IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.Nos.12559 and 12560 of 2015
and M.P.No.1 of 2015

V.Mathiyalagan ...Petitioner in both the above WPs.

Versus

1.The Principal Secretary to Government
of Tamil Nadu
Commercial Taxes and Registration (E1)
Department
Secretariat
Chennai-600 009

2.The Commissioner
Commercial Taxes and Registration (E1) Department
Chepauk, Chennai-600 005

3.The Joint Commissioner
Commercial Taxes and Registration(E1) Department
Chennai(South) Division
PAPJM Building, Greams Road
Chennai-600 006

4.The Inspector of Police
Chennai City I
Vigilance and Anti Corruption
Raja Annamalaipuram
Chennai-600 028 ... Respondents in both the above WPs.

PRAYER: Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the order not to retire from service issued by the 1st respondent and suspension passed by the 1st respondent respectively in G.O.(D).No.176 and 174 dated 30.04.2014 and quash the same and consequently direct the 1st respondent to allow the petitioner to retire from the office of the 1st respondent and to provide all the retirement benefits including pensionary benefits to the petitioner.

For Petitioner : Mr.P.Satheesh Kumar

For Respondents : Mr.V.Jayaprakash Narayan,
Special Government Pleader

O R D E R

With the consent of both sides, the Writ Petitions are taken up for final disposal.

2. The Petitioner was working as Assistant Commissioner in the Commercial Taxes and Registration (E1) Department. He reached the age of superannuation on 30.04.2014. He was placed under suspension by order dated 30.04.2014 in G.O.(D).No.174, Commercial Taxes & Registration (E1) Department under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Another G.O.(D).No.176 C.T. &R(E1) Department dated 30.04.2014 was passed not permitting to retire on his reaching the date of superannuation i.e., 30.04.2014, but he was retained in service and the said order was passed under Rule 56(1)(c) of the Fundamental Rules.

3. The reason for not permitting the petitioner to retire and to keep him under suspension is due to registration of F.I.R., on 25.04.2014 on the file of the Vigilance and Anti Corruption viz., the fourth respondent under Section 120 B, 420, 465, 468, 471, 477 (A) IPC and under Section 13(2) read with 13(1)(c) & (d) of Prevention of Corruption Act, 1988. Now, the petitioner has sought to question those Government Orders viz., G.O.(D).No.174 and 176 dated 30.04.2014.

4. The learned counsel for the petitioner has relied on the judgment of the Apex Court dated 16.02.2015 in Civil Appeal No.1912 of 2015 (Arising out of SLP(C).No.31761 of 2013 [AJAY KUMAR CHOUDHARY VS. UNION OF INDIA THROUGH ITS SECRETARY AND ANOTHER] in support of his contention that the petitioner cannot be kept under suspension for more than three months, without issuing charge memo in the disciplinary proceedings.

5. On the other hand, the learned Special Government Pleader has produced written instructions, wherein, it is stated that F.I.R., has been registered on 25.04.2014. He further submitted that the judgment of the Apex Court relied on by the petitioner would not apply to the order of suspension based on criminal cases. He has also submitted that the judgment of the Apex Court would be attracted only in cases when the Department has kept the employee under suspension for more than 3 months for departmental action, without issuing charge memo. According to the Special Government Pleader, no departmental action is taken by the respondent Department in this case, but the petitioner was placed

under suspension and retained in service for the registration of F.I.R., based on serious criminal allegations falling under IPC and Prevention of Corruption Act provisions.

6. I have considered the submissions made on both sides. As rightly submitted by the learned Special Government Pleader, F.I.R., was registered only on 25.04.2014 and the allegations are of very serious in nature. I have also perused the judgment of the Apex Court relied on by the petitioner.

7. I am in full agreement with the submissions of the learned Special Government Pleader. The judgment of the Apex Court would cover only cases, wherein, the Departmental Proceedings is contemplated and the same is pending for more than 3 months without issuing charge memo and only in those cases, the Supreme Court directed to restore the petitioner in service and to proceed with the departmental action.

8. In this case, the petitioner attained the age of superannuation on 30.04.2014, but, by that time, F.I.R., has been registered against him for serious criminal allegations and the investigation is going on. In such circumstances, I am not inclined to interfere with the Government Orders passed by the first respondent, by which, the petitioner was placed under suspension and retained in service, by invoking Rule 56(1)(c) of the Fundamental Rules. Accordingly, the writ petitions fail and the same are dismissed. However, while dismissing the writ petitions, a direction is issued to the fourth respondent to complete the investigation within a period of six months from the date of receipt of a copy of this order. If investigation is not completed within six months, the petitioner is at liberty to approach this Court seeking appropriate relief. No costs. Connected MP is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvsri

To

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of Tamil Nadu
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Chennai-600 009

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Chennai City I
Vigilance and Anti Corruption
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Chennai-600 028

4 ccs to M/s. R.C. Paul Kanagaraj, Advocate, sr. 23471 & 23472
1 cc to Government Pleader, Sr. 23318

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RSK (CO)
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