

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

Dated : 29.11.2005

Coram:-

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K.KRISHNAN

W.P.Nos. 10680 of 2003 and 1710 of 2004

1. The Secretary to Government,
Small Industries Department,
Fort St. George, Chennai - 600 009.
 2. The Commissioner and
Director of Industries and Commerce,
Chepauk, Chennai - 600 005.
- Petitioners in
both writ petitions

Vs

1. R. Venugopal
 2. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai - 104.
- Respondents in
both writ petitions

Writ Petitions filed Under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the Tamilnadu Administrative Tribunal in O.A.No.2231 of 2002 dated 23.4.2002 (WP No.10680/03) and in C.A. No.381/2002 (WP No.1710/04) dated 4.4.2003 in O.A.No.2231 of 2002 and to quash the same.

For petitioners : Miss. V.Velumani,
Additional Government Pleader

For R-1 : Mr. S.K. Raghunathan

COMMON ORDER

(Order of the Court was made by P. Sathasivam, J.)

Small Industries Department and the Commissioner and Director of Industries and Commerce are the petitioners in the above Writ Petitions.

2. W.P.No.10680 of 2003 is filed against the order of the Tamil Nadu Administrative Tribunal, dated 23.04.2002, made in O.A. No. 2231 of 2002, in and by which, the Tribunal directed the Department to pass final orders in respect of the representation of the applicant within a period of three months from the date of its order.

3. Aggrieved by the order of the very same Tribunal, dated 04.04.2003, made in Contempt Application No.381 of 2002 in O.A.No.2231 of 2002, the same petitioners filed W.P. No. 1710 of 2004.

4. Heard learned Additional Government Pleader for petitioners and Mr. S.K.Raghunathan for contesting 1st respondent.

5. In order to appreciate the reasoning given by the Tribunal, it is relevant to refer the relief sought for by the applicant in O.A. No. 2231 of 2002 before the Tamil Nadu Administrative Tribunal. The applicant prayed for a direction, directing the respondents viz., Small Industries Department and the Commissioner and Director of Industries and Commerce, to consider and pass orders on the representation of the applicant dated 03.10.2001 with regard to the revocation of suspension and permit him to retire from service with effect from 31.12.1994 and also grant consequential benefits.

6. The Tribunal, on consideration of the relief prayed for and the stand taken by the Department in their counter affidavit, and also taking note of the fact that the applicant had become due for retirement in 1994, the Judgement in the Criminal case has been pronounced in January 2004, resulting in acquittal, and the Government has not passed final orders, directed the respondents to pass final orders on the representation of the applicant within a period of three months. Even after the acquittal by the Criminal Court in respect of the criminal charges levelled against the delinquent, inasmuch as the Department has not passed final order resulting in hardships and sufferings, the applicant made a representation on 03.10.2001, requesting for revocation of suspension and

treating him retired from service with effect from 31.12.1994. Since no order had been passed, the Tribunal granted three months' time for disposal of the said representation. In such circumstances, we do not find any error or infirmity in the said order of the Tribunal.

7. Since the Department was not in a position to pass final orders within the time as directed by the Tribunal in the order dated 23.04.2002, they filed an Application in M.A. No.5678 of 2002, praying for extension of time for a further period of six months beyond 22.07.2002. In this regard, it is useful to refer the stand taken by the Department in the petition filed in M.A. No.5678 of 2002. In paragraph No.6, it is stated as under:-

" 6. It is submitted that the time available to finalise the issue of final orders in respect of respondent herein, as per the orders of Hon'ble Tamilnadu Administrative Tribunal, is upto 22.07.2002. The respondent herein is under suspension from 15.05.1979 and on revocation of suspension a decision has to be taken regarding regularisation of period of suspension. For implementing the orders of Tamilnadu Administrative Tribunal, the respondents are to consult the Administrative Departments of the Secretariat before issue of orders revoking the suspension of the respondent, permitting him to retire on the date of his superannuation (31.12.1994) regulating the period of suspension, payment of back wages etc. It may take some more time to the applicants herein to arrive at a conclusion on the implementation of the orders of Tamilnadu Administrative Tribunal. Hence, the final orders could not be issued before 22.07.2002 ie., the date fixed by this Hon'ble Tamilnadu Administrative Tribunal. "

8. In the light of the stand taken by the Department, the Tribunal, after finding that there is no justification for granting further time, directed the Department to implement the order dated 23.04.2002 within a period of four weeks and posted the said Application to 24.01.2003 for reporting compliance. Inasmuch as the department did not comply with the order even within the extended period, the applicant filed a Contempt Application in C.A. No.381 of 2002 for punishing the respondents/Department. By order

dated 04.04.2003, the Tribunal, after recording a factual finding that though direction was given to dispose of the enquiry and pass final orders within three months from 22.04.2002, even in April 2003, the Department had not taken any follow-up action, and finding that there is no justifiable reason on the side of the Department, passed an order annulling the charge memo dated 10.02.1986 and all disciplinary proceedings. In the same order, the Tribunal also concluded that the applicant shall be deemed to have been retired with effect from the date of retirement in the year 1994 and closed the Contempt Application. Questioning the said Order, the Department has filed W.P. No. 1710 of 2004.

