



W.P.(MD)No.26585 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 13.06.2024

Delivered On : **11.09.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.26585 of 2023

and

W.M.P.(MD)Nos.22868 and 22869 of 2023

I.Santhanasamy

... Petitioner

Vs.

The Director,
Adi Dravidar and Tribal Welfare Department,
Cheppakkam,
Chennai 600005.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in Na.Ka.No.03/11557/2017 dated 11.10.2023 and quash the same and consequently direct the respondents to disburse all the retirement benefits with interest at the rate of 12% per annum.

For Petitioner

: Mr.C.Prithiviraj

For Respondent

: Mr.S.Shaji Bino

Special Government Pleader

ORDER

The Writ Petition has been filed, to quash the proceedings ni Na.Ka.No.03/11557/2017 dated 11.10.2023 and to consequently direct the



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respondents to disburse all the retirement benefits with interest at the rate of 12% per annum.

2.The petitioner had been working as Warden at the Kallakudi Boys' Hostel, Trichy, for Adi Dravidar students and he was also given additional charges, Warden-in-charge, in respect of Dr.Ambedkar Boys Hostel at Trichy, New College Boys Hostel and Government School Boys Hostel, at Thiruverambur. The petitioner had attained superannuation and was allowed to retire on 30.06.2022 without prejudice to the pending disciplinary proceedings. During 2017, the respondent had sent a communication vide proceedings in Na.Ka.No.03/11557/2017, dated 19.06.2017, stating that, the petitioner had manipulated and encashed bogus bills of fake students at hostels under his supervision and he had tendered and encashed fake bills in respect of purchase of books for library and had tampered with the Government accounts to suit his own whims and fancies and thereby, he had illicitly and illegally misappropriated the Government funds allocated for the welfare of the Adi Dravidar tribal students. Thereafter, the petitioner was placed under temporary suspension with effect from 19.06.2017, by invoking Rule 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and pursuant to the same, on 22.06.2017, the respondent also issued a charge memo against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The petitioner had given reply to the said charge memo on 28.06.2017. While being so, an enquiry officer was



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appointed and the petitioner had also replied to all the charges, following which an enquiry report was submitted by the enquiry officer on 30.10.2017, wherein the enquiry officer had reported that all the charges leveled against the petitioner are proved. For which, the petitioner was sought for his further explanation and on 14.12.2017, refuting all the charges against him a reply was given by the petitioner. After a lapse of 5 years, the respondent had passed the impugned order, dated 12.10.2022, by stating that all the charges against him are proved and a sum of Rs. 2,55,000/- has to be recovered from his retiral benefits and the same was also communicated to him on 05.12.2022. While being so, another order was passed by the respondent on 11.10.2023, for the same set of charges and hence, challenging the same, this Petition came to be filed.

3.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent and anxiously perused the materials available on record.

4.On 17.06.2017, the Inspection Committee formed by the respondent had inspected the premises of Kallakudi Boys Hostel, Trichy, for Adidravida students, Dr.Ambedkar Hostel at Trichy, New College Boys Hostel and Government School Boys Hostel at Thiruverambur, which were under the supervision and management of the petitioner and had also inspected the office of the Special Tahsildar, Adi Dravidar Welfare, Trichy and had sent an



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inspection report to the file of the respondent. Pursuant to the said inspection report submitted by the Inspection Committee, the respondent had sent a communication vide proceedings in Na.Ka.No.03/11557/2017, dated 19.06.2017, stating that the petitioner had manipulated and encashed bogus bills of fake students at Hostels under his supervision and had tendered and encashed fake bills in respect of purchase of books for library, tampered with the Government accounts and had illegally misappropriated Government funds allocated for the welfare of the Adhidraavidar and tribal students. Thereafter, the petitioner was placed under temporary suspension until further orders with effect from 19.06.2017 under Rule 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. On 22.06.2017, the petitioner was visited with a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, for four counts of charges.

