

(2013) 03 MAD CK 0019
In the Madras High Court
Case No : W.A.No. 1956 of 2011

A.G. Ramalingam

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 27-03-2013

Acts Referred:

Citation : (2013) 5 MLJ 246

Hon'ble Judges : M.M. Sundresh, J;M. Jaichandren, J

Bench : Division Bench

Advocate : V. Vijay Shankar, for the Appellant; S. Gunasekaran, Government Advocate, for the Respondent

Judgement

M. Jaichandren, J.—Heard the learned counsels appearing for the parties concerned. This writ appeal has been filed against the order,

dated 31.8.2009, passed by the learned single Judge of this Court, in W.P. No. 35660 of 2006 (O.A. No. 3810 of 1998). The petitioner in the

writ petition, in W.P. No. 35660 of 2006, is the appellant in the present writ appeal.

2. The brief facts of the case are as follows:

2.1 While the petitioner was working as an Executive Officer, in Seithur Town Panchayat, during the period, from 25.4.1977 to 3.5.1979, it had

been alleged that he had misappropriated the funds of the panchayat. Therefore, certain charges had been framed against him, vide a charge memo

issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Based on the said allegations, he had been imposed with

the punishment of postponement of increment for three years, with cumulative effect. The said order had been passed by the Divisional

Development Officer, Sivakasi, in his proceedings, dated 18.9.1980. The said punishment had been given effect to, from 3.10.1980.

2.2 It had been stated that the petitioner had preferred an appeal against the order of punishment imposed on him, before the District Collector

concerned, on 3.12.1980. It had been alleged that the petitioner in the writ petition had manipulated the records and had obtained his promotion,

as an Executive Officer, (Selection Grade). The manipulation of the records had been done by the petitioner in connivance with some other

persons, who had been working along with the petitioner. Like wise, he had also obtained a favourable order from the District Collector

concerned and had drawn a sum of Rupees 20,660/-, as arrears of pay, due from 1980 to 1991. When the manipulation, by the petitioner, had

been deducted, a charge memo had been framed against the petitioner, on 6.11.1995. Thereafter, an enquiry had been conducted. In the said

enquiry, the petitioner had remained ex parte. The Enquiry Officer had submitted a report, dated 30.8.1997, holding that the petitioner was guilty of

the charges levelled against him. A copy of the enquiry report had been furnished to the petitioner. Even though he had received the enquiry report,

he had not submitted his explanation. Therefore, the second respondent had passed the impugned order, dated 15.2.1998, removing the petitioner

from service. The petitioner had not filed an appeal against the said order. Instead, he had filed an original application before the Tribunal, in O.A.

No. 3810 of 1998. The said original application had been transferred to the file of this Court and renumbered as W.P. No. 35660 of 2006.

2.3 The learned single Judge, by his order, dated 31.8.2009, made in W.P. No. 35660 of 2006, had dismissed the writ petition filed by the

petitioner stating that the petitioner had not shown sufficient reasons for setting aside the impugned order passed by the second respondent, dated

15.2.1998.

2.4 The learned single Judge had observed that the punishment of dismissal from service had been imposed on the petitioner, after following all the

necessary procedures, in terms of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It had also been observed that, in spite of the

report of the enquiry officer having been served on the petitioner, he had not chosen to submit a reply, within a reasonable time. The second

respondent had passed the final order, dismissing the petitioner from service, after perusing all the relevant on records. As such, the writ petition

filed by the petitioner is devoid of merits and therefore, it was liable to be dismissed. Accordingly, the learned single Judge had dismissed the writ

petition filed by the petitioner, by his order, dated 31.8.2009.

3. The learned counsel appearing on behalf of the appellant had submitted that a common enquiry had been conducted involving the appellant, the

petitioner in the writ petition, and the other two persons, namely, Pachiappan and Murugan, said to have been involved in the misappropriation of

the funds of the panchayat concerned, on 27.8.1997. The enquiry had been adjourned to 11.9.1997. However, the enquiry officer had submitted

a report hastily, on 30.8.1997 itself. Based on the said report, the order of removal from service had been passed, by the second respondent,

removing the petitioner from service.

4. The learned counsel had further stated that this Court, by an order, dated 29.7.2009, made in W.P. No. 10138 of 2006, had quashed the order

of punishment imposed on Pachiappan, on the said ground.

5. The learned counsel had further submitted that due to the removal of the petitioner from service, by the impugned order of the second

respondent, dated 15.2.1998, he had not been paid the pensionary benefits, even though he had rendered 38 years of service. In such

circumstances, the order of the learned single Judge, dated 31.8.2009, in W.P. No. 35660 of 2006, is liable to be set aside.

6. The respondents had not placed before this Court the relevant records to contradict the claims made by the learned counsel appearing for the

appellant.

7. In such circumstances, it is found that the impugned order, dated 15.2.1998, had been passed by the second respondent, removing the

petitioner from service, hastily, without proper application of mind. Further, the principles of natural justice had not been followed before the said

impugned order had been passed.

8. At this stage of the hearing of the writ appeal, an affidavit had been filed on behalf of the appellant, dated 25.3.2013, stating that he would not

claim the back wages from the date of his removal from service, till the date of his superannuation.

9. In view of the submissions made by the learned counsels appearing for the appellant and in view of the records available, this Court is of the considered view that the impugned order passed by the second respondent, dated 15.2.1998, was based on the report of the enquiry officer, dated 30.8.1997. The enquiry officer had submitted the report even before the petitioner had been given an opportunity to submit his explanation with regard to the charges levelled against him. As such, the second respondent had passed the impugned order, dated 15.2.1998, without proper application of mind. However, the learned single Judge had not taken into consideration such facts, while passing the order, dated 31.8.2009, in W.P. No. 35660 of 2006. Therefore, we are of the considered view that the order of the learned single Judge, dated 31.8.2009, made in W.P. No. 35660 of 2006, is liable to be set aside. Hence, it is set aside. In such circumstances, in view of the affidavit filed by the appellant, dated 25.3.2013, stating that he would not claim any back wages for the period when he was out of service, pursuant to the order of removal from service passed against him, the impugned order of the second respondent, dated 15.2.1998, stands quashed and the respondents are directed to pay the pensionary benefits due to the petitioner, taking into account the period, from 15.2.1998 till he had attained the age of superannuation, for the purpose of calculating such pensionary benefits. However, it is made clear that the appellant in the present writ appeal would not be entitled to the backwages for the period, during which he was out of service. The writ appeal is ordered accordingly. No costs. Connected M.P. No. 1 of 2010 is closed.