



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.5550 of 2016

and

W.M.P (MD) No.4973 of 2016

M.Nadarajan

... Petitioner

vs.

1)The Director of Adi Dravidar Welfare,
O/o. The Directorate of Adi Dravidar Welfare,
Chepauk Chennai-5.

2)The District Collector,
Thanjavur District,
Thanjavur.

3)The District Adi Dravidar Welfare Officer,
Thanjavur District,
Thanjavur.

4)The Special Tahsildar,
Adi Dravidar Welfare,
Thanjavur,
Thanjavur District.

... Respondents

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 in pursuant to the impugned order passed by the 3rd respondent in Na.Ka.No.48155/2014/Ma5 dated 25.01.2016 and quash the same and consequently direct the respondents to allow the petitioner to retire from service on his superannuation date i.e on 09.01.2016 and to disburse the petitioner's retirement benefits within a stipulated time may be fixed by this Honourable Court with interest.

For Petitioner : Mr.M.Saravana Kumar

For Respondents : Mr.M.Murugan, Government Advocate

ORDER

The petitioner/M.Nadarajan has filed this writ petition challenging the impugned suspension order dated 25.01.2016, passed by the 3rd respondent/District Adi Dravidar Welfare Officer, Thanjavur District, to quash the same with a consequential



direction to the respondents to allow him to retire from service on his superannuation i.e 09.01.2016 and to disburse his retirement benefits within a time frame.

2.Learned counsel for the petitioner would submit that after studying Vth Standard in Harijan Welfare Elementary School at Thennamanadu, Thanjavur District, in the year 1967, the petitioner enrolled his name with the District Employment Exchange showing his date of birth as 09.01.1956 and the same was also entered in his Transfer Certificate. On the basis of his qualification, he was appointed as a Cook in Adi Dravidar Welfare Department on 18.04.1990. Thereafter, the respondents opened a Service Register and entered the petitioner's date of birth as mentioned in his Transfer Certificate and thereupon regularised his services from the date of his initial appointment, thus the petitioner was receiving salary under the regular time scale of pay.

3.Adding further, he would submit that for the post of Cook in Adi Dravidar Welfare Hostel, the required educational qualification is, only read and write in Tamil, therefore, the petitioner who has passed Vth Standard was appointed as Cook and his services were also regularised. Thereafter, he rendered 25 years of service. While so, when he was about to retire on attaining the age of superannuation in the month of January 2016, to his shock and surprise, the 3rd respondent issued the impugned suspension order dated 25.01.2016, on an allegation that he has altered his date of birth from 09.01.1950 to 09.01.1956. The approach adopted by the respondents in passing the impugned order of suspension at the fag end of the petitioner's services, he pleaded, is not only affecting the petitioner, but also his entire family members because, after his retirement on 30.01.2016, in view of placing him under suspension without there being any justification, the petitioner and his family are put to financial crunch.

4.He also submitted that even assuming the irregularities found out by the respondents are true, they should have initiated action long time ago, even before the petitioner's services were regularised. In any event, the original Record Sheet produced before this Court by the learned Government Advocate clearly shows that his date of birth is 09.01.1956, therefore, he pleaded, the respondents ought not to have placed the petitioner under suspension without allowing him to retire from service, on a false allegation that he has forged his date of birth as 09.01.1950 instead of 09.01.1956. If there is any over-writing or interpolation, it is pleaded, the respondents entertaining any doubt, ought to have issued the suspension order followed by charge memo, atleast one year prior to the retirement of the petitioner, so that he could have vindicated his innocence during his service and by now, he would have retired with all service



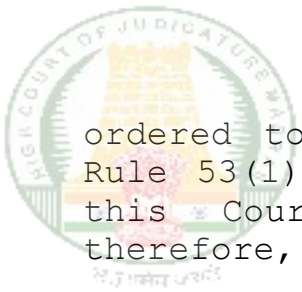
benefits.

5.A detailed counter affidavit has been filed by the 3rd respondent. Based on the averments made therein, Mr.M.Murugan, learned Government Advocate appearing for the respondents would submit that a representation was given to the 3rd respondent, stating that the petitioner herein, had studied only upto IIIrd Standard in Thannamanadu Harijan Welfare School, whereas, his Transfer Certificate obtained by him discloses that he had studied upto Vth Standard, therefore, on receipt of the said representation alleging that the petitioner has given false educational qualification and forged his date of birth, the 3rd respondent has issued the impugned order of suspension.

