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W.P.No.7970 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2026

CORAM:

THE HONOURABLE MR. JUSTICE T.VINOD KUMAR

W.P.No.7970 of 2021

and

W.M.P.Nos.8521, 8524 to 8526, 8528 & 8530 of 2021

A.Siluvaiprakasam

... Petitioner

vs

1. Government of Tamil Nadu

Represented by the

Principal Secretary to Government,

Micro, Small and Medium Enterprises [EII(2)],

Secretariat, Chennai – 600 009.

2. The Principal Secretary,

The Industries Commissioner and

Director of Industries and Commerce,

SIDCO Office Building,

Thiru.Vi.Ka Industries Estate,

Guindy, Chennai – 600 032.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the first respondent issued in G.O.(2D) No.15 MSME [EII(2)] Department dated 01.08.2019 and G.O.(D).No.81 MSME, dated 04.12.2020 and impugned proceedings No.RC.29303/EG4/2010 dated 04.01.2018 of the second respondent and quash the above said orders and to consequently direct the



W.P.No.7970 of 2021

respondents to accord all service benefits like promotions with effect from the date of promotions of his immediate junior, revision of seniority and pay and allowances and subsequent pension/pensionary benefits with effect from 28.02.2015 AN the date of superannuation of the petitioner and arrange to pay the arrears arising out of such re-fixation of pension disburse all monetary benefits within a short date that may be fixed by this Court and pass orders.

For Petitioner : Mr.D.Daniel
For Respondents : Mrs.V.Yamunadevi
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing on behalf of the respondents and perused the records.

2. The case of the petitioner in brief is that he was recruited on 01.08.1983 and was due for retirement on 28.02.2015; that while in service, a charge memo dated 13.03.2011 was issued to him; that on enquiry officer submitting his report, the disciplinary authority has passed the order dated 11.11.2013 awarding him punishment; that aggrieved by the aforesaid order of punishment, he had filed an appeal before the Appellate Authority on 06.01.2014; and that the said appeal is pending for consideration.

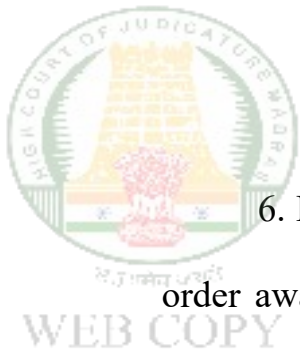


W.P.No.7970 of 2021

3. Petitioner contended that while the appeal filed by him against the order of punishment dated 11.11.2013 was pending consideration, the first respondent in exercise of powers under Rule 36 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955, *suo moto* revised the order of the disciplinary authority *vide* G.O. (2D) No.7 MSME [EII(2)]dated 24.02.2015; and that the respondents thereafter *vide* proceedings No.47549/EG4/2007 dated 26.02.2015, placed the petitioner under suspension and did not allow him to retire on due date of retirement i.e., 28.02.2015.

4. It is the further case of the petitioner that thereafter, the respondents taking note of acquittal recorded in criminal case *vide* proceedings dated 17.07.2017, had revoked his suspension and allowed him to retire from the date on which he had attained the age of superannuation i.e., 28.02.2015.

5. Petitioner further contended that the first respondent thereafter had once again issued proceedings dated 04.01.2018, imposing punishment of cut in pension of Rs.500/- per month for one year, as he was allowed to retire from service retrospectively.



W.P.No.7970 of 2021

6. It is the further contention of the petitioner that aggrieved by the aforesaid order awarding punishment of cut in pension, passed by the first respondent, he had filed an appeal as provided under the Rules on 07.03.2019; and that the said appeal has been rejected by the Appellate Authority, without taking into consideration that initiation of disciplinary proceeding initially by issuing article of charges on 13.03.2011 itself is vitiated and thus, the first respondent could not have passed the order dated 04.01.2018.

7. Petitioner further contended that the Appellate Authority without considering that the order by which, he was awarded punishment is wholly unsustainable in law, without applying his mind, had rejected the appeal filed by him, holding that no valid reasons/grounds are shown in the appeal and the objection of the petitioner is not acceptable, which action it is contended is without considering the pleas taken by him in the appeal.

8. It is the further case of the petitioner that aggrieved by the rejection of the appeal, he had filed review to the Government; and that the Revisional Authority *vide* his proceedings G.O.(2D) No.81 dated 04.12.2020 had also rejected the said petition without considering, that the disciplinary authority as well as the first



W.P.No.7970 of 2021

Appellate Authority had failed to take note of the fact that as the charge memo is issued on invalid basis, the subsequent proceedings would stand vitiated.

