

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.21148 of 2015
and
M.P.Nos.1, 2 and 3 of 2015

V.Chandrasekaran

...Petitioner

Versus

1. The State of Tamil Nadu
Rep. By its Agricultural Production
Commissioner and Secretary
(Agriculture) to Government
St.George Fort
Chennai-600 009

2. The Director of Agriculture
Chepauk, Chennai-5

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order of suspension vide G.O.(2D).No.83 Agriculture (AA II) Department dated 30.06.2015 and consequential order of retention of retirement vide G.O.(2D)No.84 Agriculture (AA 2) Department dated 30.06.2015 on the file of the first respondent and quash the same consequently directing the respondents to permit the petitioner to retire from service with all full monetary benefits as on the date of superannuation on 30.06.2015 afternoon with the subsequent pension benefit pending proceedings, if any against the petitioner.

For Petitioner : Mr.U.Karunakaran

For respondents : Mrs.M.E.Raniselvam, AGP.

O R D E R

The petitioner was formerly Assistant Director of Agriculture, Thottiam Taluk, Trichy District. He retired on reaching the age of superannuation on 30.06.2015. While so, the first respondent passed G.O.(2D).No.84 Agriculture (AA2) Department dated 30.06.2015 retaining the petitioner in service by invoking its power under Rule 56(1)(c) of the Fundamental Rules. It is relevant to extract the following passage in G.O.(2D).No.84 as under:-

"Now, therefore, it is hereby ordered under rule 56(1)(c) of the Fundamental Rules that the said Thiru V.Chandrasekaran, formerly Assistant Director of Agriculture, Thottiam Taluk, Trichy District, now Deputy Director of Agriculture, Karur District shall not be permitted to retire on his reaching the date of superannuation i.e., on 30.06.2015 afternoon but shall, be retained in service until the enquiry into grave charges pending against him are concluded and final orders are passed thereon by the Competent Authority."

2. The petitioner was also placed under suspension by G.O.(2D). No.83 Agriculture (AA-II) Department dated 30.06.2015.

3. Now, the petitioner has filed this writ petition seeking to quash both G.O.(2D).Nos.83 and 84.

4. It is submitted by the learned counsel for the petitioner that the petitioner is retained in service and he was not permitted to retire under Rule 56 (1)(c) of Fundamental Rules on the ground that a complaint of the criminal offence against the petitioner is under investigation/trial.

5. A reading of the above referred to G.Os., would disclose that the petitioner was retained in service contemplating departmental enquiry and not based on any criminal case.

6. It is also useful to extract Rule 56(1)(c) of the Fundamental Rules:-Rule 56(1)(c) of the Tamil Nadu Government Fundamental Rules:-

"Retirement on Superannuation- (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except

with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years:

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.

Notwithstanding anything contained in clause (a), a Government servant who is under suspension,
(i)
(ii)
(iii) against whom an enquiry into grave charges is contemplated or is pending; or
(iv) against whom a complaint of criminal offence is under investigation or trial;
shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, or rule 3(e) of the Tamil Nadu Police Sub-ordinate Service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority".

7. In my view, the Government did not invoke 56(1)(c) (iv) as contended by the learned counsel for the petitioner; on the other hand, the Government invoked Rule 56(1)(c) (iii) of Fundamental Rules.

8. In these circumstances, the Writ Petition is disposed of directing the first respondent to complete the disciplinary proceedings within a period of 8 months from the date of receipt of a copy of this order. The Writ Petition is disposed of accordingly. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Agricultural Production
The State of Tamil Nadu
Commissioner and Secretary
(Agriculture) to Government
St.George Fort
Chennai-600 009

2. The Director of Agriculture
Chepauk, Chennai-5

1 CC to Mr.U.Karunakaran, Advocate SR.No. 35686

1 CC to the Government Pleader, SR.No. 36065

सत्यमेव जयते

W.P.No.21148 of 2015

NM (CO)

PSI (20.07.2015)

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