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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:25.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.A.(MD) Nos.1379 to 1381 of 2016

and

C.M.P.(MD).Nos.10104 to 10108 of 2016

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 020.

2.The Deputy Inspector General of Registration,
Madurai, Madurai District.

..Appellants/ Respondents in all WAS

Vs

M.Saraswathy,
Sub-Registrar(Admin) (Deputation),
District Registrar Office,
Virudhungan District,
Virudhungan.

..Respondent/Writ Petitioner in all WAS

Writ Appeals are filed under Clause 15 of Letters Patent against the common order dated 07.10.2016 made in W.P.(MD). No.19681,18843 and 18844 of 2016.

Prayer in WP(MD). 19681/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned charge memo made in Memorandum No.7247/A1/2016 dated 30.09.2016 issued by the 2nd respondent and quash the same.

Prayer in WP(MD). 18843/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned charge memo made in Memorandum. No.6613/A1/2016 dated 23.09.2016 issued by the 2nd respondent and quash the same.

Prayer in WP(MD). 18844/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records pertaining to the impugned charge memo made in Memorandum NO.6612/A1/2016 dated 23.09.2016 issued by the 2nd respondent and quash the same.



For Appellants :Mr.A.K.Baskarapandiyan
Spl.Govt.Pleader
For Respondent :Mr.Sadiq Raja

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COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, all these Writ Appeals are taken up for final disposal. The parties are referred to as per the rank in the Writ Petitions.

2. The facts leading to the filing of all these Writ Appeals would disclose among other things that the petitioner has been issued with charge memo dated 30.09.2016 which is the subject matter of W.P.(MD).No.19681 of 2016 and two other charge memos dated 23.09.2016 which are the subject matters of W.P.(MD).Nos.18843 and 18844 of 2016. The petitioner had also filed W.P.(MD).No.17013 of 2016 challenging the proceedings in memo dated 02.11.2015 and prayed for voluntary retirement and in the light of the subsequent development in the form of recovery of the alleged loss caused to the official respondents, the said Writ Petition came to be dismissed as infructuous and as against the same, no appeal has been preferred by the official respondents. In short, the appeals are preferred by the official respondents against the common order passed in W.P.(MD).Nos.19681, 18843 and 18843 of 2016 only.

3. Learned Special Government Pleader appearing on behalf of the respondents/ appellants in all the above-stated three Writ Petitions would contend that no counter affidavit has been filed in the Writ Petitions and the counter affidavit has been filed only in respect of the W.P.(MD).No.17013 of 2013, wherein, the official respondents took a stand in paragraph No.8, in the following manner:-

"8. It is submitted that the petitioner is due to retire on superannuation on 31.10.2016 and for the proven charges, any punishment, if awarded, cannot be implemented as the petitioner is on the verge of retirement. Therefore, it has been decided to continue the disciplinary proceedings initiated against the petitioner under Rule 9(2)(a) of the Tamil Nadu Pension Rules.

Rule 9(2)(a) of the Tamil Nadu Pension Rules is as follows:

"9(2)(a) The departmental proceeding referred to in sub-rule (1), if instituted while the government servant was in service, whether before his retirement or during his re-



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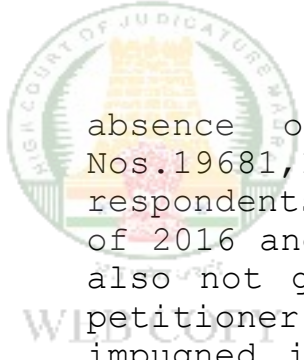
employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service."

However, The learned Judge had taken note of the said stand and proceeded further as if similar stand has been taken in the other Writ Petitions too and disposed of the Writ Petitions granting liberty to the official respondents to proceed under Section Rule 9(2)(a) of the Tamil Nadu Pension Rules and according to the official respondents, the said reason is wholly untenable for the reason that it is open to them to take a different stand in other Writ Petitions. It is submitted that since the petitioner attains superannuation on 31.10.2016, it may not possible to conclude the disciplinary proceedings, and the respondents may resort to other provisions of law by retaining the petitioner in service and therefore, prays for setting aside the orders impugned in these Writ Appeals so as to enable the respondents to file counter affidavits and contest the matters on merits.

5. *Per contra*, learned Counsel appearing on behalf of the respondent /writ petitioner would vehemently contend that all three charge memos which are subject matters of challenge in these Writ Appeals, are almost similar, for which, enquiry has also been concluded and it was the subject matter of challenge in W.P.(MD). No.17013 of 2016 and in the light of the stand taken by the official respondents in the said Writ Petition, it is not open to them to take a different stand in other Writ Petitions and the interest of the official respondents is also protected by invoking Rule 9(2)(a) of the Tamil Nadu Pension Rules and in the event of charges are proved, the petitioner would be deprived of pensionary benefits after her retirement and therefore, prays for dismissal of all these Writ Appeals.

6. This Court has paid its best attention and perused the materials available on record.

7. A perusal of W.P.(MD).Nos.19681, 18843 and 18844 of 2016 would disclose among other things that the petitioner has also taken a similar stand as that of W.P.(MD).No.17013 of 2016 and would submit that since she exercised her quasi judicial function, the same cannot be termed as a ground of misconduct and apart from it, there is delay in initiating the disciplinary proceedings against her. However, the learned Judge, while disposing of W.P.(MD).Nos.19681, 18843 and 18844 of 2016, has taken into consideration the stand of official respondents in W.P.(MD).No.17013 of 2016 and held that in respect of the other Writ Appeals, the Rule 9(2)(a) of the Tamil Nadu Pension Rules can be invoked. In the considered opinion of this Court, in the



absence of any counter affidavit being filed in W.P.(MD). Nos.19681,18843 and 13622, it cannot be concluded that the respondents may take a similar stand as that of W.P.(MD).No.17013 of 2016 and they may take a different stand. The learned Judge has also not gone into the merits of other grounds put forth by the petitioner. Therefore, this Court is of the view that the orders impugned in all these writ appeals warrant interference and the matters have to be remanded, so as to enable the official respondents to file a counter affidavit in all other three Writ Petitions and thereafter, disposal, on merits and in accordance with law.

8. In the result, the orders impugned in these Writ Appeals stand set aside and the matters are remanded back and the official respondents are directed to file counter affidavit in all Writ Petitions, within a period of two weeks from the date of receipt of a copy of this order. The Registry is directed to accord priority for final disposal of the matters as the petitioner attains superannuation on 31.10.2016. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To:

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 020.

2.The Deputy Inspector General of Registration,
Madurai, Madurai District.

Copy to : The Section Officer, Writ Section,
Madurai Bench of Madras High Court, Madurai.
(for posting the case 'for final disposal)

+1cc to M/s.D.Sadiq Raja, Advocate in SR.63764
+1cc to the Special Government Pleader, in SR.64200

W.A(MD).Nos.1379 to 1381 of 2016
25.10.2016

ssm

PBK/KP 02.11.2016 ::4P-6C:(IT)