

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-08-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.11915 OF 2015

L.Krishnan

...

Petitioner

-vs-

1.The Commissioner,
Tiruvallore Municipality,
Tiruvallore.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.

...

Respondents

Writ Petition has been filed, praying for issuance of a writ of certiorarified mandamus, to call for the records relating to the impugned order of suspension issued by the first respondent in Na.Ka.No.3292/2013/C1-1, dated 27.06.2014, and quash the same and consequently direct the first respondent to submit the pension proposals to the Director of Local Fund Audit for sanction of Pension and DCRG to the petitioner.

For petitioner : Mr.T.Ranganathan

For respondent 1 : Mr.P.Srinivas

For respondent 2 : Mr.V.Subbiah,
Special Government Pleader.

O R D E R

By consent, the Writ Petition is taken up for final disposal.

2. The petitioner, while working as Town Planning Inspector in the first respondent Municipality, was issued with an order of suspension, dated 27.06.2014, by the first respondent, based on the direction of the second respondent, dated 26.06.2014.

3. Challenging the said order of suspension, the petitioner has filed this Writ Petition, contending that the order of suspension can be passed only in public interest, and, in the present case, it is not so. The petitioner would submit that as per G.O.Ms.No.144, P&AR Department, dated 08.06.2007, suspension on the verge of retirement should be avoided, unless a criminal case is pending or grave irregularities have been committed by the individual concerned, which would result in major punishment/penalty viz., dismissal or removal from service, and,

admittedly, the impugned order came to be issued belatedly, based on an audit objection.

4. It is also the case of the petitioner that the order of suspension should be followed by an order of extension of service under FR 56 (1) (c) and, undisputably, the first respondent did not pass any such order and, on that ground also, he is entitled to succeed.

5. When the Writ Petition was listed for admission on 27.04.2015, another learned single Judge of this Court had directed the first respondent to pay the terminal benefits, such as, GPF, SPF and Encashment of Earned Leave, and further directing the learned Special Government Pleader to get instructions as to whether any order, retaining the petitioner in service beyond the age of superannuation, was passed? In response to the said query, the first respondent has filed a counter affidavit, stating, among other things, that the order, dated 11.06.2015, was passed, retaining the petitioner in service, pending finalisation of the departmental proceedings, and the said order was also despatched to the petitioner and served on him on 13.06.2015.

6. Learned counsel for the petitioner would submit that the petitioner has reached the age of superannuation on 30.06.2014 and the impugned order of suspension came to be passed on 27.06.2014 and no order, extending the period of service, has been passed by the first respondent under FR 56 (1) (c) and, therefore, appropriate orders may be passed, treating the petitioner as retired from service, and with a further direction to settle all the terminal benefits available to him.

7. Per contra, Mr.P.Srinivas, learned Standing Counsel, appearing for the first respondent, has drawn the attention of this Court to the counter affidavit as well as the additional typed set of papers, and would submit, that once the petitioner is suspended from service, he is deemed to be in service, and no separate order is required, extending the period of service/retention in service beyond the age of superannuation. He would further submit that the Hon'ble Supreme Court in Chairman-cum-Managing Director, Mahanandi Coalfield Ltd. v. Rabindranath Choubey, 2013 (6) CTC 342, has referred the said issue to a Larger Bench and prays for dismissal of the Writ Petition.

8. Heard the submissions of Mr.V.Subbiah, learned Special Government Pleader, who accepted notice on behalf of the second respondent, as well.

9. This Court has carefully considered the rival submissions and also perused the materials placed before it, coupled with the decision reported in 2013 (6) CTC 342.

10. The Hon'ble Supreme Court of India, in the abovesited decision, has referred the issue to a Larger Bench, by taking into consideration the fact, that the retirement of the employee was subject to that of the disciplinary proceedings, and after conclusion of the disciplinary proceedings, whether an order of dismissal can be passed? Therefore, the contention put forth by

the learned counsel for the first respondent, by placing reliance upon the abovesaid issue, in the opinion of this Court, is untenable.

11. In so far as the core issue, as to, whether in the absence of any order, extending the period of service or retaining the petitioner in service, beyond the age of superannuation, disciplinary proceedings can be allowed to go on ?, this Court is of the considered view, that unless and until the order of suspension on the verge of retirement is followed by a separate order, retaining the petitioner in service for the purpose of concluding the proceedings, further disciplinary proceedings cannot go on.

