



W.A(MD) No.1089 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 05.02.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

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1.The Secretary to Government,
Highways and Minor Ports Department,
Secretariat, Chennai-9.

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

3.The Divisional Engineer,
Construction of Maintenance,
Pudukkottai.

... Appellants

Vs.

A.Innasimuthu

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to allow the writ appeal by setting aside the order passed in W.P.(MD)No.10371 of 2017, dated 11.11.2021.



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For Appellants : Mr.S.Shaji Bino
Special Government Pleader

For Respondent : Mr.S.Govindan

JUDGMENT

(Judgment of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The writ petitioner Thiru.A.Innasimuthu joined the Highways Department as overseer on 02.09.1980. He was issued with charge memo dated 23.12.1996. It contained the following four articles of charge:-

- CHARGES: 1** That the said Thiru. A. Innasimuthu while functioning as Union Overseer of Thiruvankulam Panchayat Union, during the period from 17.5.95 to 12.7.95 had prepared the bill for payment relation to the work of construction of slab culvert birkkotai even before the measurement were check measured by the Union Engineer, against the rule.
- CHARGES: 2** That during the aforesaid period and while functioning in the aforesaid office, the said Thiru. A. Innasimuthu had failed to prepare the bill relating to the work of Improvement to Adidraavidar colony burial ground road at puovarasakudi in time.
- CHARGES: 3** That during the aforesaid period and while functioning in the aforesaid office, the said Thiru. A. Innasimuthu had failed to measure the work relating to construction of Slab culvert in car street, Kavilar and allowed the work for completion without recording measurements.
- CHARGES: 4** That during the aforesaid period and while functioning in the aforesaid office, the said Thiru. A. Innasimuthu had failed to maintain absolute integrity and devotion to duty and has violated the rule 20 of Tamil Nadu Government Servant Conduct Rules.



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The writ petitioner offered his explanation. Not satisfied with the same, enquiry was conducted. The enquiry officer submitted his report dated 30.06.1999 holding that the charges 1 & 2 are not established, while the charges 3 & 4 stood established. In the meanwhile, the writ petitioner was implicated in a vigilance case. In fact, he came to be convicted and sentenced vide Judgment dated 27.07.2000 in Spl.C.C.No.1 of 1997 on the file of the Special Judge-cum-Additional District and Sessions Judge-cum-Chief Judicial Magistrate, Pudukkottai. Aggrieved by the same, the appellant filed Crl.A.No.327 of 2000. The criminal appeal was allowed on 23.11.2009 and the writ petitioner was acquitted of all the charges.

3. The writ petitioner was placed under suspension as early as on 27.09.1995. Even though the writ petitioner sought reinstatement, his request was not considered. The writ petitioner reached the age of superannuation on 31.08.2014. He was allowed to retire on 31.08.2014. Since till then the disciplinary proceedings had not attained culmination, the Government had to pass final orders. The opinion of TNPSC was obtained and finally, the Government imposed the punishment of cut in pension to the tune of Rs.500/- per month for a period of one year.



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Challenging the same, the writ petitioner filed W.P.(MD)No.10371 of 2017. The learned single Judge vide order dated 11.11.2021 disposed of the writ petition in the following terms:-

“16.In the result, the following order is passed:

(i) The G.O.(D)No.200 is modified, the punishment of cut in the pension at the rate of Rs.500/- (Rupees Five Hundred only) per month for a period of one year is reduced to Rs.200/- (Rupees Two Hundred only) per month for a period of one year.

(ii) The respondents are directed to regularize the period of suspension in accordance to law.

(iii) The respondents are directed to grant all service benefits and monetary benefits.

(iv) The respondents are directed to settle the retirement benefits with interest, where ever statutory interest are applicable.”

Aggrieved by the said outcome, the Government has filed this writ appeal.

4. The learned Special Government Pleader drew our attention to the Rule 20 of Tamil Nadu Pension Rules, 1978. It reads as follows:-

“20.Counting of periods of suspension:- Time passed under suspension pending enquiry into conduct counts in full where, on conclusion of the enquiry, the Government servant has been fully exonerated or the suspension is held to have been



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wholly unjustified. In other cases, the period of suspension does not count unless that authority competent to pass orders under Fundamental Rule 54 expressly declares at the time that it shall count, and then it shall count only to such extent as the competent authority may declare.”

5. As rightly argued by the learned Special Government Pleader, the writ petitioner was not dismissed following his conviction in the vigilance case. On the other hand, he continued to remain under suspension. When the Government passed the final order, the appellant was not exonerated but found guilty of two of the charges. Punishment was also imposed on him. The learned single Judge had not set aside the order passed by the Government. The punishment imposed on the petitioner alone was slightly modified. In these circumstances, Rule 20 of the Pension Rules will definitely kick in. In this case, the competent authority had also not passed any order favouring the writ petitioner under Fundamental Rule 54. Hence, the period of suspension cannot be counted for pension purposes. The learned single Judge erred in giving a direction that the suspension period should be regularised. No mandamus can be issued contrary to law. Therefore, the direction of the learned



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single Judge that petitioner's suspension period should be regularised is set aside.

6. The learned counsel appearing for the petitioner pointed out that following his conviction, the Government stopped paying subsistence allowance also. It is well settled that 50% or 75% of the salary is paid as subsistence allowance. But the fact remains that till date when he was allowed to retire, he had not been paid the subsistence allowance for close to 14 years.

7. If the subsistence allowance has not been paid, the entire amount shall be paid to the writ petitioner within a period of twelve weeks from the date of receipt of a copy of this order, as per his entitlement. It is also stated that the petitioner is getting only provisional pension post his retirement. This shall also be duly regularised and all the benefits that have to be paid to the petitioner shall be settled within the aforesaid twelve weeks.



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8. The Writ Appeal is allowed on these terms. No costs.

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(G.R.S., J.) (R.K.M., J.)
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