

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.21760 of 2014 &
M.P.Nos.1/2014 & 1/2015

R.Sriranganathan

..Petitioner

Vs.

1.Government of Tamil Nadu
represented by Secretary to Government
Home (Transport) Department
Secretariat, Chennai 600009.

2.The Transport Commissioner
Chepauk, Chennai 600 005.

3.Tribunal for Disciplinary Proceedings
rep. By its Commissioner
5/1842-A,Trichy Road
Coimbatore.

..Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in Proc.R.No.84381/VB2/2001 dated 29.12.2011 and the procds. R.No. 77620/R2/2011 (E.O.No.420/2011 dated 30.12.2011) and quash the same and to consequently permit the petitioner to retire from service on attaining the age of superannuation on 31.12.2011 AN, without prejudice to the proceedings pending on the file of the 3rd respondent in TDP Case No.2/2012 and to grant all consequential benefits.

For Petitioner :Mr.M.Ravi

For Respondents :Mrs.K.Bhuvaneshwari
Government Advocate
* * * * *

ORDER

The learned counsel appearing for the writ petitioner made a submission that similarly placed persons like that of the writ petitioner had been allowed to retire from service, despite the fact that disciplinary proceedings were pending against those employees. Even a submission was made that the co-delinquents were also allowed to retire from service, without prejudice to the pendency of the disciplinary proceedings. Thus, a submission was made by the learned counsel by stating that a similar treatment to be extended to the writ petitioner also in respect of grant of retirement without prejudice to the disciplinary proceedings pending against him.

2.The learned counsel further contended that though the order of suspension was issued on 29.12.2011 and the order retaining the services of the writ petitioner was also issued on 30.12.2011, even after a lapse of about 6 ½ years, the disciplinary proceedings initiated against the writ petitioner has not been concluded and the same is

pending before the Tribunal for Disciplinary Proceedings (TDP), Coimbatore. Thus, the delay in conclusion of the disciplinary proceedings also to be considered for grant of relief in respect of allowing the writ petitioner to retire from service. The learned counsel also contended that Provident Fund and other benefits were not settled in favour of the writ petitioner. With the aforementioned grievances the petitioner has come forward with this Writ Petition, challenging the order of suspension and the order retaining the services of the writ petitioner.

3.The order of suspension was issued on 29.12.2011, by stating that an enquiry into grave charges against Thiru R.Sriranganathan, Junior Assistant, Regional Transport Office, is pending, as per the information received by the Director of Vigilance and Anti Corruption in the report dated 22.12.2011. Subsequently, the order dated 30.12.2011 was issued retaining the services of the writ petitioner by invoking Rule 56(1)(c) of the Fundamental Rules. Accordingly, the writ petitioner was not allowed to retire from service.

4.Since the allegations levelled against the writ petitioner are all relating to corruption, the case was referred to the TDP as per the

Rules in force. Accordingly, a charge sheet in TDP Case No. 2 of 2012 was issued by the third respondent on 01.10.2012 and the charges levelled against the writ petitioner are as under:

CHARGE-I:

While you (Accused Officer-1) Thiru.V.Ramkumar and you (AO-2) Thiru.S.Sakthivel were working as Motor Vehicle Inspectors, Grade-I in the Office of the Regional Transport Officer, Salem West, Salem were collecting illegal gratification for performing their official duty, from the public through a private individual, viz., Tr.M.Mahesh @ Maheswaran and during the surprise check on 07.02.2011 between 17.00 hrs and 23.50 hrs, the said Thiru.M.Mahesh @ Maheswaran found in possession of an unaccounted amount of Rs.1,20,370/- collected as illegal gratification for you AO-1 and AO-2 along with 3 chits in which such illegal collection amounts were noted by yourselves. Thus, you AO-1 and AO-2 had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty.

CHARGE-II:

While you (Accused Officer-3) Thiru.V.Rajamohan, were working as Motor Vehicle Inspector Grade-II, in the Office of the Regional Transport Officer, Salem West, Salem was collecting illegal gratification for performing your official duty, from the public through a private individual, viz., Tr.R.Sekar and during the surprise check on 07.02.2011 between 17.00 hrs and 23.50 hrs, the said Thiru.R.Sekar found in possession of an unaccounted amount of Rs.31,360/- collected as illegal gratification for you AO-3 along with 4 chits in which such illegal collection amounts were

noted by yourself. Thus you AO-3 had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty.

