

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 17111 of 2017

N.Paraman

... Petitioner

Vs

1.The Agricultural Production Commissioner
And Secretary to Government,
Agriculture Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Coimbatore - 641 045.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent herein to consider the representation of the petitioner dated 05.06.2017 by permitting him to retire from service on 31.08.2017 without prejudice to the pendency of TDP case No.18/2011 on the file of the 2nd Respondent herein in the light of similar orders issued in the case of similarly placed officials facing TDP proceedings and to continue the proceedings under Rule 9-A of the Tamilnadu Pension Rules, 1978.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to consider the representation dated 5th June 2017 by permitting him to retire from service on 31st August 2017 without prejudice to the pendency of TDP case No.18 of 2011 on the file of the Commissioner, Tribunal for Disciplinary Proceedings, Coimbatore.

2. The prayer sought for technically worded in this writ petition, so as to get retirement from the Government service even during the pendency of disciplinary proceedings, which is pending on the file of the Commissioner, Tribunal for Disciplinary Proceedings, Coimbatore. This Court is curious to look into the documents filed in this writ petition.

3. Normally, when the departmental disciplinary proceedings are initiated under Rule 17-b of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, only in case of corruption allegations the enquiry will be referred to the Tribunal for disciplinary proceedings under the Rules. All other cases will be dealt with by the Department concern itself.

4. Thus, this Court has to consider that the allegations against the writ petitioner was serious and that is the reason why the enquiry was referred to the Tribunal for disciplinary proceedings. It is open to the writ petitioner to defend his case before the Tribunal and prove his innocence. But it is the duty of the delinquent employee to participate in the enquiry. Otherwise, the enquiry will be proceeded with in his absence. Intermediate intervention by this Court in disciplinary proceedings have to be exercised cautiously, the delinquent employees cannot be allowed to escape from the clutches of disciplinary proceedings, unless, the proceedings are vitiated under the Rules relevant.

5. The case on hand, the charges are framed against the writ petitioner and the same was already referred to the Tribunal for disciplinary proceedings and the Tribunal has undertaken the task of conducting the enquiry and the report also to be submitted to the Disciplinary Authority for further consideration. When the task is undertaken by the Tribunal for disciplinary proceedings is pending, a mere submission of representation to the Disciplinary Authority on 5th June 2017, the writ petitioner has filed this writ petition by coining the prayer in such a way seeking direction to direct the first respondent to consider the representation of the petitioner dated 5th June 2017 by permitting him to retire from service on 31st August 2017 without prejudice to the pendency of TDP case No.18 of 2011 on the file of the Commissioner, Tribunal for Disciplinary Proceedings, Coimbatore.

6. Two things have to be looked into in this perspective. The petitioner's intention in getting retirement from service on 31st August 2017, which is a future date; and he must be allowed to retire from service without prejudice to the pendency of TDP case No.18/2011. These two things are very much contrary to the Disciplinary and Appeal Rules. As per the Rules, an

employee, who is facing charge memo under Rule 17-b cannot be allowed to retire from service and he should be placed under suspension by considering the nature of allegation, and when he is placed under suspension, his services are to be retained under the fundamental Rules. Only after establishing his innocence before the Tribunal, such an employee will be allowed to retire from service and all the terminal benefits will be paid. In order to escape from the clutches of the disciplinary proceedings, the delinquent officers are attempting to file the writ petition to get the relief in one way or other, so as to pressurize the Disciplinary Authority to get the relief as per their wishes.

7. Now, this Court has to examine the right of the writ petitioner to file this writ petition. The basic legal principles for entertaining the writ petition is that, atleast a semblance of right and its violation, has to be established for issuing a Writ under Article 226 of the Constitution of India. In the absence of establishing any right, no writ can be issued. The writ petitioner has been served with the charges under the Disciplinary and Appeal Rules. He has submitted his explanation. The case was referred to Tribunal for disciplinary proceedings. Now the Tribunal has to give an opportunity to the writ petitioner for filing the relevant materials. The writ petitioner has to participate in the enquiry and prove his innocence. But, there is no allegation or averments stating that the writ petitioner has not been given any opportunity, which is pending before the Tribunal. Contrarily, he has shown his interest in getting retirement from service, even during pendency of the disciplinary proceedings. Hence, this Court is not inclined to entertain the writ petition and the intention of the writ petitioner is to get away from the disciplinary proceedings. Such a practice of filing of writ petition is to be deprecated.

8. In view of the prayer sought for in this writ petition and non-establishment of semblance of right of the writ petitioner, this Court is not inclined to consider the representation in this writ petition. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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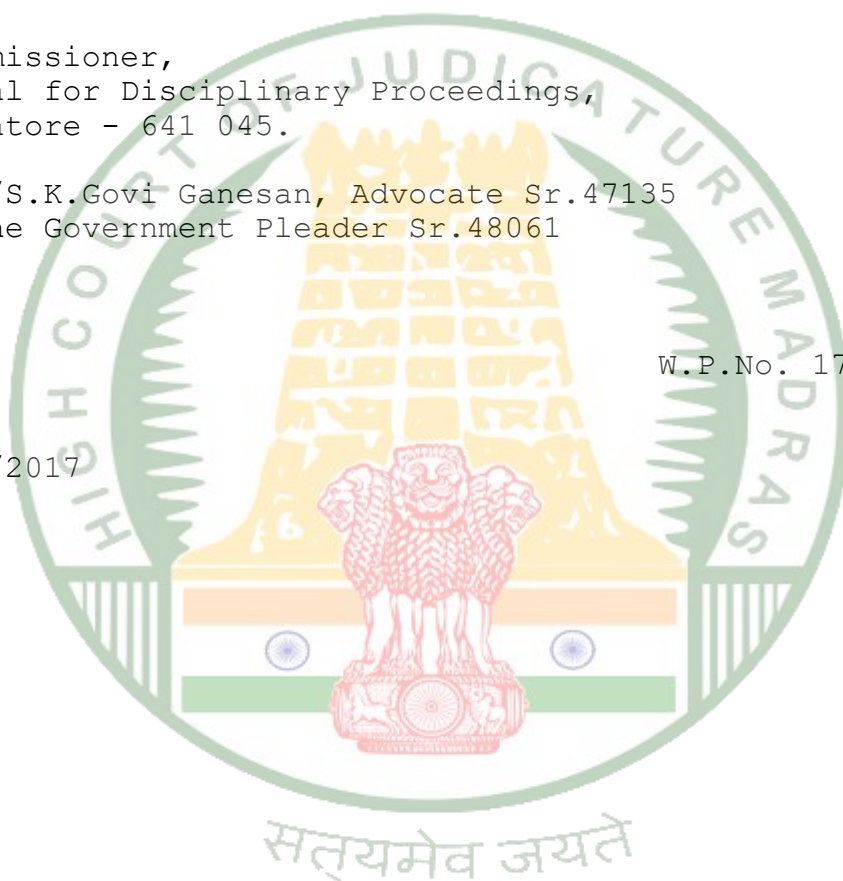
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+1cc to M/S.K.Govi Ganesan, Advocate Sr.47135
+1cc to the Government Pleader Sr.48061

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srg 21/07/2017



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