



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) No.5051 of 2017

and

W.M.P. (MD) No.4069 of 2017

M.Palanichamy

... Petitioner

Vs.

1.The Principal Secretary-cum-Commissioner,
Revenue Administration,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The District Collector,
Pudukottai District,
Pudukottai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorari, to call for the records on the file of the 2nd respondent in connection with the impugned order of suspension passed by him in his Proceedings in Rc.A2 4704/2017 dated 20.03.2017 (served on 21.03.2017) and quash the same as illegal and arbitrary.

For Petitioner
For Respondents

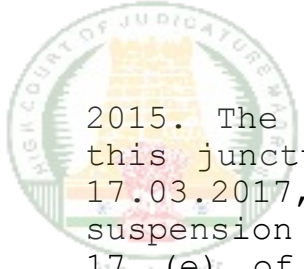
:Mr.G.Thalaimutharasu
:Mr.J.Gunaseelan Muthiah
Government Advocate

ORDER

This Writ Petition is filed, challenging the impugned order of suspension passed by the second respondent dated 20.03.2017.

2. The grievance of the petitioner is that the impugned order was passed just prior to the date of his retirement, without indicating the nature of misconduct committed by the petitioner and it is further submitted that there was no other proceedings pending against the petitioner and that there is no indication that the order of suspension was in contemplation of disciplinary action.

3.The petitioner was appointed in service as Village Administrative Officer on 12.03.1984, and he was appointed as Junior Assistant in the year 2000 and thereafter promoted as Assistant in the year 2005. The petitioner got promotion as Deputy Tahsildar in the year 2011 and again promoted as Special Tahsildar in the year



2015. The petitioner was about to retire on 31.03.2017. It is, at this juncture, based on the letter of the first respondent, dated 17.03.2017, the second respondent has placed the petitioner under suspension by the impugned order, dated 20.03.2017, by invoking Rule 17 (e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

3. The contention of the petitioner is that the impugned order is liable to be set aside, in view of the failure of the respondents, to give adequate reasons warranting suspension by invoking Rule 17 (e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is further submitted that suspension cannot be passed at the fag end of retirement, as the same has to be exercised at least three months prior to the date of retirement as per instructions. He submitted that the suspension order is therefore contrary to G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007. It is also the legal submission of the learned counsel for the petitioner that the respondents have not passed any order retaining the petitioner in service, which is necessary under Fundamental Rule 56 (1) (c). It is the specific stand taken by the petitioner that the suspension order is not followed by any order retaining the petitioner in service and hence the impugned order cannot stand as per the dictum of this Court in several judgment.

4. The learned Counsel for the petitioner relied upon the judgment of this Court, in the case of **S.Jayaseelan v. The Director of Adi Dravidar and Tribal Welfare, Chepauk, Chennai and others in W.P.No.12238 of 2007**, dated 17.08.2007. In the said judgment, the learned Single Judge of this Court, has held as follows:

"...13. The Division Bench of this Court has an occasion to deal with the present question namely whether the order of suspension alone, passed against the Government Servant before retirement is sufficient without a further order retaining him in service, which is reported in 2005 (3) CTC 4, The State of Tamil Nadu, rep. By the Commissioner and Secretary to Government, Home Department, Fort St. George, Chennai -9 and others Vs. R. Karuppiyah, Inspector of Police (Under Order of Suspension), Manamadurai Circle, Sivagangai District and another. Their Lordships in the said Judgment have clearly held in para 29 as follows:

"From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule is vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside."



14. Thus the reading of Rule 56(c) of the Fundamental Rules and the judgment referred to above, will amply make it very clear that a mere order of suspension on the petitioner before his retirement without passing further order retaining the petitioner in service before he attained the age of superannuation which is mandatory as per Rule 56(i)(c) will vitiate the entire proceedings against the petitioner and the same is not sustainable under law and are liable to be set aside."....

5. The learned Counsel for the petitioner relied upon another judgment of this Court in the case of **L. Krishnan v. The Commissioner, Tiruvallore Municipality, Tiruvallore and others** in W.P.No.11915 of 2015, dated 05.08.2015, wherein it has been held as follows:

"...13. Concedingly, in this case, no such order was passed, permitting the petitioner to retire from service, subject to pendency of the disciplinary proceedings and, as rightly pointed out by the learned counsel for the petitioner, no separate order has also been passed either on the date of superannuation or just prior to that, retaining the petitioner in service, in terms of FR 56 (1) (c) and such an order came to be passed nearly one year thereafter i.e., on 11.06.2015."....