CHARGE-III:

While you (Accused Officer-4) Tmt.M.Manjula, were working as "A" Section Superintendent and you (AO-6) Thiru.K.Sekar, were working as Assistant in the Office of the Regional Transport Officer, Salem West, Salem were collecting illegal gratification for performing your official duty, from the public through a private individual, viz., Tr.S.Balaji employing unofficially by you as Section Writer and during the surprise check on 07.02.2011 between 17.00 hrs and 23.50 hrs, the said Thiru.S. Balaji found in possession of an unaccounted amount of Rs.5,650/- collected as illegal gratification for you AO-4 and AO-6. Thus, you AO-4 and AO-6 had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty.

CHARGE-IV:

While you (Accused Officer-5) Tr.K.Mariappan, were working as "C" Section Superintendent and you (AO-7) Tr.R.Sriranganathan, were working as "C" Section Junior Assistant in the Office of the Regional Transport Officer, Salem West, Salem were collecting illegal gratification for performing your official duty, from the public through a private individual, viz., Tr.A.G.John Basha, employing unofficially by you as Section Writer and Tr.P.Murugesan, Photo Section Machine Operator (on deputation from Elcot) and during the surprise check on 07.02.2011 between 17.00 hrs and 23.50 hrs, the said Tr.A.G.John Basha and Tr.P.Murugesan were found in possession of an unaccounted amount of Rs.2,930/- and Rs.850/- respectively collected as illegal gratification for you AO-5 and AO-7. Thus, you AO-5 and AO-7

had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty.

CHARGE-V:

While you (Accused Officer-5) Tr.K.Mariappan, were working as "C" Section Superintendent in the Office of the Regional Transport Officer, Salem West, Salem had allowed an unaccounted amount of Rs.10,125/- hidden in three places in the record room at 1st Floor of the Office suspected to have been collected as illegal gratification from the public for you (AO-5) for your personal gain. Thus, you AO-5 had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty.

CHARGE-VI:

While you (Accused Officer-4) Tmt.M.Manjula, were working as "A" Section Superintendent in the Office of the Regional Transport Officer, Salem West, Salem had allowed an unaccounted amount of Rs.24,755/- hidden in two places in the office room at ground floor of the Office suspected to have been collected as illegal gratification from the public for you (AO-4) for your personal gain. Thus, you AO-4 had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty

CHARGE-VII:

While you (Accused Officer-1) Tr.V.Ramkumar, were working as Motor Vehicle Inspector Grade-I, you (AO-2) Tr.S.Sakthivel, were working as Motor Vehicle Inspectors, Grade-I and you (AO-3) Thiru.V.Rajamohan, were working as Motor Vehicle Inspector Grade-II, in the Office of the Regional Transport Officer, Salem West, Salem had illegally allowed 2 private

individuals viz., Tr.M.Mahesh @ Maheswaran and R.Sekar to unauthorisedly handle official records in your office and authorized them to collect illegal gratification along with 2 more touts, viz., Tr.N.Baburaj and Tr.B.Dineshkumar and you (AO-4 and AO-5) had illegally allowed 3 private individuals viz., Tvl.S.Balaji, A.G.John Basha and Sivakumar to unauthorisedly handle official records in “A” and “C” Sections respectively, besides authorising them to collect illegal gratification. Thus, you AO-1 to AO-5 had committed grave official misconduct and failed to maintain absolute integrity and devotion to duty.

Thereby you (AO-1, AO-2, AO-3, AO-4, AO-5, AO-6 and AO-7) have failed to maintain absolute integrity and devotion to duty in Government Service and behaved in a manner unbecoming of Government Servants and violated Rule 20(1) of Tamil Nadu Government Servants Conduct Rules 1973.

5.The list of witnesses were furnished in the charge sheet and the TDP, Coimbatore, has undertaken the task of conducting the trial in respect of the delinquent officials against whom the charge sheet was filed in TDP Case No.2 of 2012. The grievances of the writ petitioner is that the disciplinary proceedings are pending before the Tribunal for the past about 4 ½ years and the same is yet to concluded.

6. In respect of the relief sought for in this writ petition, this Court is of the view that the order of suspension was issued on account of the report submitted by the Department of Vigilance and Anti Corruption on 22.12.2011. Thus, there is no infirmity in the order of suspension. Further, it is imminent for the Department to place the writ petitioner under suspension, since he was due to retire from service. The order retaining the services of the writ petitioner under Rule 56(1) of the Fundamental Rules also is consequential and there is no infirmity in retaining the services of the writ petitioner in service on account of the pendency of the disciplinary proceedings. Therefore, this Court is of the view that there is no infirmity in the order passed by the second respondent in respect of corruption cases.

7. The learned counsel appearing for the writ petitioner made a submission that the co-delinquent in the charges are allowed to retire from service.

