

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

**W.P.No.18576 of 2016
and
W.M.P.No.16282 of 2016**

R.Palanisamy

... Petitioner

Vs.

Tamil Nadu Water Supply & Drainage Board
rep. by its Managing Director,
TWAD House, Chepauk,
Chennai-600 005.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to Proceeding No.88621/Estt.(D)/A2/2002, dated 30.05.2016 and to quash the same and to direct the respondent to forthwith allow the petitioner to retire from service and to release all the terminal benefits admissible to the petitioner in the light of the order dated 09.01.2009 passed in W.P.No.22664 of 2008.

For Petitioner : Mr.Kandhan Duraisamy

For respondent : Mr.R.Ganesh Babu

* * * * *

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent relating to Proceeding No.88621/Estt.(D)/A2/2002, dated 30.05.2016 and to quash the same and to direct the respondent to forthwith allow the petitioner to retire from service and to release all the terminal benefits admissible to the petitioner in the light of the order dated 09.01.2009 passed in W.P.No.22664 of 2008.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows__

2-1.The petitioner joined the service of the Tamil Nadu Water Supply and Drainage Board as Assistant Engineer, RWS Division, Erode on 30.08.1980. Thereafter, on 28.05.1986, he was transferred to RWS Division, Uthagamandalam and worked in the said Division till 24.04.1991.

2-2.While so, a charge-memo was issued to the petitioner by the Executive Engineer vide. No.7747.Confidential/B7/93, dated 13.04.1993, alleging non-furnishing of M.Books-reference in respect of erection of pump-sets. To the said charge-memo, the petitioner had submitted his reply, furnishing all the requisite details. Thereafter, by proceedings of the Superintending Engineer, The Nilgiris, Ooty, in Proc.No.59C/EA3/96, dated 31.05.1999, the said charges framed against the petitioner were dropped.

2-3.Again, by proceeding in JCE(G1) / TWAD / HO / Chennai/

Lr.No.C4/119921/97, dated 06.12.1997, the petitioner was served with another charge-memo; but actually it was issued in respect of another person having same name of the petitioner viz., Palanisamy. Hence, immediately, the petitioner had given a representation that he never worked in HADP Division, Uthagamandalam. By proceedings in Letter No.EA/C.29/97, dated 06.01.1998, the Executive Engineer, realising the mistake in identity committed in the Head Office, redirected the charge-memo to the Head Office to be served on said D.Palanisamy.

2-4.In the meantime, by the proceedings of the Superintending Engineer in another Charge-memo No.9759/BA/99, dated 04.08.2000 was issued to the petitioner with reference to non-submission of MAS account during the period from 28.05.1986 to 24.04.1991. Immediately, the petitioner submitted his reply. Thereafter, an Enquiry Officer was appointed and enquiry was conducted. In the enquiry proceedings, the petitioner's stand was accepted and the charges framed against him on 04.08.2000 were also dropped.

2-5.During the year 2002, the petitioner was issued with another charge-memo by the Managing Director vide proceedings No.15062/Estt.D1/A2/01/24, dated 12.01.2002, with reference to fabrication of materials during the alleged period from 1982 to 1987. After the petitioner submitted his explanation, the petitioner's stand was accepted and charges were dropped by proceedings in B.P.Ms.No.155, dated 17.12.2007.

2-6.While so, by proceedings No.88621/Estt/2002, dated 27.11.2002, the Managing Director passed an order suspending the petitioner on the basis of registration of an FIR in Crime No.3/AC88 Hqrs of 88. Challenging the same, the petitioner had filed a writ petition in W.P.No.43498 of 2002 before this Court. In fact, similar writ petitions were filed by the other persons, who were placed under suspension like the petitioner herein. Initially, an interim order of stay was granted by this Court, subsequently, it was made absolute on 18.09.2003. Thereafter, appeals were filed by the respondent-Board against the interim order in W.A.Nos.2826 to 2831 of 2004; but the said writ appeals were dismissed by the Division Bench of this Court.

2-7.It is further stated by the petitioner that an identical order of suspension dated 27.11.2002 in respect of another similarly placed person viz., one M.Balan, was quashed by the Division Bench of this Court by order dated 03.01.2008 in W.P.No.43483 of 2002. Thereafter, the appeal preferred by the respondent-Board against the said order of the Division Bench dated 03.11.2008 was also dismissed by the Hon'ble Supreme Court in S.L.P.(Civil).No.3424 of 2008 & etc. In spite of the earlier order of the Hon'ble Supreme Court quashing the suspension order, the above said Balan was again suspended on the ground of pendency of criminal case. The same was challenged by him in W.P.No.22664 of 2008, which was allowed by this Court by order dated 09.01.2009. The order of this Court dated 09.01.2009 was also confirmed

by the Division Bench of this Court in appeal in W.A.No.275 of 2009 and on further appeal, the Hon'ble Supreme Court in S.L.P.(Civil).No.22587 of 2009 has also confirmed the order of the learned Single Judge of this Court dated 09.01.2009. Consequently, all the terminal benefits were given to the said Balan, subject to the outcome of the criminal case. Following the above said orders of this Court as well as the Hon'ble Supreme Court, orders were issued in other writ petitions in W.P.Nos.8868 of 2001 and W.P.Nos.24872 & 24873 of 2010, allowing the writ petitioners (similarly placed persons) to retire from service with all retirement benefits, pending disposal of the criminal proceedings. Consequently, all the terminal benefits were given to the above writ petitioners also, subject to the outcome of the criminal case.