5.Following which, the petitioner tendered his reply dated 28.06.2017, refuting all the charges and allegations levelled against him. On receipt of the reply from the petitioner without proceeding with the enquiry further, the respondent slapped the petitioner on 29.08.2017, with a show cause notice vide proceedings in Na.Ka.No.Thal/13784/2017, dated 03.08.2017 and had called upon the petitioner to show cause why a sum of Rs. 26,27,350/- shall not be recovered from him. Challenging the said show cause notice, the petitioner filed a Writ Petition in W.P.(MD)No.18405 of 2017 and this Court had disposed of the same, by order dated 15.03.2022



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and the relevant portion of the same is extracted as follows:-

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“6. This Court is of the considered opinion that without a conclusive proof whether the petitioner has committed misappropriation, quantification of misappropriation and recovery from the petitioner is not appropriate. The respondent is directed to conclude the disciplinary proceedings within a period of two months from the date of receipt of a copy of this order. Since the counter states that there is a co~delinquent in this issue, recovery cannot be made from the petitioner itself. Therefore, the respondent is directed to conclude the proceedings of both recovery as well as the disciplinary proceedings simultaneously. If in the enquiry it is found that the petitioner has misappropriated, then the respondents are at liberty to issue recovery order afresh. Hence, the present recovery order is set aside. Since the petitioner is on the verge of retirement, the respondents shall conclude the enquiry within a period of 12 weeks from the date of receipt of the copy of the order.

7. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.”

6. Thereafter, an enquiry officer was appointed and the petitioner also duly appeared before the enquiry officer and responded to all the charges framed against him, on the basis of which, an enquiry report was submitted by the enquiry officer on 30.10.2017, holding that all the charges levelled against the petitioner has been proved. The petitioner had duly submitted his explanation responding to the said enquiry report. In the meanwhile, on attaining the age of superannuation, the petitioner was allowed to retire on



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30.06.2022, without prejudice to the pending disciplinary proceedings.

However, after a lapse of 5 years, the respondent had passed an order dated 12.10.2022, by stating that all the charges against the petitioner stands proved and a sum of Rs.2,55,000/- has to be recovered from his retiral benefits and the same was communicated to the petitioner on 05.12.2022. The petitioner filed yet another petition in W.P.(MD)No.666 of 2023, before this Court. Challenging the aforesaid order, dated 12.10.2022 and this Court was pleased to dispose of the same on 11.01.2023 and the relevant portion of the same is extracted as follows:-

“Considering the limited request made by the learned counsel appearing for the petitioner, this Court directs the respondent to withhold a sum of Rs.2,55,000/~ (Rupees Two Lakhs Fifty Five Thousand only) from the pensionary and terminal benefits of the petitioner and pay the balance amount of the pensionary and terminal benefits to him within a period of six weeks from the date of receipt of this order. Further, liberty is granted to the petitioner to file an appeal before the Appellate Authority.”

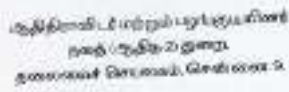
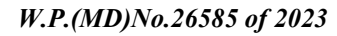
7.Pursuant to the said order, the petitioner had preferred an Appeal before the Government and the same is pending. The petitioner also made a request to the respondent to disburse his pensionary and terminal benefits, in terms of the aforesaid order passed by this Court. However, the impugned order came to be passed by the respondent on 11.10.2023, in Na.Ka.No. 03/11557/2017, that an amount of Rs.13,78,645/- has to be recovered from the petitioner's DCRG. The said order is assailed in this Writ Petition.



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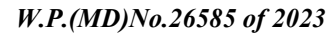
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8.A careful perusal of the materials available on record would reveal that the respondent had sought the permission of the Government vide letter in Na.Ka.No.03/11557/2017 dated 12.10.2022, that is, after two months from the date of the petitioner's retirement, seeking permission under Rule 9(2)(1) of the Tamil Nadu Pension Rules, 1978, for the purpose of initiating disciplinary proceedings against the petitioner under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. In response to the same, the Government vide a letter No.3651398/ஆதிந-2(2)/2022-1, dated 05.09.2023, had given the following instructions to the respondent and the same is extracted as follows:-



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W.P.(MD)No.18405/2017 வழக்கின் 15.03.2022 நாளிட்ட தீர்ப்பின் அடிப்படையில், தனியார் மீது ஏற்படுத்தப்பட்ட 17½ குற்றக் குறிப்பாணையின் கீழ், ரூ.2,55,000/-வை தனியாரின் ஓய்வூதிய பணப் பணிக்கொடையிலிருந்து (DCRG) மிகத்தம் செய்ய இறுதியாணை பிறப்பித்து உத்தர விட்டுள்ளதாக தெரிவிக்கப்பட்டுள்ளது.