8. The order of the respondent in that regard of allowing the other co-employees to retire from service, cannot have any consideration in respect of the case on hand, since this Court cannot

show any leniency in respect of corruption case. The actions initiated by the respondents in this regard has to be looked into independently and the facts and circumstances of that case in respect of other delinquents cannot be taken note of in this Writ Petition, in view of the fact that the charges are to be dealt with independently, with relevant to the respective participation of the delinquents concerned.

9.The decision taken by the Department in respect of the order of retirement of other co-delinquents cannot be a ground to allow the petitioner to retire from service. Because if the employee is allowed to retire from service during the pendency of the disciplinary proceedings, more specifically in the case of corruption, then it will send a wrong message and the Department cannot be in a position to impose penalties contemplated under the D&A Rules. Placing the employee under suspension and retaining his service under Rule 56(1)(c) of the Fundamental Rules, is with an object to impose penalties including the major penalty as provided under the D&A Rules. In the event of allowing the delinquent employee to retire from service, then the entire proceedings have to be transferred to the provisions under Rule 9 of the Tamil Nadu Pension Rules and therefore, the Department cannot invoke the provisions under TNCS

(D&A) Rules. Once the disciplinary proceedings are transferred for invoking the provisions under the Tamil Nadu Pension Rules, then the disciplinary authority will not be in a position to impose the penalties contemplated under the D&A Rules. Even the provision contemplated under the Fundamental Rules have got a specific purpose and object to impose penalties as contemplated under Rule 8 of the D & A Rules, including major penalty, more so, in corruption cases. If the corruption charges are preferred against the delinquent officials, the same may necessitate the disciplinary authority to impose major penalties. The ultimate object of those Rules are to protect the interest of the public administration, focus the corrupt officials and those officials who were involved in corrupt cases should not be allowed to escape from the clutches of the disciplinary proceedings. When the purpose and object of the Rules in this regard also to be considered while granting such a relief, this Court must be cautious while exercising the powers of judicial review under Article 226 of the Constitution of India.

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10. In the case on hand, undoubtedly the allegations were all relating to corruption. It is left open to the writ petitioner to participate in the process of enquiry and prove his innocence both

before the disciplinary authority as well as during the course of enquiry proceedings. This Court is not inclined to go into the merits and demerits of the allegations set out in the charge memo and it is for the TDP to conduct the full-fledged enquiry in accordance with Rules by providing all opportunities in accordance with Rules and submit a report in that regard. Equally, the disciplinary authorities are also competent to peruse all the materials available on record, including the report submitted by the TDP and take a final decision in the disciplinary proceedings. This Court is aware of the fact that the process of conducting the enquiry and concluding the disciplinary proceedings will be causing lot of mental agony and inconvenience to the delinquent officials. However, this Court is of the opinion that delay which would occur on account of various reasons, is unavoidable and on that ground this Court cannot exonerate the delinquents, who are otherwise involved in corruption cases. A mere delay cannot constitute a ground for exoneration of a delinquent, who are facing the corruption charges. In other words, delay cannot be a ground for quashing all the charges or suspension or an order retaining the services of the employees.

11. Intermittent intervention in the disciplinary proceedings are

not preferable and only on exceptional circumstances, the Courts can interfere in the disciplinary proceedings during the intermittent period. All the departmental proceedings initiated against the delinquent employees shall be allowed to be completed in all respects and a logical conclusion to be reached. The very purpose and object and of TNCS (D&A) Rules are to punish the corrupt officials who have committed misconducts, while performing their duties and responsibilities.

12. This being the view consistently taken by the Courts, this Court is not inclined to consider the facts on merits and the grounds raised in this Writ Petition for quashing of the order of suspension as well as the order retaining the services of the writ petitioner beyond his date of superannuation. Further, considering the fact that the disciplinary proceedings are pending for about 4 ½ years, the third respondent is directed to proceed with the enquiry as early as possible and complete the same without causing much delay in this regard. This Court is aware of the fact that lot of petitions are pending before the Tribunal and it will be of a great task for the Presiding Officers to complete all the cases within a short span of time.

13. In this view of the matter, the Tribunal shall take note of these facts and try to dispose of the cases as early as possible. Accordingly, no further adjudication is required in this Writ Petition and the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.10.2017

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To

1. Government of Tamil Nadu
represented by Secretary to Government
Home (Transport) Department
Secretariat, Chennai 600009.
2. The Transport Commissioner
Chepauk, Chennai 600 005.
3. Tribunal for Disciplinary Proceedings
rep. By its Commissioner
5/1842-A, Trichy Road
Coimbatore.

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S.M.SUBRAMANIAM, J.,

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