6. The learned Counsel for the petitioner further relied upon a judgment of the learned Single Judge of this Court, in the case of **M. Janarthanan v. The Chairman, Tamil Nadu Slum Clearance Board, Chennai - 600 005 and others** in W.P.Nos.32563 and 32564 of 2012, dated 09.06.2014, wherein this Court has quashed the order of suspension which was passed just prior to the date of retirement on superannuation of the petitioner therein. In the said Judgment, the guidelines issued by the Government vide G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, was considered. Clauses (i), (ii), (iv), (v), (vii) of Government Order are also relevant and it is quoted below for convenience :

(i) The Disciplinary authority should not resort to last minute suspension of the Government servants (i.e) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-



footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

(iv) Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government Servant concerned.

(v) Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56 (1) (c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are not issued on the date of retirement of the Government servants. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rule 56 (1) (c) have to be issued on the date of retirement only .

(vii) If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three months prior to the date of retirement of the Government Servant and charges could not be framed before the date of retirement of the Government servant, then also it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(a) (c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.

7.As per the Government Order cited supra, the Government has issued a direction not to resort to last minute suspension. It is as per the Government Order, the decision either to allow the Government servant to retire from service or to suspend from service should be taken well in advance, atleast three months prior to the date of retirement on superannuation. Further, if irregularity committed by a Government servant, comes to the notice of the Disciplinary Authority, within three months prior to the date of retirement, the Government has directed the Disciplinary Authority, to process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the case pending against him or to place him under



suspension based on gravity of the irregularities committed by him.

8. Even in the case of misconduct, the Disciplinary Authority is directed to ensure not to pass suspension order on the date of retirement. In the case of Government servant, already under suspension, a specific direction is issued to the effect that, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rules 56(1)(c), have to be issued atleast on the date of retirement.

9. In the present case, the petitioner was due to retire on 31.03.2017, however, the impugned order of suspension was passed by the second respondent, on 20.03.2017, and it was communicated to the petitioner subsequently. It is not in dispute that no separate order retaining the petitioner in service was passed by the second respondent till the date of his retirement. Hence, the impugned order is contrary to the guidelines issued vide G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007.

10. The second respondent has filed counter affidavit, in which it is stated that, a complaint of demand and acceptance of bribe was given against the petitioner and that an enquiry was pending, after registration of a case at the direction of Vigilance and Anti Corruption, dated 14.09.2015.

11. Though it is alleged that a complaint against the petitioner was given about two years back and that a case was registered against him 1½ years back, no further proceedings were initiated till date. No charge memo was issued to the petitioner for any misconduct. Only on the basis of a complaint, for which no action was taken for more than two years, the petitioner cannot be placed under suspension, without giving the reason warranting action under Rule 17 (e) TamilNadu Civil Services (Discipline and Appeal) Rules. The precedents relied upon by the petitioner is applicable to the petitioner's case and the impugned order is liable to be set aside. This Writ Petition is, therefore, allowed and the impugned order passed by the second respondent is set aside.

12. With the above observation, the Writ Petition is allowed. Consequently, the connected W.M.P.(MD) No.4069 of 2017 is closed. No Costs.

Sd/-

Assistant Registrar(P & A)

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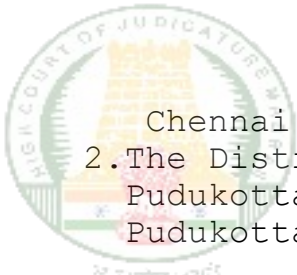
Sub Assistant Registrar

To

1. The Principal Secretary-cum-Commissioner,

<https://hcservices.ecourts.gov.in/hcservices/>
Revenue Administration,

Ezhilagam, Chepauk,



Chennai - 600 005.

2.The District Collector,
Pudukottai District,
Pudukottai.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.58862

+1cc to MR.G.THALAIMUTHARASU Advocate in SR. No.58741

CMR/GSP

JS/GT/SAR.1/29.06.2017/6P-5C

W.P. (MD) No.5051 of 2017
and

W.M.P. (MD) No.4069 of 2017
06.06.2017