 that the respondent and two others were responsible for misappropriation of Government money of Rs.3,900/- by not installing 0.5 HP Mono Block Motor in the alleged construction.

7. It is the further argument of the learned Additional Government Pleader that the respondent placed reliance on the letter dated 07.05.2018 of the Principal of Government, ITI, Konam, which is after the charge memo. Further, in that letter, it was stated that the motor was installed in Marine Engine Fitter Department, but in the charge memo, the motor was not fitted in the workshop and classroom (fitter trade) for hearing and speech impaired students. so, the learned Single Judge ought not to have



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appreciated the said letter of the respondent.

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8. The learned counsel for the respondent vehemently contended that the appellants initiated departmental proceedings against the respondent for the commission of work during the year 2015- 2016 and there is no complaint of non installation of motor. As per the appellant's case, the motor was installed in some other room. The charge memo and suspension were passed just a few days before the respondent's superannuation, who put more than 25 years of service.

9. We have heard the learned counsel appearing for the respective parties.

10. It is admitted that the construction work was commenced on 10.08.2015 and completed on 10.02.2016. It is the charge memo issued by the appellants that the respondent, who is supervising authority, passed payment of Rs.3,900/- to the contractor towards non-installation of one Half HP Mono Block Motor, based on the 2nd appellant's report in his letter No.CII(3)/2240/2018-2, dated 28.04.2018. The respondent produced a



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letter of the Principal Government, ITI, Konam, dated 07.05.2018 showing the fitting of 0.5 HP Motor. Now, the appellants claim that the letter was after the charge memo, moreover, the Principal stated about the installation of motor at the Marine Engine Fitter Department, but the charge is regarding not fitting the motor in workshop and classroom (fitter trade) for hearing and speech impaired students. Therefore, a half HP Mono Block Motor was fitted in the alleged construction admitted. At this juncture, why the appellants have not called for any report regarding the installation of motor from the Principal of concerned ITI on receipt of the discreet enquiry report and there is no acceptable explanation shown by the appellants about what prevented the appellants to call for such report regarding installation of motor. The appellants have not shown the actual work with breakup particulars for the alleged construction during the year 2015-2016. It is the case of the appellants that the respondent sanctioned Rs.3,900/- towards motor, which is for one motor or more, there is no acceptable material placed by the appellants.



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11. It is trite to say here that disciplinary proceedings are to be commenced soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. There is considerable delay in finding out the alleged non-fitting of motor in a constructed premises by the appellants, which occurred between 10.08.2015 and 10.02.2016. There is no material or statement of the alleged contractor.

12. Though the appellants contended that the respondent has the opportunity to contest the charge memo before the inquiry officer, it is to be noted here that the appellants have not issued any show cause notice calling for explanation from the respondent for the alleged non fitting of motor before issuing charge memo and suspension order, in the interest of natural justice. Because, observance of principles of nature justice is of cardinal importance for the employee who put more than sufficient years of public service. It is not the case of the appellants that the respondent was involved in such irregularities in his previous service. Denial of opportunity can have very serious consequences. In this case, the principles of natural justice were not complied with. On this ground, the order of the learned Single Judge would



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support the respondent. The rulings stated by the appellants in the appeal grounds are not applicable to the facts and circumstances of this case. Therefore, this Court is not inclined to accept the submissions as canvassed by the learned Additional Government Pleader.

13. In conclusion, this Court agrees with the line of reasoning of the learned Single Judge and confirms his order.

14. Accordingly, these Writ Appeals are dismissed and the common order of the learned Single Judge, dated 20.01.2020 in W.P(MD)Nos.10710 and 10711 of 2018 are confirmed, with a direction to the appellants to disburse the retirement benefits payable to the respondent within a period of four weeks from today. No costs. Consequently, connected Miscellaneous Petitions are closed.

(N.S.S.,J.) (P.V.M.,J.)
16.07.2024

Index : Yes/No
Internet : Yes/No
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