

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2016

CORAM :

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P. No. 20831 of 2016

and

W.M.P. No. 17850 of 2016

T.Panneerselvam

... Petitioner

Versus

1. The State of Tamil Nadu
Rep. by its Additional Chief
Secretary to Government,
Public Works Department,
Fort St. George
Chennai - 600 009.
2. The Chief Engineer,
Public Works Department,
WRD, Operations & Maintenance,
Chepauk, Chennai - 600 005.
3. The Engineer in Chief
WRD & Chief Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005. ... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, to call for the records of the 1st respondent in G.O. (D)No.170 Public Works (E2) Department, dated 30.05.2016 and consequential order in G.O.(D)No.171 Public Works (E2) dated 30.05.2016 and quash both the orders dated 30.05.2016 and consequently, direct the respondents to settle all the retirement benefits to the petitioner.

For Petitioner : Mr. AR.L. Sundaresan, Senior Advocate
for Mr. M. Sivavarthanam

For Respondents : Mr. M.S. Ramesh,
Additional Government Pleader

ORDER

Mr. M.S. Ramesh, learned Additional Government Pleader takes notice on behalf of the respondents. By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner was appointed as Assistant Engineer in the year 1982 in Public Works Department and thereafter, he was promoted as Assistant Executive Engineer in the year 2004 and as Executive Engineer in the year 2008. Subsequently, he was promoted as Superintending Engineer on 11.11.2013 and he was due to retire from service on 31.05.2016. In the meanwhile, he was served with a Charge Memo dated 30.05.2016, i.e. one day before his retirement, by the second respondent under Rule 17 (B) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) along with a Government Order dated 30.05.2016, suspending him from service and another Government Order dated 30.05.2016 retaining him in service under FR 56(1)(c) and the said orders were received by him on 31.05.2016 at about 5.30 p.m. Challenging the orders refusing to permit the petitioner to retire from service inter alia retaining him in service, the petitioner has filed this writ petition.

3. According to the learned Senior counsel for the petitioner, the charge memo relates to the alleged occurrence took place in the year 2012 when the petitioner was working as Executive Engineer. In the charge memo, it is alleged that the petitioner failed to protect the Hard rock stock excavated while forming a canal and thereby caused loss to the Government. According to the learned Senior Counsel for the petitioner, he discharged his duties without giving room for any complaint. It is further stated that the petitioner verified the MAS balance of Hard rock on 06.06.2012 and reported that 1,35,798.96 m³ was available and the same was measured by an Assistant Engineer on 17.01.2013, which revealed that only 30,609 m³ of hard rock alone was available. The respondent department had floated tender and awarded contract to a contractor to dispose the Hard Rock Stock of 1,35,798.96 m³ and entered into an agreement dated 31.03.2012 and the same was executed by the respondent. Thereafter, he was promoted as Superintending Engineering and posted at Chennai. The petitioner understands that the contractor is still making payment to the Department for the said contract and the respondents have reduced the value of the Hard Rock Stones from Rs.53 per m³ to 21.70 m3. While so, according to the learned Senior counsel for the petitioner, the suspension of the petitioner is unnecessary especially on the last date of his retirement. In this context, the petitioner made a representation dated 03.06.2016 to the first respondent, requesting to revoke the suspension and to permit him to retire from service. Despite the same, there is no response from the first respondent. Hence, the present writ petition has been filed.

4. The learned Senior Counsel for the petitioner further submitted that the charges relate to the alleged occurrence took place in the year 2012 and it is based on an incorrect report given by the Subordinate Officials. The impugned order was issued at the verge of the retirement of the petitioner, due to which, he could not get the retirement benefits. He further submitted that the petitioner had taken disciplinary

action against one Junior Engineer for certain lapses in accounting the materials, which would indicate that there is no fault on the part of the petitioner. Though the petitioner served unblemished service, he was served with the impugned order on the last date of his retirement. As per the guidelines issued by the Government in G.O.Ms. No. 144 dated 08.06.2007, no government servant should be placed under suspension on the eve of his retirement for any irregularity atleast three months prior to his or her date of retirement. Therefore, the impugned order is in clear violation of the guidelines issued by the government for taking disciplinary action. Despite the representation of the petitioner, no order was passed on the said representation. However, he submitted that the petitioner would be satisfied, if the first respondent is directed to consider the representation dated 03.06.2016 and pass orders on merits and in accordance with law.

5. The learned Senior counsel appearing for the petitioner relied upon the Order dated 27.06.2011 passed by this Court in the case of P.Pandaram Pillai vs. Secretary to Government, Labour & Employment Department, Secretariat, Chennai - 600 009 and the Commissioner of Employment & Training, Alandur Road, Guindy, Chennai-32, wherein, this Court, following the decision of the Division Bench of this Court in the case of (Bommusamy, A. Vs. The Government of Tamil Nadu, rep. by its Secretary to Government, Co-operation, Food and Consumer Protection Department and four others) reported in 2007 (3) CTC 518 and submitted that once a government servant has reached the age of superannuation, placing him under suspension after his date of superannuation is without authority of law especially when the relationship of master-servant ceased to exist and no disciplinary proceedings could be initiated against the petitioner. Therefore, the learned Senior counsel appearing for the petitioner prayed for quashing the impugned proceedings and to direct the respondents to settle all the terminal benefits payable to the petitioner.

