



W.P.No.12532 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P.No.12532 of 2017

and

W.M.Ps.No.13321 and 13322 of 2017

Judgment reserved on 07.03.2025	Judgment pronounced on 02.06.2025
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J.Earnest

...Petitioner

.....Vs.....

1.The Government of Tamil Nadu,
Represented by its Additional Chief Secretary,
Highways Department & Minor Ports Department,
Fort St.George, Chennai- 9.

2. The Director General,
Highways Department,
Chepauk, Chennai - 5.

.....Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the issue of G.O.(D)22 Highways and Minor Port (HL1) Department dated 08.02.2016 issued by the first respondent and quash the same and consequently direct the respondents to pay interest at the rate of this Court may deem appropriate for the retiral benefits paid to the petitioner



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belatedly, viz., commutation of pension; Arrears of pension; Leave salary encashment Special Provident Fund cum Gratuity and Death Cum Gratuity to the petitioner from 30.04.2005 to the actual date of payment within a time frame as fixed by this Court.

For Petitioner : Mr.N.Subramaniyan

For Respondents : Mr.V.Veluchamy,
Additional Government Pleader

ORDER

This Writ Petition is filed against the order of punishment imposed on the petitioner and seeks a direction for the payment of interest on the delayed terminal benefits, as well as the repayment of the penalty amount recovered from the petitioner.

2. The service details of the case are as follows:

The petitioner was appointed as an Assistant Engineer in the Highways Department on 30.01.1971 and was promoted to Assistant Divisional Engineer on 15.07.1981. He was placed under suspension on the date of his retirement, i.e., 30.04.2005, by G.O.(3D) No. 64, dated 29.04.2005, in connection with alleged lapses that occurred during the period from 17.06.1999 to 14.10.2001. Subsequently, after the completion of the enquiry



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conducted in accordance with Rule 9 of the Tamil Nadu Pension Rules, he was permitted to retire retrospectively with effect from 30.04.2005, as discussed infra.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

4. The case arises under the following circumstances:

(i) The petitioner entered Government service upon being selected through the Tamil Nadu Public Service Commission as an Assistant Engineer and joined duty in January 1971.

(ii) While serving in the Tiruchendur Sub-Division between 17.06.1999 and 14.10.2001, the petitioner was alleged to have committed irregularities by failing to enforce the conditions of the agreement pertaining to the procurement of Bitumen and Bitumen Emulsion from any of the three Government of India undertakings/oil companies. He also failed to ensure the production of Tipper/Lorry Trip Sheets bearing the seals of the check posts en route from the oil companies to the point of delivery. This lapse enabled the

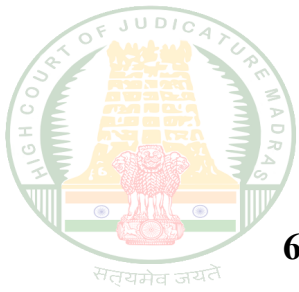


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contractors to submit claims in violation of the agreement terms, which resulted in the use of sub-standard quality Bitumen. Further, the petitioner allegedly permitted the contractors to use lesser quantities of Bitumen than prescribed for the works, in contravention of the prevailing Government Orders, and to claim payments based on bogus invoices produced by the contractors. He is said to have thus colluded with other accused officers, causing a loss of Rs. 2,18,337/- to the Government exchequer.

(iii) As stated above, the petitioner was placed under suspension. After completion of the enquiry, he was permitted to retire retrospectively with effect from 30.04.2005.

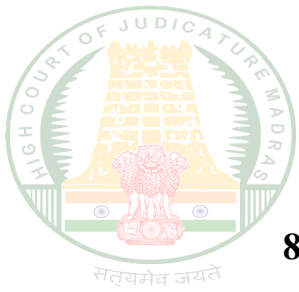
5. By a charge memo dated 25.06.2009, three charges were levelled against the petitioner. The petitioner submitted his explanation, the enquiry was completed, and a report was filed. After obtaining the opinion of the Tamil Nadu Public Service Commission, the Government passed an order. The petitioner submitted a further explanation on 25.04.2012. Subsequently, the punishment, as stated supra, was imposed, and the petitioner was permitted to retire retrospectively from service with effect from 30.04.2005.



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6. The Government proposed the punishment of a cut in pension of Rs.500 per mensem for a period of six months, in addition to the recovery of Rs.50,000/- towards the Government's loss from the petitioner's Death-cum-Retirement Gratuity.

7. The learned Additional Government Pleader submitted that the petitioner was paid the Special Provident Fund – 2000 amounting to Rs.2,750/-, along with interest of Rs.774/-, totaling Rs.3,524/- on 22.05.2014. Likewise, the Encashment of Earned Leave and Leave on Private Affairs amounting to Rs.2,66,299/- was paid on 14.07.2014. Similarly, the Special Provident Fund – 1984 amounting to Rs.2,960/-, along with interest of Rs.9,023/- and the Government's contribution of Rs.10,000/-, totaling Rs.21,983/-, was paid on 08.09.2014. Additionally, the Death-cum-Retirement Gratuity of Rs.3,50,000/- was paid on 27.07.2016, pursuant to the approval of the Accountant General, after deducting Rs.50,000/-. Thus, the petitioner was paid his eligible retirement and other monetary benefits immediately after the finalization of the departmental disciplinary proceedings, and there was no delay in the disbursement.



