IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN
W.P.No.21333 of 2014
& MP.Nos.2 of 2014 & 1 of 2015

K.Bhaktavatchalam

..Petitioner

Vs.

1.The Secretary to Government
of Tamil Nadu,
Revenue Department,
The Secretariat,
Fort St. George,
Chennai-600 006.

2.The District Collector,
Kancheepuram District,
Kancheepuram.

3.The District Revenue Officer,
Kancheepuram Division,
Kancheepuram. ..Respondents

Petition filed under Article 226 of The Constitution of India praying seeking for issuance of a Certiorarified Mandamus to call for the entire records in Na.Ka.No.23691/2011/A3 dated 27.11.2011, on the file of the second respondent herein, viz., The District Collector, Kancheepuram District, Kancheepuram and the consequential order dated 08.05.2015 in G.O.(2D) No.297 Revenue (Service 4(2)) Department passed by the first respondent, quash proceedings in the same and consequently direct the respondents herein to disburse the retirement-cum-service benefits of the petitioner herein(Prayer amended as per order dated 13.07.2017 by VPNJ in MP.Nos.2 & 3 of 2015 in W.P.No.21333 of 2014).

For Petitioner .. Mr.S.Thankasivan for M/s.M.Sudhan
For Respondents .. Mr.R.A.S.Senthilvel, AGP

ORDER

The petitioner has approached this Court seeking for the following relief:

'' To issue a Certiorarified Mandamus to call for the entire records in Na.Ka.No.23691/2011/A3

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dated 27.11.2011, on the file of the second respondent herein, viz., The District Collector, Kancheepuram District, Kancheepuram and the consequential order dated 08.05.2015 in G.O.(2D) No.297 Revenue (Service 4(2)) Department passed by the first respondent, quash proceedings in the same and consequently direct the respondents herein to disburse the retirement-cum-service benefits of the petitioner herein.''

2.The case of the petitioner is as follows:

The petitioner was appointed as Assistant in the year 1980 in the Revenue Department. He was promoted as Deputed Tahsildar in the year 1996 and further promoted as Tahsildar in the year 2006. According to the petitioner, he had rendered unblemished 32 years of service. While he was serving as Tahsildar, Thirukalukundram Taluk, Kancheepuram District, some discrepancies were found in discharge of duties by the petitioner. Thereafter, a charge memo was issued against the petitioner under Rule 17 (b) of the Tamil Nadu Sub-Ordinate Services (D & A) Rules dated 27.11.2011. The said charge memo was the subject matter of challenge by the petitioner before this Court in W.P.No.20712 of 2013. During the pendency of the said writ petition, the petitioner had attained the age of superannuation. This fact was brought to the knowledge of this Court in the said writ proceedings and there upon, the learned single Judge of this Court by order dated 29.07.2013, passed an order directing the respondents to complete the disciplinary proceedings initiated against the petitioner vide charge memo dated 27.11.2011. The writ petition stood disposed of. The learned single Judge has granted six months time for completing the disciplinary proceedings from the date of receipt of a copy of this order. Admittedly, the disciplinary proceedings were not completed as per the direction passed by this Court in the order dated 29.07.2013. In the said circumstances, on behalf of the respondents, a miscellaneous application was filed in W.P.No.20712 of 2013, praying for extension of time for completing the disciplinary proceedings. The said petition came up for hearing before the learned single Judge on 07.07.2014. The learned single Judge, after adverting to the submissions made by the parties, refused to entertain the miscellaneous petition and dismissed the same. The learned single Judge had observed in the said proceedings that the period stipulated in the earlier order had already expired in February 2014 itself and therefore, the miscellaneous petition seeking further time cannot be entertained.

3.In spite of the above position, the respondents persued the disciplinary action against the petitioner and therefore, he was constrained to challenge their action by filing the present writ petition challenging the charge memo once again,

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principally on the ground that once the time granted by the Court had expired, the respondents have lost their right to proceed with the enquiry. While the present writ petition was pending before this Court, the respondents proceeded with the disciplinary action and ultimately, vide G.O.(2D) No.297, Revenue (Service 4(2)) Department dated 08.05.2015, imposed punishment of Rs.1000/- cut per every month on the pension of the petitioner for a period of two years. The petitioner had taken out an application for amending the prayer by including the subsequent order passed by the respondents imposing the punishment. The said application has been allowed.

4.Today, when the matter is taken up for hearing, the learned counsel for the petitioner would submit that once this Court had applied its mind when an application for extension was sought for and the same was held to be not valid and dismissed the same, it was not open to the respondents to proceed with the enquiry and imposed a penalty, which is impugned in the present writ petition. The learned counsel would rely on the decision of the Division Bench of this Court reported in CDJ 2010 MHC 2505 (The State of Tamil Nadu, rep. by its Secretary to Government & Another Vs.Ranganathan), wherein, the Division Bench held that once the time is granted by the Court and the same has not been complied with by the respondents, they had lost their right to continue disciplinary action against the employee concerned. The Division Bench of this Court has relied on the decisions reported in 2010(2)LW 867(The State of Tamilnadu and another Vs. T.Ranganathan), 2010 (3) MLJ 625 (K.Sulochana Vs. State rep. by the Inspector of Police, Vizilance and Anti Corruption, Nagercoil).

5.Upon notice, Mr.R.A.S.Senthilvel, the learned Additional Government Pleader has entered appearance on behalf of the respondents 1 to 3 and filed his counter affidavit. The learned Additional Government Pleader would submit that the punishment has been imposed vide impugned order dated 08.05.2015 and an attempt has been made to explain the reason as to why the disciplinary proceedings cannot be completed within the stipulated time by this Court in the earlier proceedings. This Court is unable to persuade itself to the said explanation since this Court has earlier applied its mind to the reasons set-forth by the respondents in the miscellaneous petition seeking extension of time and the same having been dismissed by this Court, it was not open to the respondents to re-open the issue in further and as held by the Division Bench of this Court, they have lost their right to continue disciplinary action against the petitioner.

6. This Court after hearing the submissions made by the learned counsel for the petitioner since the disciplinary proceeding has not been completed as per the original order

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passed by this Court dated 29.07.2013, in WP.No.20712 of 2013, further action taken which culminated in the punishment order dated 08.05.2015 cannot be countenanced in law.

7. In view of the same, the impugned charge memo dated 08.05.2015 is set aside. There shall be a consequential direction to the respondents to refund any amount which has been recovered from the pension of the petitioner. The said exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

8. The writ petition is disposed of, with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

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To
1. The Secretary to Government
   of Tamil Nadu,
   Revenue Department,
   The Secretariat,
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   Chennai-600 006.

2. The District Collector,
   Kancheepuram District,
   Kancheepuram.

3. The District Revenue Officer,
   Kancheepuram Division,
   Kancheepuram.

+1 Cc to Mr.M. Sudhan, Advocate sr 67619.
+1 CC to Govt. Pleader sr 69470.

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W.P.No.21333 of 2014

SP(12/10/2017)

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