3. மேற்காணும் துழிதலையில், திருத்திராப்பள்ளி மாவட்டம், தேவிமங்கலம், அரசு ஆதிதிராவிடர் நல நடுதலையை பணியில் பட்டதாரி ஆசிரியராக பணிபுரிந்து வயது முதிர்வின் காரணமாக 30.06.2022 நிற்பகல் ஓய்வூதியத் திருத்தத்தின்கீழ் என்பவர், 2016-2017-ஆம் ஆண்டில், கல்கெருடி அரசு ஆதிதிராவிடர் நல மாணவர் விடுதியில் காப்பாளராக பணிபுரிந்த மற்றும் கூடுதல் பொதுப்புலகித்க, திருவெறும்பூர், அரசு ஆதிதிராவிடர் நல மாணவர் விடுதி, திருவெறும்பூர், அரசு ஆதிதிராவிடர் நல கல்வாழ் மாணவர் விடுதி, மற்றும் அண்ணாநோட்டோடியம், அம்பேத்கர் கல்லூரி மாணவர் விடுதி ஆகிய மூன்று விடுதிகளில் பணியாற்றிய காலத்தில் அவரது பணியில் காணப்பட்ட குறைபாடுகள் காரணமாக தொடரப்பட்ட ஒழுக்கு நடவடிக்கை தொடர்பாக வெளியிடப்பட்ட அனைத்து ஆவணங்களையும் அரசு கவண்முடன் ஆய்வு செய்தது. ஆய்வுக்குப்பின் கீழ் அறிவுறுத்தல்களைப் பின்பற்றி உரிய நடவடிக்கை மேற்கொள்ளுமாறு அரசால் அறிவுறுத்தப்படுகிறது.

* Accord sanction to initiate departmental disciplinary proceedings against the said individual for the recovery of the said sum of Rs.13,78,645/-based on recommendation of the enquiry committee, under rule 9(2)(b)(i) of the Tamil Nadu Pension Rules, 1976. In this connection, it may be pointed out that, as per sub-clause (ii) of clause (b) of sub rule (2) of rule 9 of the said Rules, the departmental proceedings, shall not be instituted in respect of any event which took place more than four years before such institution, if it is not instituted while the Government servant was in service. In the instance case, it is seen that the alleged misappropriation took place in the year 2016-2017 i.e. 4 years time limit prescribed in the said rule 9(2)(b)(ii) has already lapsed. Hence no disciplinary proceedings could be initiated against the said individual under the Tamil Nadu Pension Rules. It is also pointed out that the High Court in its aforesaid order has only granted liberty to issue recovery order afresh and it has not issued any direction. Hence, the question of initiation of disciplinary proceedings as per said High Court Order also does not arise.*

தங்கள் உண்மையுள்ள.

சுப. தயங்கு
2.11.2023

அரசு செயலாளருக்காக.

02/11/23



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9.It is interesting to understand that the Government had declined to initiate disciplinary proceedings as against the petitioner, following the mandates of Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978. The Rule 9 of the Tamil Nadu Pension Rules, 1978 reads as follows:-

“9.Right of [Competent Authority] to withhold or withdraw pension. -

[(1)(a) The [Competent Authority] reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any co-operative society comprising of government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961;

[Provided that before passing an order under this clause, if the pensioner does not agree to such withholding or withdrawal of the pension, the Tamil Nadu Public Service Commission shall be consulted by the Government. In respect of pensioners who belonged to service other than the State Service, the Head of the Department concerned shall refer the case to the Government and the Government, after consulting the Tamil Nadu Public Service Commission shall intimate the views of the Commission to the Head of the Department concerned for issue of final orders. The Tamil Nadu Public Service Commission need not be consulted in cases



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where the pensioner agrees to withholding or withdrawal of the pension, but a copy of the orders passed by the competent authority in such cases shall be sent to the said Commission.]

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in subrule (5) of Rule 43.