2-8.Now, it is stated by the petitioner that by order dated 26.03.2013 the writ petition in W.P.No.43498 of 2002 filed by the petitioner was allowed by this Court along with the connected batch of writ petitions and the suspension order was quashed. Pursuant to the same, by proceedings No.88621/Estt.(DP)/A2/2002-1, dated 30.10.2013, the orders passed by this Court was implemented by the respondent-Board.

2-9.The petitioner and other similarly placed persons filed a batch of Criminal Original Petitions before this Court in CrI.O.P.No.7587 of 2013 etc., to quash the charge-sheet in C.C.No.126 of 2011 on the file of the Special Court, Coimbatore. By a common order dated 27.02.2015,

this Court allowed the Criminal Original Petitions and quashed the charge-sheet against the petitioner and other similarly placed persons. Pursuant to the quashing of the charge-sheet in the criminal case, the petitioner filed a writ petition in W.P.No.31618 of 2015 before this Court seeking promotion, which was long due from 2000. By proceeding No.C1/HO/EE/25155/2015, dated 03.03.2016, the respondent-Board promoted the petitioner as Assistant Executive Engineer, without prejudice to the outcome of the SLP filed by the Police before the Hon'ble Supreme Court. Accordingly, the petitioner was working as Assistant Executive Engineer in RWS Division, Nagercoil.

2-10.It is further stated by the petitioner that the petitioner's date of superannuation is 31.05.2016. All the departments concerned of the respondent-Board, after due verification of the records, gave their clearance for his retirement due on 31.05.2016, categorically stating that no disciplinary case is pending against the petitioner and the chargesheet filed against the petitioner, along with the other accused, was quashed by this Court. However, to the utter shock and surprise, suddenly on 31.05.2016, just few hours before the end of his service, the petitioner was serviced with an order of suspension vide proceedings No.88621/Estt(D)/A2/2002, dated 30.05.2016. The only reason stated in the suspension order is extracted hereunder_

"and whereas, a report received from Legal Cell that DSP, Ooty has filed SLP in Supreme Court against the judgment dated 26.02.2015 in which Thiru.R.Palaniswamy,

Assistant Executive Engineer, TWAD Board, RWS Sub-Division, Kuzhithurai is one among the delinquents. The SLP is yet to be disposed."

Thus, only based on the SLP pending before the Hon'ble Supreme Court, the petitioner was placed under suspension and he was not allowed to retire from service. Hence, challenging the impugned suspension order, the petitioner has come forward with the present writ petition.

3.Today, when the matter is taken up for consideration, the learned counsel for the petitioner submitted that the only ground on which the petitioner was placed under suspension is that as against the order dated 26.02.2015 in CrI.O.P.No.7587 of 2013, passed by this Court quashing the chargesheet as against the petitioner herein in C.C.No.126 of 2011 on the file of the Special Court, Coimbatore, an SLP has been filed by the DSP, Ooty and the said SLP is pending before the Hon'ble Supreme Court. Now, it is stated by the petitioner that the said SLP has been dismissed by the Hon'ble Supreme Court on 23.09.2016. Therefore, according to the learned counsel for the petitioner, there is no impediment in considering the case of the petitioner with regard to revocation of suspension order and allowing the petitioner to retire from service.

4.The learned counsel appearing for the respondent also submitted that the SLP filed against the order dated 26.02.2015 in CrI.O.P.No.7587

of 2013, passed by this Court quashing the chargesheet as against the petitioner herein in C.C.No.126 of 2011 on the file of the Special Court, Coimbatore, has been dismissed by the Hon'ble Supreme Court.

5.Heard both sides and perused the materials available on record.

6.Though the present writ petition has been filed for a larger relief, considering the facts and circumstances of the case, this Court directs the petitioner to give a fresh representation to the respondent, along with a copy of this Court, annexing the order passed by the Hon'ble supreme Court in the SPL as referred to above, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondent is directed to consider the same and to appropriate orders, with regard to the claim of the petitioner to allow him to retire from service, within a period of three weeks thereafter.

With the above terms, the writ petition is disposed of.
Consequently, connected Miscellaneous Petition is closed. No costs

18.11.2016

Index : Yes/No

Internet : Yes/No

SSV

NOTE:- Issue on or before 21.11.2016

To

The Managing Director,
Tamil Nadu Water Supply & Drainage Board
TWAD House, Chepauk,
Chennai-600 005.

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