

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 29.08.2017****CORAM :****THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.A(MD)No.944 of 2016
and
C.M.P(MD)No.5684 of 2016**

1. State rep.by The Secretary to
Government,
Animal Husbandry and Fisheries
Department,
Fort.St.George, Chennai-9.
2. The Director of Fisheries,
Chennai-6.
3. The Assistant Director of Fisheries (Marine),
Ramanathapuram (North) ... Appellants

Vs.**A.Ganesan ... Respondent**

Prayer : This Writ Appeal is filed under Clause 15 of Letters Patent, to allow the writ appeal and set aside the order dated 02.12.2015 made in WP(MD)No.21439 of 2015 on the file of this Court.

Prayer in WP(MD). 21439/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the entire records of the 2nd respondent pertaining to his proceeding Proc.No.9897/M1/2005 dated 29.08.2005 and quash the same as illegal and consequently direct the respondents to pay the petitioner all the retirement benefits, Gratuity, Leave Salary enhancement, special G.P.F. etc. with interest at 18% from the date of superannuation i.e. On 31.08.2005.

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

: Mr.T.S.Md.Mohideen, AGP

For Respondent

: Mr.N.Sivakumar

**J U D G M E N T**

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

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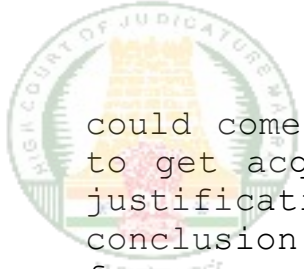
The Government of Tamil Nadu is on appeal challenging the order dated 02.12.2015 made in WP(MD)No.21439 of 2015 filed by the respondent herein.

2.The respondent herein was working as Inspector of Fisheries in the office of the Assistant Director of Fisheries (Marine), Ramanathapuram. He was arrested on 18.03.2005 by the Vigilance & Anti Corruption Wing, Ramanathapuram and a criminal case was registered against him. The said corruption case was still pending trial. He was suspended from service on 19.03.2005. He reached the age of superannuation on 31.08.2005. After referring to the order of suspension dated 19.03.2005, the Director of Fisheries sent a proposal to initiate enquiry into the grave charges against him. The Director of Fisheries by order dated 29.08.2005 did not permit the respondent herein to retire and retained him in service. Subsequently disciplinary action was also taken against him. But the charges framed against the respondent were dropped vide G.O.(D)No.325, Animal Husbandry and Fisheries Department, dated 07.12.2009. But, in view of the pendency of the criminal case, the benefits payable to the respondent were still withheld. The respondent therefore filed WP(MD)No.21439 of 2015 challenging the order dated 29.08.2005 whereby he was not allowed to retire from service. The learned Single Judge allowed the writ petition. Questioning the same, this intra Court appeal has been filed.

3.Heard the learned counsel for the parties.

4.The learned Single Judge took the view that the writ petitioner was not allowed to retire, because, the authority proposed to hold enquiry against him in respect of certain grave charges. The said enquiry ended in favour of the employee. The order retaining the writ petitioner was not premised on any other ground. Therefore pendency of the criminal case cannot be a justification for the continued retention of the respondent herein in service. It is in that view of the matter, the learned Judge allowed the writ petition. We are not inclined to subscribe to the said reasoning. Admittedly, the respondent herein is still facing the corruption case before the criminal Court.

5.The learned counsel for the respondent would contend that the standard of proof for criminal case is higher compared to departmental enquiry. When the respondent/writ petitioner



could come clean even in the disciplinary proceeding, he is bound to get acquittal in the criminal case. Therefore there is no justification in retaining the respondent in service till the conclusion of the criminal case when the result appears to be foregone. We cannot accept the said submission. One cannot presume what will be the outcome of a judicial proceeding. Merely because in the disciplinary enquiry, the delinquent was found not guilty, it cannot mean that he would be entitled to an automatic acquittal in the criminal case. In any event, it is a matter of record that the respondent herein was arrested in a trap case. When an allegation of bribery is pending in a criminal trial, the respondent herein cannot demand that he should be permitted to retire and disbursed with all the benefits. In the event of the respondent being found guilty in the criminal case, the appellant would be entitled to pass an order of dismissal.

7.This Court cannot foreclose the said right of the employer. It is also seen that the writ petitioner was suspended from service only following his arrest and registration of criminal case. The said proceeding is very much referred to in the order dated 29.08.2005 whereby the writ petitioner was not allowed to retire from service. The learned Judge erroneously assumed that the retention of the writ petitioner in service was only to enable the conduct of the departmental enquiry against him. It is not so. The order retaining the writ petitioner in service refers to the earlier suspension following the registration of criminal case against him. The operative portion of the order passed by the authority reads as under :

"AND WHEREAS In the circumstances of the case, it is necessary that the said Thiru.A.Ganesan, Inspector of Fisheries (under suspension) shall not be permitted to retire on his reaching the age of superannuation, i.e, 31.08.2005 afternoon but, shall be retained in service."

8.The expression "in the circumstances of the case" is wide enough to cover the pendency of the criminal case also. We therefore set aside the order dated 02.12.2015 made in WP(MD) No.21439 of 2015. The respondent herein is of course at liberty to request the criminal Court to expedite the proceedings against him. It is seen that the criminal case was registered as early as in the year 2005. More than 12 years have gone by. The appellant reached the age of superannuation in the year 2005 itself. Right to speedy trial is a fundamental right of the accused. However, we are not in a position to fix any outer time limit for the conclusion of the criminal case. The respondent is at liberty to make a mention before the Presiding



9. This writ appeal is allowed with these observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

1. The Secretary to Government,
Animal Husbandry and Fisheries Department,
Fort.St.George, Chennai-9.
2. The Director of Fisheries,
Chennai-6.
3. The Assistant Director of Fisheries (Marine),
Ramanathapuram (North).

+1 cc to Mr.A.Thiyagarajan , Advocate in SR.No. 75233
+1 cc to The Special Government Pleader in SR.No.75771

Skm/Arul

AE/KP/SAR1/15.09.2017/4P/6C

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and
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