9. On behalf of the petitioner, it is contended that since, the order of the disciplinary authority passed on 04.01.2018 as well as the order of appellate authority and review order did not consider the aforesaid fact, the petitioner is entitled to assail the said order by the present writ petition.

10. Counter affidavit on behalf of the respondents is filed.

11. Respondents, by the counter affidavit, contended that the petitioner was issued with a charge memo under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, on 13.03.2011; that on petitioner submitting his explanation to the same on 01.06.2011, the respondents appointed the enquiry officer; that the enquiry officer after conducting enquiry into the articles of charge and examining the witnesses and evidence submitted his report dated 02.05.2012; that the disciplinary authority thereafter had issued proceedings dated 11.11.2013 awarding punishment; and that the petitioner aggrieved by the aforesaid order had filed an appeal to the appellate authority on 06.01.2014.



W.P.No.7970 of 2021

12. The respondents by the counter affidavit further contended that since, the order by which the petitioner was awarded punishment would not be enforceable on account of the fact that the petitioner is due for retirement on 28.02.2015 and the next date of increment is on 01.10.2014, due to which withholding of increment, without cumulative effect for a period of one year cannot be implemented on him fully while in service, the first respondent in exercise of powers conferred under Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, decided to set aside the unimplementable order of punishment, passed by the second respondent *vide* proceedings dated 11.11.2013 and accordingly, *vide* proceedings dated 24.02.2015 in G.O (2D) No.7 had set aside the order of the second respondent and directed him to take further course of action on the disciplinary proceedings of the petitioner; and that based on the aforesaid order setting aside earlier disciplinary order with a direction to take further course of action on the disciplinary case, order dated 01.08.2019 was passed by the first respondent.

13. On behalf of the respondents, it is contended that since, the proceedings of the disciplinary authority dated 11.11.2013, was set aside as unimplementable on 24.02.2015, the second respondent issued proceedings dated 26.02.2015 placing



W.P.No.7970 of 2021

the petitioner under suspension in order to continue the disciplinary proceedings, as per the directions contained in the order of the first respondent dated 24.02.2015, since the petitioner was due for retirement on 28.02.2015.

14. The respondents further contended that the second respondent taking note of the disposal of the criminal case, by proceedings dated 17.07.2017 revoked the suspension of the petitioner and permitted the petitioner to retire as on the date of actual date of retirement i.e., 28.02.2015 subject to condition that the disciplinary proceedings pending against him shall be continued under Rule 9 of Tamil Nadu Pension Rules, 1978 and thereafter, had passed the impugned order dated 04.01.2018.

15. The respondents by the counter affidavit contended that the petitioner on being served with the order of punishment dated 04.01.2018 allowed the said order to attain finality by not pursuing further remedies by way of appeal; that it is only after a period of one year and two months from the date of petitioner being visited with the order of punishment, filed an appeal on 07.03.2019 much beyond the time limit of two months specified in the disciplinary order; and that the first respondent taking note of the fact that the Appeal has been filed beyond the time prescribed,



W.P.No.7970 of 2021

vide G.O.(2D).No.15 dated 01.08.2019 had rejected the appeal as having been filed belatedly i.e., more than one year and noted that no valid reason or new ground was shown in the appeal.

16. The respondent by the counter affidavit further contended that the Appellate Authority had rejected the appeal filed by the petitioner mainly on the ground of being filed belatedly; and that the petitioner aggrieved by the aforesaid order had filed review application on 18.09.2019; that the Revisional Authority after obtaining views from the Tamil Nadu Public Service Commission, rejected the review petition on 04.12.2020 finding that the Review filed against the order of the disciplinary authority by which the petitioner was awarded punishment, as confirmed in appeal, is devoid of merits; and that the punishment of cut in pension for a period of one year at the rate of Rs.500/- per month has been imposed based on the acceptance of individual's representation dated 10.11.2017.

17. On behalf of the respondents, it is further contended that the petitioner having accepted for award of punishment of cut in pension for Rs.500/- by representation dated 10.11.2017, cannot now claim that the order is bad or vitiated.



W.P.No.7970 of 2021

18. Contending as above, the learned Special Government Pleader seeks for dismissal of the writ petition.

19. In reply, on behalf of the petitioner, it is contended that the imposition of punishment of cut in pension by the respondents was agreed to by the petitioner, as without accepting for the same, the respondents have stated that they would not revoke his suspension.

