



WP(MD). No.25092 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.12.2024

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THE HONOURABLE MR. JUSTICE B.PUGALENDHI

WP(MD)No.25092 of 2022

T.Jeyasekar

... Petitioner

versus

1. The Principal Secretary to Government,
Revenue and Disaster Management Department,
Secretariat,
Chennai 600 009.
2. The Director of Survey and Settlement,
Survey House,
Chepauk,
Chennai 600 005.
3. The Regional Deputy Director,
Survey and Land Records,
Madurai.
4. The Assistant Director of Survey and Land Records,
District Survey Office,
Sivagangai - 630 561.

... Respondents

Writ Petition filed under Article 226 of Constitution of India,
praying this Court to issue of a Writ of Certiorarified Mandamus calling



WP(MD). No.25092 of 2022

for the records of the third and second respondents i.e., the Regional Deputy Director of Survey and Land Records, Madurai in his proceedings in R.C.A3/ 1081/2019 dated 25.02.2019 and the Director of Survey and Settlement, Chennai in his proceedings No.Na.Ka. Ga2/ 9586/2022 (Ni.A) dated 22.08.2022 and quash the same and consequently direct the first respondent i.e., the Principal Secretary to Government, Revenue and Disaster Management Department, Chennai to notionally promote the petitioner as Superintendent as per the inclusion of the petitioner's name in S.No.26 in the approved list of the year 2012-2013 and arrange to send revised pension proposals in the cadre of Superintendent within a specified time frame that may be fixed by this Court.

For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner, while serving as Assistant in the office of the 4th respondent, was issued with a charge memo. He has submitted his explanation to the charge memo on 12.12.2018. Thereafter, an Enquiry Officer was appointed and after the enquiry, the Enquiry Officer has submitted his report on 22.12.2018. The disciplinary authority, namely, the 4th respondent, after considering the Enquiry Officer's report that the



WP(MD). No.25092 of 2022

charges were not proved, dropped the disciplinary proceedings initiated against the petitioner. Thereafter, the 3rd respondent/appellate authority suo motu examined the issue and imposed a punishment of stoppage of increment for a period of six months without cumulative effect and also directed the 4th respondent to implement the punishment, by his proceedings in Na.Ka.No.A3/1081/2019 dated 25.02.2019. The petitioner was due to retire on superannuation on 28.02.2019. Challenging the order of punishment, the petitioner has preferred an appeal before the appellate authority and the same was rejected by the appellate authority by order dated 22.08.2022. Challenging the order of punishment dated 25.02.2019 and the order of the appellate authority dated 22.08.2022, the petitioner has filed this writ petition.

2. The learned counsel appearing for the petitioner submits that the 3rd respondent ought not to have imposed the punishment and it cannot be implemented. When no increment is due to be accrued, the punishment of stoppage of increment cannot be ordered. Therefore, the order of punishment is liable to be set aside.

3. The learned Additional Government Pleader submits that as per



WP(MD). No.25092 of 2022

the proviso to Rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in cases where the penalty of withholding of increment cannot be given effect to fully for any contingency that arose after the penalty of withholding of increment is imposed, the monetary value equivalent to the amount of such increments that cannot be given effect to shall be recovered from the person. Therefore, the order of punishment can be implemented as per the second proviso to Rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and they have also recovered a sum of Rs.11,772/- (the monetary value equivalent to the amount of withholding of increment) from the petitioner.

4. The learned counsel for the petitioner has relied on a Judgment of the Division Bench of this Court in W.A.(MD)No.239 of 2007, dated 03.09.2007, wherein, the Division Bench of this Court, considering the the meaning of Contingency, as provided under Rule 8(iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, has dealt with the issue in detail and passed an order as under:

“6. The second proviso itself makes it clear that such proviso can be made applicable only when the punishment of withholding of increment cannot be



implemented on account of any contingency that arises after the imposition of penalty. The expression of “contingency” means as per Oxford Dictionary “a future event or circumstance which is possible but cannot be predicted with certainty”. It obviously cannot mean an event which was a normal and inevitable incident of employment namely routine retirement on attaining the age of superannuation. No “contingency” arose in the present case, as the delinquent retired on 31.03.2007 in normal course. The second proviso, added by virtue of G.O.Ms.No.113, Personnel and Administrative Reforms (N) Department dated 02.08.2006, is thus not applicable.

7. The second proviso is applicable only on account of any contingency that arises after the penalty of withholding of increment imposed and the order cannot be given effect to. In this case, the retirement of a person is normal on the date of superannuation and it cannot be construed as a “contingency” arising after the imposition of penalty. In our considered opinion, therefore, it was most inappropriate to impose the punishment of stoppage of increment for one year with cumulative effect.”

5. In the present case, the petitioner was due to retire on 28.02.2019 and the order of punishment was issued only on 25.02.2019.



WP(MD). No.25092 of 2022

In view of the order passed by the Division Bench of this Court as cited supra, the order of punishment issued by the 3rd respondent dated 25.02.2019 cannot be sustainable.

6. Accordingly, this writ petition is allowed and the order of punishment issued by the 3rd respondent dated 25.02.2019 and the order of the appellate authority dated 22.08.2022 are hereby set aside.

No costs.

04.12.2024

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NCC : Yes / No.

Index : Yes / No.

Internet: Yes / No.

To

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WP(MD). No.25092 of 2022

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WP(MD). No.25092 of 2022

B.PUGALENDHI, J.

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WP(MD) No.25092 of 2022

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