



WP No. 11369 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2025

WEB COPY

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

**WP No. 11369 of 2018
and W.M.P.No.13270 of 2018**

C.Kothandapani
No.1058, TNHB Phase
Thiruppathur,
Vellore District – 635 601.

Petitioner(s)

Vs

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

2. The Engineer in Chief,
Water Resources Dept., &
Chief Engineer (General), PWD,
Public Works Department,
Chepauk,
Chennai – 600 005.



WEB COPY

3. The Chief Engineer,
Public Works Department – WRO,
Chepauk, Chennai – 600 005.

4. The Superintending Engineer,
Public Works Department – WRO,
Project Circle,
Vellore – 632 006.

5. The Superintending Engineer,
Enquiry Officer,
Public Works Department,
Grounds Water Circle – WRD,
Taramani, Chennai – 600 113.

6. The Principal Accountant General,
(A&E) of Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai – 600 018.

Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to G.O.(D) No.57, Public Works (E2) Department dated 10.03.2017 passed by the first respondent and quash the same consequently direct the respondents to promote the petitioner as E.E. On and from 2011 notionally and to pay all the



consequential benefits including the pensionary benefits.

WEB COPY

For Petitioner(s): M/s.V.Dhanapalan

For Respondent(s): M/s. P.Kumaresan
Additional Advocate General
assisted by
Mr.T.Chezhan
Additional Government Pleader
for R1 to R5

Mr.V.Murali
Standing Counsel for R6

ORDER

The writ petition is filed to call for the records relating to G.O.(D) No.57, Public Works (E2) Department dated 10.03.2017 passed by the first respondent and quash the same consequently direct the respondents to promote the petitioner as E.E. on and from 2011 notionally and to pay all the consequential benefits including the pensionary benefits.

2. The petitioner was working as Assistant Executive Engineer with the fourth respondent. The petitioner has been given with the charge memo stating that he had executed two temporary ring bunds without obtaining sanction in violation of Circular 182 of PWD Code and that he had made payments in a hasty and hurried manner without sanction and caused loss to the tune of



Rs.51.82 lakhs.

WEB COPY

3. An enquiry officer has been appointed and at the conclusion of the enquiry, a report has been filed stating that the charges against the petitioner were proved and subsequently, the petitioner has been imposed with the punishment of dismissal.

4. Mr.V.Dhanapalan, the learned counsel for the petitioner, submitted that the enquiry report has been filed in a short sighted manner without properly appreciating the evidence on record. On the side of the department, no witness has been examined and no document has been marked. The petitioner was allowed to retire on 30.06.2013 on his attaining the age of superannuation despite the disciplinary proceedings were pending.

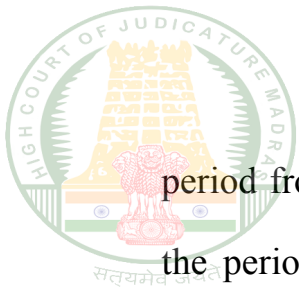
4.1. After two years, i.e., on 27.03.2015, a conclusion was arrived for recovering a sum of Rs.25,91,000/- on 140 installments as loss to the Government. The petitioner had filed his objection on 11.05.2015. Thereafter, an opinion was sought for from the Tamil Nadu Public Service Commission(TNPSC). The TNPSC offered its opinion stating that the petitioner's explanation was not considered and there was no loss as alleged in the charge sheet and the materials would show that there is only a procedural violation of guidelines.



4.2. By overlooking the TNPSC opinion and without giving any opportunity to the petitioner, he was imposed with a penalty for the reasons which was not stated in the charge sheet, i.e., recovery of Rs.51.82 lakhs has been imposed totally against which the petitioner was ordered to refund a sum of Rs.25,91,000/-. The findings rendered by the enquiry officer and the TNPSC opinion was not considered and the inordinate delay in issuing the charge sheet at the each stage of the enquiry also not properly considered.

5. Mr.P.Kumaresan, the learned Additional Advocate General, appearing for the respondents 1 to 5, submitted that the opinion of the TNPSC cannot be considered as an opinion superseding the enquiry report and it is the first respondent to pass orders on a comprehensive analysis of the materials produced before him. It is further submitted that the inspection reports would show that the lapses on the part of the petitioner had caused huge loss of revenue to the department.