20. I have taken note of the respective contentions as urged.

21. At the outset, it is to be noted that though the petitioner had contended that he had given acceptance for imposition of punishment i.e., cut in pension for a period of one year at the rate of Rs.500/- per month, as a condition precedent for the respondents revoking the order of suspension, it is to be noted that the order revoking the petitioner's suspension was passed on 17.07.2017, while the petitioner had submitted the representation accepting the award of punishment on 10.11.2017 i.e., three months, after the revocation order was passed. Thus, the said contention urged by the petitioner can only be considered as an afterthought, in order to cause prejudice against the respondents. Accordingly, the said contention is rejected.



W.P.No.7970 of 2021

WEB COPY

22. Though on behalf of the petitioner, it is contended that on the first respondent passing the order dated 11.11.2013, petitioner having filed an appeal on 06.01.2014 and the said appeal remains to be considered, it is to be noted that on account of the order passed by the respondents in exercise of *suo moto* power conferred Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, setting aside the order dated 11.11.2013 *vide* G.O.(2D) No.7 dated 24.02.2015 and directing the first respondent to take further course of action on the disciplinary proceedings, the appeal which was pending on the said date has lived its life and became infructuous. Thus, the petitioner cannot claim that his appeal remains unconsidered till date.

23. Further, it is to be noted that on the first respondent setting aside the order by which the petitioner visited with the penalty i.e., order dated 11.11.2013 under G.O.(2D) No.7 dated 24.02.2015 and the matter being remitted back to the first respondent, for taking further action on the disciplinary proceedings, the first respondent had passed the order afresh once again on 04.01.2018, whereby the petitioner was visited with punishment of cut in pension of Rs.500/- per month for one year. If, only the petitioner was aggrieved by the said order, he ought to have



W.P.No.7970 of 2021

filed an appeal within a period of two months as noted at the bottom of the said order.

24. It is also to be noted that it is not as if petitioner is not aware of the appeal remedy, since, the petitioner had availed the remedy of appeal against the earlier order dated 11.11.2013, within time. However, the petitioner on being served with the order dated 04.01.2018 remained silent and allowed the said order to attain the finality, on expiry of two months by not preferring an appeal. It is only thereafter i.e., after an expiry of further one year, the petitioner chose to file an appeal on 07.03.2019 and the respondent appellate authority by its order dated 01.08.2019, noting that the said appeal having been filed belatedly, rejected the same.

25. Petitioner thereafter filed second appeal which also was rejected, taking note of the fact that the penalty imposed was agreed to by the petitioner by its representation dated 10.11.2017 and thus, the petitioner being estopped from contesting the said order.



W.P.No.7970 of 2021

26. The fact of petitioner not filing appeal in time and allowing the order dated 04.01.2018 to attain the finality, it is not open for the petitioner now to contend that the appellate authority failed to consider the appeal in correct perspective, or the initiation of disciplinary proceedings itself is invalid or the enquiry being vitiated and also that the second respondent also having failed to take note of the same.

27. Firstly, it is to be noted that in a challenge to order of disciplinary authority which had attained the finality, on account of first Appeal and Review being dismissed, the scope of interference of the Writ Court is limited as held by the Apex Court in the case of ***Union of India Vs. P.Gunasekaran*** reported in ***(2015) 2 SCC 610***, wherein it is held as under:-

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience”*



W.P.No.7970 of 2021

28. Though an effort was made on behalf of the petitioner to show that on the basis for initiating disciplinary proceedings, issue of charge memo containing the articles of charge to be wrong, it is to be noted that a Writ Court after the proceedings have attained the finality, cannot go into those aspects, as the same would amount to re-appreciation and re-evaluation of evidence as an appellate authority which is not permitted in law. [See: *Union of India Vs. Subrata Nath (2022 SCC Online SC 1617)*].

29. Further, it is also to be noted that the petitioner having consented for imposition of punishment in the form of cut in pension of Rs.500/- per month for one year *vide* his representation dated 10.11.2017, cannot seek to wriggle out of the same by assailing the initiation of proceedings itself, at this point of time.

30. Thus, considered from any angle, the present writ petition as filed is devoid of merits and is accordingly, dismissed. Consequently, connected Miscellaneous Petitions are closed. No order as to costs.

17.02.2026

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

dh

13/15



W.P.No.7970 of 2021

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T. VINOD KUMAR, J.

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