

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.11365 of 2015

and M.P.No.1 of 2015

R.Palaniappan .. Petitioners
vs.

- 1.The Director,
School Education Department,
College Road,
Chennai-600 006.
- 2.The Principal Accountant General,
Pay and Allowances,
Teynampet,
Chennai-600 018.
- 3.The District Educational Officer,
District Educational Office,
Old Railway Station Road,
Erode.
- 4.The Head Master,
Government Higher Secondary School,
Solai Pudhur,
Kodumudi,
Erode District,
Pincode-638 151.

सत्यमेव जयते Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration declaring the entire disciplinary proceedings initiated against the petitioner by the first and third respondents as null and void and further direct the respondents to pay all the monetary benefits with interest to the petitioner.

For Petitioner : Mr.T.K.S.Gandhi
For Respondents : Mr.K.Dhananjayan,
Special Govt. Pleader
for R1, R3 & R4
Mr.V.Vijayashankar for R2

O R D E R

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

2. The petitioner, in the affidavit filed in support of this writ petition, would aver among things that he is an Ex-servicemen and thereafter, joined as Junior Assistant in the School Education Department and while he was working in that capacity, the Headmaster, Minnapalayam Girls Higher Secondary School, Erode, have lodged a complaint with the Malayampalayam Police Station, Erode District, based on which a case in Crime No.245 of 1998 was registered, alleging that the petitioner had misappropriated the General Provident Fund amount of the school staff members during the period 27.06.1996 to 28.10.1996 to the tune of Rs.19,000/- and immediately, the petitioner was placed under suspension with effect from 17.09.1998. Therefore, the petitioner filed an Original Application before the Tamil Nadu Administrative Tribunal and in pursuant to the order passed by the Tamil Nadu Administrative Tribunal, the order of suspension was revoked and the petitioner was reinstated into service on 22.04.2003. The original date of retirement of the petitioner is 30.04.2006 and just 5 days prior to the date of his retirement, he was placed under suspension by the third respondent, vide order dated 25.04.2006, citing the reason of pendency of criminal case before the District Munsif cum Judicial Magistrate, Kodumudi, Erode District. According to the petitioner, the criminal case, after full fledged trial, had ended in acquittal, vide order dated 23.01.2009 in C.C.Nos.173 to 175 of 2003, by awarding benefit of doubt and no further challenge was made in the form of appeal by the State and therefore, the said judgment has become final. The petitioner has also approached the respondents praying for settlement of terminal benefits and however, it was not done so and it is also the claim of the petitioner that he has not been paid with Subsistence Allowance despite the fact that he has been placed under suspension as well as the fact that his service was also extended, vide proceedings of the third respondent dated 28.04.2006 under Rule 56(i) (c) of the Fundamental Rules.

3. Mr.T.K.S.Gandhi, learned counsel appearing for the petitioner would submit that admittedly the petitioner is placed under suspension right from 25.04.2006 and so far, no charge memo has been issued and the departmental proceedings as well as the criminal prosecution are on the same set of charges and though very many years had lapsed, charge memo is yet to be issued and as such, he has been put to grave hardship and prejudice and therefore, came forward with this writ petition praying for a Declaration, declaring the disciplinary proceedings initiated against the petitioner as null and void.

4. Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents 1, 3 and 4 has drawn the attention of this Court to the counter affidavit filed on behalf of the respondents and would submit that the petitioner is facing the following charges:

"1. Misappropriation GPF fund - withdrawal of Rs.179200 & 216700

2. Special fees registers were not maintained properly by the petitioner during 7/9/96 to 3/9/98.

3. Rs.19800 was withdrawn and incurred expenditure in special fees without following rules.

4. Admission fees collected from the students Rs94/- and it was not remitted in the Government Account.

5. Daily fee collection Register was not properly maintained.

6. Sanchayika amount Rs6623/- & 8163.25 were withdrawing by the petitioner and that amount was not paid to the students. The petitioner not produced any vouchers for that amount.

7. EL surrender 15 days bill amount was paid to the teacher Tmt.Nandhini priya on 1.12.1997 for that there is no entry in MTC 70.

8. So many corrections are made by the petitioner in MTC 70 and differences found in UDP registers."

It is further stated in the counter affidavit that only two instalments have been recovered from his salary and the balance instalments has not been recovered and since it has not been done so, he has been rightly proceeded with departmentally. This Court has also put a specific question to the official respondents as to whether charge memo has been issued and on

instructions, it is reported that so far no charge memo has been issued.

5. This Court has considered the rival submissions and also perused the entire materials available on record.

6. Admittedly, the petitioner, at the verge of superannuation, was suspended from service on 25.04.2006 by the third respondent by invoking Rule 56(i)(c) of the Fundamental Rules and retained the services of the petitioner so as to enable them to proceed against him departmentally. Admittedly no charge memo was issued even after a lapse of 10 years from the date of suspension.

7. It is a well settled position of law that delay in initiating disciplinary proceedings is fatal, however it depends upon the facts and circumstances of each case.

8. It is the categorical submission of the learned counsel appearing for the petitioner that the allegation in the disciplinary proceedings and criminal prosecution are one and the same and the criminal case has also ended in acquittal, by awarding benefit of doubt and it has reached finality and therefore, there is no point in pursuing the disciplinary proceedings initiated against the petitioner in the absence of charge memo. This Court finds considerable force in the submission made by the learned counsel appearing for the petitioner.

9. Admittedly, no legal impediment on the part of the respondent to proceed against the petitioner departmentally and nothing prevented the respondents from initiating departmental action by issuing charge memo and admittedly, even after 10 years from the date of retirement, charge memo is yet to be issued and the petitioner is aged about 66 years. In the considered opinion of this Court, non-issuance of the charge memo for nearly 10 years is fatal to the departmental proceedings and on the sole ground, the petitioner is entitled to the relief sought for.

10. Though the petitioner has prayed for a Writ of Declaration, this Court, in the light of the above facts and circumstances, is of the view that the order dated 25.04.2006 in R.C.No.7773/A1/98 as well as the order dated 28.04.2006 in Rc.No.7773/A1/98 passed by the third respondent, placing the petitioner under suspension and not permitting him to retire, are liable to be set aside and accordingly both the proceedings are set aside.

11. In the result, this Writ Petition is allowed and the respondents 1, 3 and 4 are directed to take necessary and expeditious steps to settle the terminal and other attendant benefits due and payable to the petitioner, subject to eligibility in accordance with the relevant norms and pass orders as expeditiously as possible and not later than three months from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm
To

- 1.The Director,
School Education Department,
College Road,
Chennai-600 006.
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Government Higher Secondary School,
Solai Pudhur,
Kodumudi,
Erode District,
Pincode-638 151.

+1cc to Mr.TKS Gandhi, Advocate, S.R.No.73596
+1cc to the Government Pleader, S.R.No.73674

mu (CO)
md(03/01/2017)

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