6. Insofar as the first charge is concerned, the petitioner's submission from the inception was that he did not execute the first ring bund, because it was executed in the year 2006 and the petitioner had assumed charge for the special Project as Assistant Executive Engineer only from the year 2008. Despite the petitioner did not admit the charge, the enquiry officer had ordered mechanically stating that the petitioner had admitted the charges. But in the charge memo, it has been stated that the first ring bund was executed during the



period from 31.01.2006 to 04.05.2006 and later the same was reformed during the period from 18.03.2008 to 31.03.2008 as per the inspection notes of the Superintendent Engineer dated 17.03.2008. It is observed that the check measurement has been taken by the petitioner during the period from 18.03.2008 to 31.03.2008 and hence, his allegation that he has not involved in the project was not accepted.

7. In fact, the enquiry officer has converted the charges into several points for determination. Thereafter, he has arrived at a conclusion that all the charges have been proved. There is no discussion about the appreciation of the materials relating to the charge sheet and the reasons for arriving at the conclusion that the charges have been proved. The petitioner has filed a detailed explanation along with the documents, but it was examined and his documents were not marked. Even some of the documents, based on which the enquiry officer has arrived at the findings, also not found place in the discussion of the enquiry officer's report. In fact, the enquiry report itself is a non-speaking one, and from which the petitioner cannot even know how the enquiry officer had arrived at the conclusion that the charges against him were proved.

8. When the provisional order for recovery of the pension passed by the first respondent sent for the TNPSC concurrence, the TNPSC has given its opinion stating that there is no loss caused to the Government and there is no justification to make any recovery from the delinquent officers.



9. The learned Additional Advocate General appearing for the respondents submitted that the TNPSC cannot be considered as an appellate authority against the orders or proposals sent by the Government for concurrence and hence, the opinion of the TNPSC will not bind the first respondent. In the impugned order of punishment dated 10.03.2017 also, it has been observed that the delinquent officer had not followed the departmental procedure in executing the works and he had merely followed the instructions issued at the site by his superiors. But the first respondent has taken a contrary view on the observation that the petitioner has not obtained sanction for construction of two temporary ring bunds and made payments without getting approval for additional quantity. It is alleged that he had also siphoned off the funds meant for the construction of main earthen bunds with specifications different from the said ring bonds.

10. It is further observed that the petitioner could have chosen to divert the flow rather than constructing two temporary ring bunds. In fact, the second one have been washed away by floods on 07.09.2008. It is also observed that the flood had occurred just eight days from the date of construction, and so it is presumed that the work executed was poor in quality and the petitioner had utilized the funds from the main estimate and caused a financial loss.

11. On recording the above reason, it has been concluded that a sum of Rs.25.91 lakh, which is one half of total loss of Rs.51.82 lakh, is ordered to be



recovered from the petitioner's pension. No order can be passed on mere premises and surmises. Even if the respondents preferred to rely on any inspection report, it is obvious on the part of their part to furnish the copy of the same to the petitioner and mark the documents during the enquiry and the enquiry officer is bound to make discussion on the materials produced before him and record the reasons for arriving at the conclusion that the charges against the petitioner have been proved.

12. The petitioner has stated that he has followed the instructions issued by his superior as she is not the decision making authority with regard to the needs and necessity for putting up certain construction for specific purpose in a specific manner. Without examining any witnesses and without marking any documents and without even considering the explanations offered by the petitioner, it is unfair on the part of the enquiry officer to record findings that the charges against the petitioner have been proved.

13. Attention of the Court was drawn to the judgment of the Hon'ble Supreme Court rendered in *State of Uttaranchal & Others Vs. Kharak Singh reported in 2008 8 SCC 236* wherein it is held that the enquiry shall not become an empty formality and it should be conducted with all fairness.

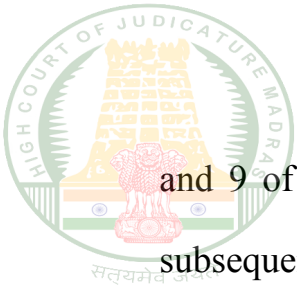
14. In the instant case as stated by the learned counsel for the petitioner, no documents have been marked and no witnesses have been examined. In fact



no Presenting Officer has been appointed despite the respondent had chosen to conduct the enquiry under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules by considering that the charges are very serious. As the Presenting Officer cannot act as a Prosecutor and he needs to be neutral. The manner in which the enquiry has been conducted would only show that there was no proper level playing field between the delinquent and the department during the enquiry process. In this regard it is also relevant to refer the paragraph 17 of the above judgment which reads as under:

“ 17. On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nadhor acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16.11.1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.”