6.He further submitted that even before issuing the impugned order of suspension, no details were forthcoming from the school, therefore the Special Tahsildar, Adi Dravidar Welfare, Thanjavur, was directed to conduct an enquiry. Subsequently, he visited the school and verified the school records and finally found that the petitioner had studied in Thennamanadu Government Harijan Welfare Primary School between 1961 and 01.06.1967. On verification of the Record Sheet of the petitioner, it was found that his admission number is 222 and his date of birth is 09.01.1950, whereas in the Transfer Certificate produced by the petitioner at the time of his appointment as Cook, the date of birth has been corrected as 09.01.1956. On the basis of the entry relating to his date of birth in the said Transfer Certificate namely, 09.01.1956, the respondents also entered the date of birth of the petitioner as 09.01.1956 in his Service Register.

7.It is further submitted that in view of the above irregularity, the Special Tahsildar, Adi Dravidar Welfare, Thanjavur, recommended for suitable action against the petitioner. Subsequently, the competent authority namely, District Elementary Educational Officer, Thanjavur, in his letter to the complainant under the Right to Information Act, 2005, in No.2079/A4/2015 dated 02.09.2015 has confirmed forgery and informed that the Record Sheet produced by the petitioner at the time of getting appointment was not a genuine document.

8.He also submitted that the 1st respondent by his letter dated 21.01.2016, directed the 3rd respondent to take appropriate action against the petitioner. In view of the direction issued by the 1st respondent, the 3rd respondent has issued the impugned order of suspension under Rule 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. As the petitioner was about to retire from service on reaching the age of superannuation in the month of January 2016, he was placed under suspension with effect from 25.01.2016 and not permitted to retire and retained in service in terms of Fundamental Rule 56. When the petitioner was



ordered to receive his subsistence allowance as per Fundamental Rule 53(1), this is not the stage for the petitioner to come to this Court challenging the impugned order of suspension, therefore, he pleaded to dismiss the writ petition.

9. Heard both sides.

10. The petitioner having studied Vth Standard in Harijan Welfare Elementary School, Thannamanadu, in the year 1967, registered the same with the District Employment Exchange, showing his date of birth as 09.01.1956. On the basis of his qualification, he was appointed as a Cook in Adi Dravidar Welfare Department on 18.04.1990. The respondents opened a Service Register and entered the petitioner's date of birth as mentioned in his Transfer Certificate and thereupon regularised his services from the date of his initial appointment. Thereafter, the petitioner rendered 25 years of service. While so, when he was about to reach the age of superannuation on 09.01.2016, as per the Rules in vogue, he was permitted to continue service till the end of the month. However, five days before his date of retirement, he was issued with the impugned order of suspension on 25.01.2016, on a mere allegation that he has altered his date of birth from 09.01.1950 to 09.01.1956. Before giving a finding on this legal issue whether last minute suspension is permissible in the facts and circumstances of this case, let me see the validity of the allegation or otherwise.

11. The original Pupil's Record Sheet of the petitioner issued by the school has been produced before this Court by the learned Government Advocate appearing for the respondents. A perusal of the same clearly shows that the petitioner's date of birth is 09.01.1956, therefore, when the petitioner was issued with a Transfer Certificate showing his date of birth as 09.01.1956, the allegation mentioned in the impugned suspension order retaining him in service on the allegation that he has altered his date of birth, is absolutely merit-less. Moreover, when the petitioner was appointed as Cook on 18.04.1990 in Adi Dravidar Welfare Department, his services were also regularised after recording his date of birth in the Service Register as 09.01.1956 based on the entry in the Transfer Certificate of the petitioner, hence, without taking any action atleast before the regularisation of the petitioner, the respondents ought not to have issued the impugned order just five days before his date of retirement, seeking to place him under suspension for an alleged incident took place 25 years ago, which according to me, cannot appear to be proved. For, the approach adopted by the respondents is also against G.O. (Ms).No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, wherein, the Government have ordered that as a general principle, issue of suspension orders on the date of retirement of a Government servant should be avoided by



examination of the case well in advance (i.e) 3 months prior to the date of retirement on superannuation of the Government servants concerned.

