

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.11912 of 2016

and

WMP Nos.10287 and 10288 of 2016

S. Krishnamoorthy

..Petitioner

Vs

1. The State of Tami Nadu,
rep by Secretary to Government,
Health and Family Welfare Department,
Secretariat,
Chennai - 9

2. The Director of Family Welfare,
Chennai - 600 006

..Respondents

Prayer:- 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 second respondent relating to impugned orders passed by Ref.No.16671 / FW/OP3/2009 dated 28.11.2015, Ref.No.16671/FW/OP3/2009 dated 28.11.2015, Memo No.16671/FW/OP3/2009 dated 28.11.2015 and Na.Ka.No.16671/FW/Aa.Na.Mu.3/2009 dated 04.03.2016 and quash the same and direct the respondent to peacefully retire the petitioner from service on 31.11.2015 AN on attaining the age of superannuation and t forthwith disburse all the retirement and pensionary benefits with interest on the delayed payments.

For Petitioner : Mr.M. Ravi
For Respondents: Mr.K. Dhanajayan
Spl.Govt. Pleader

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner joined the Tamil Nadu basic service on 15.10.1982 in the Public Health Department in Nilgiris District Health Unit and thereafter appointed as Typist on 08.09.1989 and got his promotion as Assistant from 24.08.1998 and claims that he has discharged his duties honestly, diligently to the satisfaction of his superior officers. The petitioner has submitted a representation dated 05.05.2014 to the 1st respondent against one Mr.B.J.Thirumurugan to initiate action against him to defer his promotion and since there is no response, he filed W.P.No.14794/2014 praying for issuance of Writ of Mandamus directing the first respondent therein to consider the representation dated 05.05.2014 and to pass

appropriate orders and the writ petition is still pending. In order to wreck vengeance, the petitioner was imposed with a punishment of stoppage of increment for a period of three months without cumulative effect, besides recovery of Rs.23,750/- as per G.O.(D).No.1406, Health and Family Welfare Department dated 22.12.2014 and it became an impediment for empanelment and promotion to the post of Office Superintendent, though he was fully qualified and eligible for the same. The petitioner made a challenge to the said order by filing W.P.No.11137/2015 and it is also pending. The criminal prosecution was also launched against the petitioner in Crime No.179/2011 by the G1 Town West Police Station, Ooty, which after investigation culminated in filing of charge sheet which was taken on file in C.C.No.192/2014 on the file of the Judicial Magistrate, Ooty. The petitioner filed Crl.O.P.No.23463/2015 to quash the said proceedings and initially, interim stay was granted on 16.10.2015 in Crl.M.P.No.1 of 2015 and subsequently, the said proceedings was quashed vide final order dated 12.01.2017 and no further challenge has been made to the said order and it has become final. The petitioner was also issued with the impugned charge memo dated 28.11.2015 passed by the 2nd respondent for the same set of allegation. Challenging the legality of the same, the petitioner came forward to file this writ petition.

3. Learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned charge memo and would submit that on account of the pendency of the disciplinary proceedings, the petitioner, who has attained the age of superannuation, was placed under suspension on 28.11.2015 and he was also not permitted to retire and on the very same set of allegation, criminal prosecution was launched and it was also quashed by the order dated 12.01.2017 in Crl.O.P.No.23463/2015 and therefore, there cannot be any impediment to quash the disciplinary proceedings and prays for appropriate order.

4. Per contra, Mr.K.Dhananjayan, learned Special Government Pleader appearing for the respondents would submit that in the criminal prosecution, the accused was acquitted by giving the benefit of doubt on the basis of preponderance of probabilities and therefore, the 2nd respondent is entitled to continue the disciplinary proceedings and prays for dismissal of the writ petition.

5. This Court, considered the rival submissions and perused the materials placed on records.

6. Admittedly, the criminal prosecution was launched first and it culminated in filing of the charge sheet in C.C.No.192/2014 on the file of the Court of Judicial Magistrate, Ooty and thereafter, the impugned charge memo came to be issued on 28.11.2015 on the very same set of allegation. Admittedly,

the case in C.C.No.192/2014 pending on the file of the Court of Judicial Magistrate, Ooty, was quashed by this Court, by order dated 12.01.2017 and the respondent/State did not make a challenge to the said order and it has become final. The contents of the charge memo would indicate that on the very same set of allegation, the disciplinary proceedings was initiated. Since the criminal prosecution has been quashed, this Court is of the view that continuation of the disciplinary proceedings is only a futile exercise and no useful purpose would be achieved by keeping it pending. A perusal of the charge memo would also indicate that reliance has been placed upon Crime No.179/2011 registered by the same police authority and C.C.No.192/2014 has also been referred to, which came to be quashed. In the light of the facts and circumstances, this Court is of the considered opinion that the impugned charge memo is liable to be quashed.

7. In the result, the writ petition is allowed and the impugned charge memo dated 28.11.2015 as well as the consequential order dated 04.03.2016 passed by the 2nd respondent are quashed and the respondents are directed to confer retiral /terminal benefits and other consequential benefits to the petitioner as expeditiously as possible, not later than twelve weeks 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

vsi
To

1. The Secretary to Government,
State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat,
Chennai - 9

2. The Director of Family Welfare,
Chennai - 600 006

+lcc to Mr.M.Ravi, Advocate, S.R.No.12242
+lcc to the Government Pleader, S.R.No.13031

SVI (CO)
RS (09/03/2017)

W.P.No.11912 of 2016