9. Learned Additional Government Pleader, by drawing our attention to the relief prayed in O.A. No.2231 of 2002, contended that in the absence of specific request by the applicant for quashing the charge memo and that the prayer being one for disposal of his representation, the Tribunal is not justified in quashing the charge memo and annulling all the disciplinary proceedings. In other words, according to her, the Tribunal exceeded its jurisdiction in passing such order.

10. On going through the Application filed, relief prayed, order passed in O.A. No.2231 of 2002, the stand taken by the Department in the petition filed for extension of time in M.A. No. 5678 of 2002 and the final order passed in C.A. No.381 of 2002, we are unable to accept the said contention for the following reasons,

The order of the Tribunal dated 23.04.2002 cannot be faulted, since the Tribunal directed the Department to pass orders on the representation of the applicant within a period of three months. As a matter of fact, in the petition for extension (we have already extracted the relevant portion - para.6), the Department informed the Tribunal in categorical terms that in consultation with the Administrative Department of the Secretariat, necessary orders will be issued and it may take some more time to arrive at a conclusion on the implementation of the order of the Tribunal. In such circumstances, they prayed for extension of time for a further period of six months beyond 22.07.2002. We have already referred to the order dated 26.12.2002, wherein, the Tribunal had granted four weeks time for compliance and implementation of the earlier order. Inasmuch as even after the said order, the Department had not passed any orders, the applicant moved the Tribunal by way of Contempt Application No.381 of 2002. In view of the attitude of the Department, viz.,

that no order was passed even after acquittal in the Criminal Case and on the representation of the applicant for revocation of his suspension, the Tribunal, instead of punishing the persons concerned, taking note of all relevant materials including the decision of the Criminal Court, acquitting the applicant on merits, the charges in the departmental proceedings and undue delay in not pursuing the same, finally annulled all the disciplinary proceedings pursuant to the charge memo dated 10.02.1986.

11. Learned Additional Government Pleader, by relying upon the decision reported in 2004 (12) SCC 12 579 (Principal Secretary, Govt. of A.P. vs. M. Adinarayana), would contend that the interference by the Tribunal in a matter of this nature is very limited and according to her, the Tribunal exceeded its limits and committed an error in quashing the charge memo. Absolutely there is no dispute with regard to the proposition of Law as laid down in the Judgement of the Supreme Court. We have already referred to the sufferings of the applicant and all relevant facts including the acquittal in the criminal case, representation for revocation of suspension and inaction on the part of the Department in not pursuing the enquiry in spite of the direction given by the Tribunal. In such circumstances, we are of the view that the said decision is not helpful to the stand taken by the Department. In this regard, it is relevant to refer Rule 25 of the Tamil Nadu Administrative Tribunal (Procedure) Rules, 1988, which reads as under:-

"Orders and directions in certain cases.--
The Tribunal may make such Orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of Justice."

The above provision makes it clear that the Tribunal is empowered to pass appropriate orders/directions in order to give effect to its order or to prevent abuse of its process as well as to secure the ends of justice. There is no need for us to refer the details furnished by the applicant for approaching the Tribunal and the orders passed by it.

12. In the light of the factual details mentioned above and in view of the attitude of the Department or inaction on their part in not implementing the orders of the Tribunal and pursuing the departmental proceedings, considering Rule 25 of the Tamil Nadu Administrative Tribunal (Procedure) Rules, 1988, referred above, we are of the view that the Tribunal is fully justified in interfering with the disciplinary proceedings and annulling

the same while passing an order in the Contempt Application filed by the applicant. We are in agreement with the said conclusion and we do not find any valid ground for interference.

13. Accordingly, both the writ petitions fail and the same are dismissed. No costs.
JI/gra

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Registrar,
Tamilnadu Administrative Tribunal,
Chennai - 104.

+ 2 cc to Govt. Pleader sr no. 46952 and 46951
+ one cc to Mr. S.K. Rakhunathan Advocate sr no. 46793

AK(CO)
NM(07.12.2005)

W.P.NOS. 10680 of 2003
and
1710 of 2004

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