12. A Full Bench of this Court, in the case of C.Mathesu v. The Secretary to Government, Revenue Department, Chennai, reported in 2013 (3) MLJ 846 = 2013 (3) CTC 369, by means of harmonious construction, held that the appellant therein was permitted to retire on attaining the age of superannuation, without prejudice to the disciplinary proceedings pending against him and, therefore, the proceedings could go on in terms of Rule 9 (2) (b) of the Pension Rules.

13. Concedingly, in this case, no such order was passed, permitting the petitioner to retire from service, subject to pendency of the disciplinary proceedings and, as rightly pointed out by the learned counsel for the petitioner, no separate order has also been passed either on the date of superannuation or just prior to that, retaining the petitioner in service, in terms of FR 56 (1) (c) and such an order came to be passed nearly one year thereafter i.e., on 11.06.2015.

14. For all the foregoing reasons, this Writ Petition is allowed, and the impugned proceedings of the first respondent in Na.Ka.No.3292/2013/C1-1, dated 27.06.2014, are quashed. The respondents are directed to settle all the terminal benefits due and payable to the petitioner, as expeditiously as possible, preferably not later than eight weeks from the date of receipt of a copy of this order, and communicate the decision taken to the petitioner. No order as to costs. Consequently, the connected M.P.Nos.1 and 2 of 2015 are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

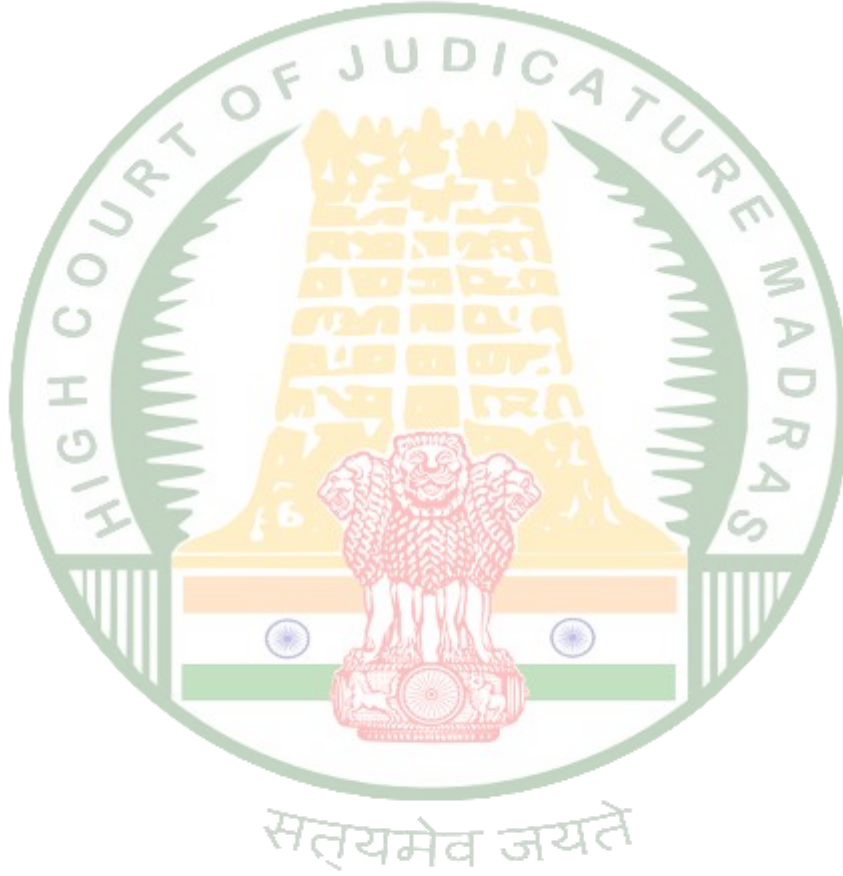
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1 cc to Mr.P.Srinivas , Advocate Sr.No.40589
1 cc to Mr.T.Ranganathan , Advocate Sr.No.40542
1 cc to Government Pleader.Sr.No.40744

W.P.No.11915/2015

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