15. It is further submitted that as per the Tamil Nadu Public Service Commission Regulations, 2018 the Commission needs to be consulted on any disciplinary matter affecting a person serving in connection with the affairs of the State except during certain circumstances. One of the circumstances which requires such consolidation would also include the orders passed under Rule 6



and 9 of the Tamil Nadu Pension Rules. As the petitioner has been enquired subsequent to his retirement and for 17(b) charges, it appears that the Commission was consulted before imposing any punishment.

16. The argument advanced by the learned Additional Advocate General on this aspect is that though the enquiry has been done under Rule 17(b), the punishment imposed was not a major punishment. It is well within the understanding of the court that a retired person cannot be imposed with major punishment like dismissal from service and the matter does not revolve around the quantum of punishment involved in adopting the process of consultation. It would have been beneficial if the argument of the respondent was towards the scope of consultation whether the opinion given by the Commission during the consultation process is either advisory and whether it would bind the respondents or not. Even when the Court crystallized the above point and requested the argument be advanced on this aspect, no materials were placed before this Court by the respondents on the above point.

17. The learned counsel for the petitioner attracted attention of the Court to the judgment of the Hon'ble Supreme Court in ***Union of India & others Vs. S.K.Kapoor*** reported in **2011 4 scc 589** wherein it is held that if the authority had consulted the Commission and relied on the report of the Commission for taking disciplinary action, then the principles of natural justice is required that a copy of the report must be supplied in advance to the concerned employee so



that he may have an opportunity for rebutting the same. In the instant case the consultative process made with the Commission had resulted in an opinion contrary to the findings rendered by the enquiry officer.

18. In the opinion of the Commission, the allegations against the petitioner were not proved because the petitioner has not caused loss of revenue to the Government. However, it is observed by the Commission that there are some procedural violation. When such a contrary opinion is given by the Commission, it is obligatory on the part of the respondent to furnish a copy to the petitioner in order to make his submission before passing any order of punishment by accepting the findings given by the Enquiry Officer. But the petitioner has not been given with any opportunity of that sort.

19. At every level of enquiry there was violation of the fundamental principles of natural justice and the whole exercise of enquiry appears to be arbitrary and unreasonable. Even while imposing the order of punishment, the first respondent did not take note of these essential aspects and had passed the punishment order. In fact in the order of punishment it is stated that the Government had examined the case once again with the relevant records. When the records did not form part of the evidence of the enquiry, the first respondent, on his own, cannot peruse the records without granting any opportunity to the petitioner. The observation of the Commission with regard to procedural violation is not the charge framed against the petitioner and the



petitioner has not been given with an opportunity to speak on the above finding.

WEB COPY

20. In view of the same, the impugned order is liable to be quashed and the matter has to be remitted back to the first respondent in order to give an opportunity to the petitioner by furnishing the copy of opinion given by the Commission.

21. In the result, the Writ Petition is disposed and the order passed by the first respondent in G.O.(D) No.57, Public Works (E2) Department dated 10.03.2017, is hereby quashed and the matter is remitted back to the first respondent to given an opportunity to the petitioner by furnishing a copy of opinion given by the Commission. No costs. Connected miscellaneous petition is closed.

27-03-2025

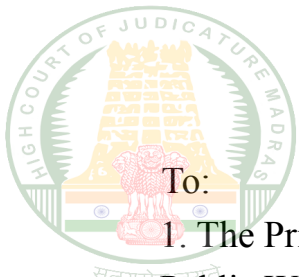
Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

bkn



To:

1. The Principal Secretary to Government,
Public Works Department,
Secretariat,
Chennai – 600 009.

2. The Engineer in Chief,
Water Resources Dept., & Chief Engineer (General), PWD,
Public Works Department,
Chepauk,
Chennai – 600 005.

3. The Chief Engineer,
Public Works Department – WRO,
Chepauk, Chennai – 600 005.

4. The Superintending Engineer,
Public Works Department – WRO,
Project Circle,
Vellore – 632 006.

5. The Superintending Engineer,
Enquiry Officer,
Public Works Department,
Grounds Water Circle – WRD,
Taramani, Chennai – 600 113.

6. The Principal Accountant General,
(A&E) of Tamil Nadu,
361, Anna Salai,
Teynampet,
Chennai – 600 018.



WEB COPY

WP No. 11369 of 2018



R.N.MANJULA J.

bkn

WP No. 11369 of 2018

27-03-2025