(2)(a) The departmental proceeding referred to in sub- rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re- employment shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

[Provided that where the departmental proceedings are instituted by an authority subordinate Government, that authority shall submit to the report a recording its findings to the Government in case of pensioners who belonged to the State Service] The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment,-

(i) shall not be instituted save with the sanction of the Government [in respect of pensioners who belonged to State Service]

(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.”



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10. It is needless to state that Rule 9(2)(a)(ii) had provided that if the departmental proceedings has not been instituted while the Government servant was in service, whether before his retirement or during his re-employment, then the same shall not be initiated in respect of any event, which took place more than 4 years before such institution. Obviously, in the instant case, the alleged misappropriation took place in the year 2016 - 2017. The petitioner superannuated on 30.06.2022. Though the charge memo in the first instance which was issued by the respondent vide Proceeding No.03/11557/2017, dated 22.06.2017, came to be visited immediately in the year 2017 itself. The disciplinary proceeding was commenced by appointment of enquiry officer and after proper enquiry, the enquiry report was submitted by the enquiry officer to the respondent on 30.10.2017. However, without concluding the disciplinary proceedings initiated as against the petitioner, in the meanwhile, the respondent had passed three orders dated 03.08.2017 in Na.Ka.No.Thal/13784/2017, calling upon the petitioner to show cause why an amount of Rs.17,90,000/- + Rs.3,40,100/- + Rs.1,60,650/- shall not be recovered from him. Challenging the charge memo dated 22.06.2017 and the aforesaid three show cause notices dated 03.08.2017, the petitioner filed W.P.(MD)No.18405 of 2017. This Court, by its order dated 15.03.2022, without quashing the charge memo had set aside all the three orders of recovery, directing the respondents to conclude the enquiry within 12 weeks from the date of the



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aforesaid order passed by this Court. Even after that the respondent, without concluding the disciplinary proceeding at the earliest before the petitioner attained his age of superannuation on 03.06.2022, kept the same pending and the petitioner on attaining his age of superannuation, allowed him to retire on 30.06.2022, without prejudice to the disciplinary proceedings. Thereafter, on 12.10.2022, vide proceedings dated Na.Ka.No. 03/11557/2017, the respondent passed the final order in the disciplinary proceedings, directing to recover an amount of Rs.2,55,000/- from the petitioner's DCRG, for the reason that all the charges framed as against him had been held proved. Challenging the same, W.P.(MD)No.666 of 2023 was filed by the petitioner and this Court on 11.01.2023, disposed of the same, directing the respondent to withhold a sum of Rs.2,55,000/- from the pensionary and terminal benefits of the petitioner and pay the balance pensionary and terminal benefits to him.

11.While being so, without heeding to the directions of the Government, the respondent had passed the impugned order, directing to recover an amount of Rs.13,78,645/- from the DCRG of the petitioner. This Court is of the considered view that the disciplinary proceeding initiated as against the petitioner has been concluded and final orders have been passed and the recovery directed to be done in the DCRG of the petitioner in the aforesaid final order has already been considered by this Court in W.P. (MD)No.666 of 2023, wherein the amount of Rs.2,55,000/- has been



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permitted by this Court to be withheld by the respondent and the aforesaid

Writ Petition challenging the final order is still pending before this Court.

While being so, despite the specific directions from the Government, directing the respondent that it would not be feasible to proceed against the petitioner any further, in view of the fact that the alleged misappropriation had taken place before 4 years from the date of request, that is, 12.10.2022, when the respondent had requested the Government to accord sanction to proceed against the petitioner for further recovery, negating the directions of the Government, the respondent had further proceeded to pass the impugned order in this Petition.

12. Accordingly, I have no hesitation to hold that the aforesaid impugned order has been passed by the respondent for the second time for the same allegation for which already a final order has been passed on 12.10.2022, which is the subject matter of challenge in W.P.(MD)No.666 of 2023, which is still pending before this Court. Accordingly, the impugned order dated 11.10.2023, is *per se* illegal and the same is liable to be quashed.



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13. Accordingly, the Writ Petition stand allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

The Director,
Adi Dravidar and Tribal Welfare Department,
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L.VICTORIA GOWRI, J.

Mrn

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