12. While dealing with the similar issue in W.P(MD) Nos. 16957 and 16958 of 2014, dated 18.12.2014, after extracting G.O.(Ms). No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, at paragraphs 9 to 11, I have held as follows:-

''9. A close reading of the aforesaid Government Order also makes it clear that a decision either to allow the government employee to retire from service or to suspend him from service should be taken well in advance, that is three months prior to the date of superannuation, and that such decision should not be taken at the last minute of the date of retirement, in any case. In the present case, as mentioned above, when a report dated 13.7.2009 had already been filed by the Director of Vigilance and Anti Corruption, keeping quiet for about five long years without issuing any charge memo or holding any enquiry or initiating disciplinary proceedings, this Court finds no justification whatsoever to keep the said report in cold storage, inasmuch as paragraph-5(ii) of the guidelines issued in the G.O.Ms.No.144 dated 8.6.2007 clearly indicates that if an irregularity or an offence committed by the government employee comes to notice, within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the government employee to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension depending upon the gravity of irregularities committed by him. Paragraph 5(iii) of the guidelines also clearly indicates that in respect of Directorate of Vigilance and Anti-Corruption cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government, as the cases are dragged on for a long time. It also speaks that in unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision to place the concerned government employee under suspension well in advance, prior to the date of retirement and not on the date of retirement.

10. Admittedly, in the case on hand, even the said guidelines have not been followed when the report was submitted way back in the year 2009. Had there been an enquiry in the year 2009, after the submission of the report by the Vigilance and Anti Corruption, the department would have reached a finality, in the case of the petitioner. But there is absolutely no explanation by the respondents for the inordinate delay of five long years in



contemplation of enquiry against the petitioner. Therefore, when there is no justification on the part of the respondents in not initiating departmental proceedings in respect of the alleged incident that took place in the year 2008 against the petitioner, keeping in mind that the delay is abnormal and there is no explanation for the delay, as per the ratio laid down by the Apex Court in **P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board, (2005) 6 SCC 636**, the delinquent employee also can expect that the disciplinary proceeding, if any, initiated against him to be concluded expeditiously without any unnecessary delay, this Court, considering the long delay that has vitiated the contemplation of disciplinary proceedings, is of the opinion that allowing the respondents to proceed further with the departmental proceedings at this distance of time will be not only prejudicial to the petitioner, but also to the respondents. Besides, the protracted disciplinary enquiry against a government employee should be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee. Therefore, finding no justification whatsoever for the respondents in not initiating the disciplinary proceedings for about five long years, at this stage, it is necessary to draw a curtain, since for the mistake committed by the department in not following the aforesaid Government Order, the petitioner should not be made to suffer, that too just four days before his retirement, as the very purpose of initiating such action gets defeated.

11. For all the above reasons, the impugned orders of suspension and retention passed against the petitioner at the last minute violating G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department dated 8.6.2007 are liable to be set aside. Accordingly, the impugned orders are set aside and the writ petitions are allowed. Consequently, M.P.(MD) Nos.1 and 1 of 2014 are closed. No costs.'

13. In the result, the impugned order dated 25.01.2016 is set aside and the writ petition stands allowed. The respondents are directed to disburse the retirement benefits of the petitioner and also forward pension proposal to the competent authority, within a period of six weeks from the date of receipt of a copy of this order. No costs. W.M.P(MD)No.4973 of 2016 is closed.

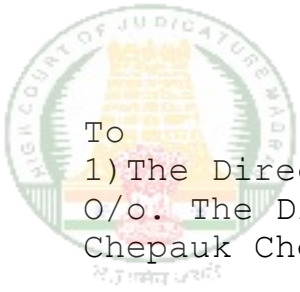
Sd/-

Assistant Registrar (T&P)

/True copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



To

1) The Director of Adi Dravidar Welfare,
O/o. The Directorate of Adi Dravidar Welfare,
Chepauk Chennai-5.

2) The District Collector,
Thanjavur District,
Thanjavur.

3) The District Adi Dravidar Welfare Officer,
Thanjavur District,
Thanjavur.

4) The Special Tahsildar,
Adi Dravidar Welfare,
Thanjavur,
Thanjavur District.

+1 CC to Mr.M.SARAVANAKUMAR, Advocate, SR No.41156

+1 CC to the Special Government Pleader, SR No.41247

W.P(MD) No.5550 of 2016
01.08.2016

SH/ARK-PV/SAR-III :10.08.2016:7P/7C