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8. The learned counsel for the petitioner submitted that similarly placed individuals with similar charges had approached the Madurai Bench of this Court in W.P.(MD) No.11174 of 2009, which was decided on 23.02.2011. In respect of others, namely S. Raman, R. Sangu, S. Sabapathy, S. Muthu Eswaran, T. Ganesan, and A. Ganesan, all charges were dropped without conducting any enquiry

9. The attention of this Court has been drawn to the judgment of the Madurai Bench of this Court in respect of A. Ganesan. In the impugned order, at paragraph No. 5, it is stated that a consent letter was issued to the delinquent officer in the format prescribed under Rule 9 of the Tamil Nadu Pension Rules, requesting him to accept the proposed punishment. As the same was not accepted, the matter was referred to the Tamil Nadu Public Service Commission, as required under Regulation 18(1)(c), and upon obtaining its opinion, the punishment was imposed.

10. Perusal of the Government Orders referred to in the preceding paragraphs reveals the explanation submitted by the delinquent officer with respect to Charge No.1. Upon examining G.O.Ms.No.20, Highways Department, dated 07.02.2007, this Court notes that only Conditions I, II, VI,



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and IX were retained, while the others were deleted. The petitioner, being a

Government servant, had scrupulously followed the said Government Order.

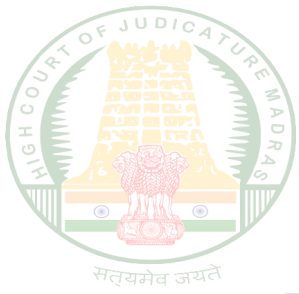
Furthermore, it was contended that the original G.O.Ms.No.376 was first modified by G.O.Ms.No.158, dated 10.10.1996, and subsequently by G.O.Ms.No.20, dated 07.02.2007. Thus, G.O.Ms.No.20 was implemented across the entire State, except in the Tirunelveli District, which led to the initiation of the enquiry proceedings.

11. The enquiry report has been filed as per the direction of this Court, and the charges are as follows:

(i) Charge No. 1:

The petitioner failed to enforce the conditions of the contracts for 13 road-laying works executed by the contractors in the Tiruchendur Sub-Division, specifically concerning the procurement of bitumen and bitumen emulsion from any one of the three Government of India undertakings/oil companies. Additionally, the petitioner failed to ensure the production of Lorry/Tanker trip sheets bearing the seals of the check posts en route from the oil companies to the point of delivery. This enabled the contractors to submit claim bills for the works executed in violation of the agreement conditions, resulting in the use of substandard quality bitumen.

(ii) Charge No. 2:



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The petitioner allowed the contractors to use lesser quantities of bitumen than prescribed for the works and to claim payment for bogus invoices produced by them for the procurement of bitumen and bitumen emulsion. This led to a loss of Rs.2,18,337.22 to the Government, in connivance with other accused officers.

(iii) Charge No. 3:

By the actions described above, the petitioner, Thiru. J. Ernest, failed to maintain absolute integrity and devotion to duty, and acted in a manner unbecoming of a member of the civil service, thereby violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

12. The Enquiry Officer has concluded that the charges have been proved.

13. As stated supra, upon perusal of G.O.Ms.No.20, Highways Department, dated 07.02.2007, it is observed that only Conditions I, II, VI, and IX were retained, while the others were deleted. The petitioner, being a Government servant, had scrupulously followed the same. It appears that the petitioner was penalized for adhering to the Government Order. In contrast, in



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other districts, the conditions stipulated in the agreement were dismissed, as observed earlier. Except for Tirunelveli District, where the petitioner was in charge, no one else was penalized despite the G.O. being applicable throughout the entire state. There cannot be any inequality in the application of the G.O. by granting exemptions, and therefore, the very charge against the petitioner must be struck down, as it is inconsistent with the treatment of similarly placed individuals.

14. This Court, by an order dated 23.02.2011 in W.P.(MD) No.11174 of 2009 filed by Ganesan, set aside the punishment on similar grounds. Since a similarly placed person was granted relief by this Court, the same benefit must be extended to the petitioner herein. Accordingly, the order imposing the punishment is hereby set aside.

15. On the issue of recovery, since the punishment has been set aside as discussed in the preceding paragraphs and the penalty imposed has already been recovered, the same is ordered to be repaid. Given the delay on the part of the respondents in settling the amount, they are required to pay interest as per the decision of the Division Bench of this Court in 2019 (1) MLJ 1. [The Commissioner for Milk Production and Dairy Development, Madhavaram Milk Colony, Chennai-51 and another Vs.S.Venkatachalam]



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WEB COPY 16. Accordingly, *this Writ Petition is allowed*. The penalty amount, along with interest, shall be repaid within a period of twelve (12) weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected W.M.Ps are closed.

02.06.2025

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Index : Yes / No

Neutral Citation : Yes/No

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