6. Per contra, the learned Additional Government Pleader submitted that the first respondent would consider the petitioner's representation dated 03.06.2016 and pass order in accordance with law.

7. On a perusal of the Judgment of the Division Bench of this Court in Bommusamy's case (cited supra), it is clear that when the relationship of master-servant ceased to exist, no disciplinary proceedings could be initiated against the petitioner. At this juncture, it is relevant to extract below paragraph Nos.13 and 14 of the above referred judgement of the Division Bench of this Court.

"13. Time and again, the Supreme Court and this Court has deprecated the initiation of Disciplinary Proceedings against an employee or the fag end of his retirement and keeping the matter pending for a long time by keeping the employee under suspension. Further when the petitioner had pleaded that there was official prejudice and enmity between him and the third respondent in the matter of use and

maintenance of the official vehicle, the Tribunal has failed to consider this aspect of the case in proper perspective while dismissing the Original Applications. The Disciplinary Proceedings were initiated against the petitioner when there was hardly fifteen days left for his retirement. Moreover, when his date of retirement is on 11.3.1987 and the order of suspension was passed on 25.3.1987 by invoking G.O.No.173. Therefore, when once the petitioner has reached the age of superannuation on 11.03.1987, the placing the petitioner under suspension after his date of superannuation is without authority and that when the relationship of master-servant ceased to exist, no Disciplinary Proceedings could be initiated against the petitioner. On this ground also, the impugned order of the Tribunal is liable to be set aside.

14. For the aforesaid reasons, we are of the view that the Tribunal has committed an error in upholding the order dated 21.1.1993 passed by the first respondent. The Tribunal has committed an illegality in dismissing the Original Application filed by the petitioners. The impugned orders passed by the Tribunal are, therefore, liable to be set aside.

15. The impugned orders passed by the Tribunal are set aside and consequently, the writ petitions are allowed. No costs."

8. Considering the facts and circumstances of the case and in view of the Judgment of the Division Bench of this Court, this writ petition is disposed of by directing the first respondent to dispose of the representation of the petitioner dated 03.06.2016, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

ogy/rsh

To

1. The Additional Chief

Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 600 009.

2. The Chief Engineer,

Public Works Department,
WRD, Operations & Maintenance,
Chepauk, Chennai - 600 005.

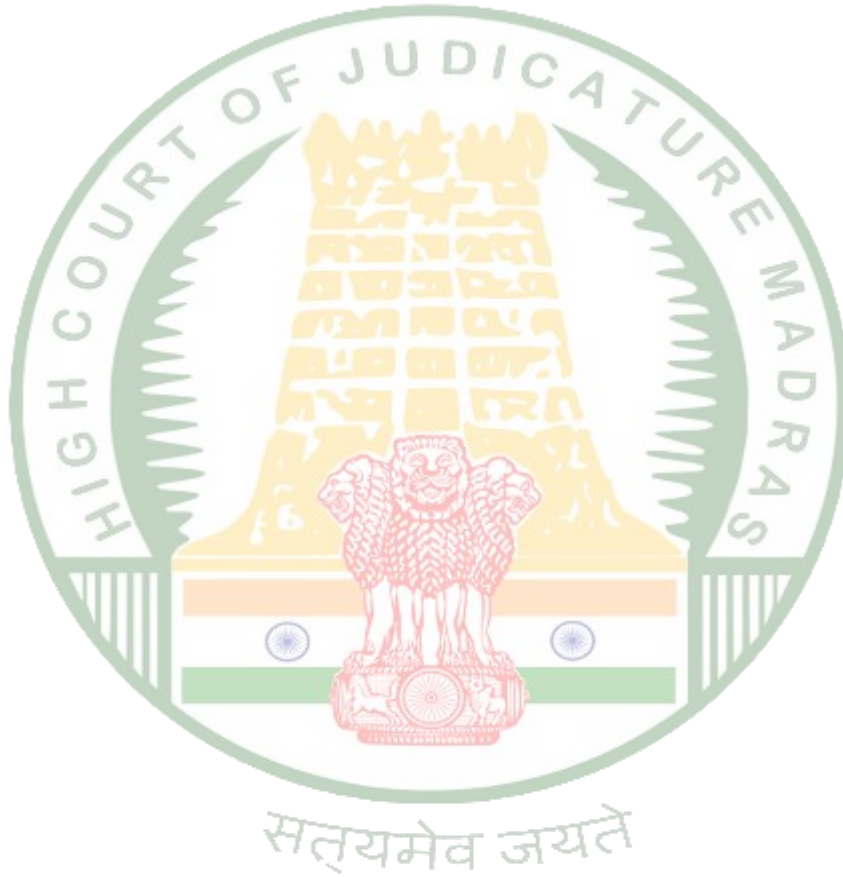
3. The Engineer in Chief
WRD & Chief Engineer (General)
Public Works Department,
Chepauk, Chennai - 600 005.

+ 1 CC to M/s.M.Sivavarthanan, Advocate SR NO 33662

+ 1 cc to Government Pleader, High Court, Madras 34122

W.P.No.20831 of 2016

rsk[co]
gp/21.7.



WEB COPY