



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.05.2017

Pronounced on : 26.05.2017

WEB COPY

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P. (MD) No.9307 of 2017

and

W.M.P. (MD) Nos.7083 to 7085 of 2017

R.Krishnamoorthi

... Petitioner

-vs-

1. The Engineer-in-Chief (Buildings)
and Chief Engineer (B), Chennai Region,
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.

2. The Principal Secretary to Government,
Public Works Departments,
Fort St. George,
Chennai - 9.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent in its Charge memo No.CII(3)/0891/2017, dated 03.05.2017 and quash the same and consequently direct the respondents to permit the petitioner to retire peacefully with effect from 31.05.2017 with all consequential and attendant pensionary benefits.

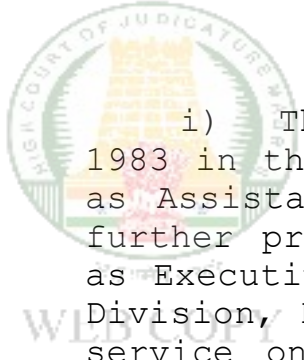
For Petitioner : Mr.V.Vijay Shankar
For R1 & R2 : Mr.B.Pugalendhi,
Additional Advocate General
assisted by Mr.K.P.Krishnadoss,
Government Advocate

O R D E R

This Writ Petition has been filed challenging the charge memo issued by the first respondent vide No.CII(3)/0891/2017-4, dated 03.05.2017 and consequently directing the respondents to permit the petitioner to retire peacefully with effect from 31.05.2017 with all consequential and attendant pensionary benefits.

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

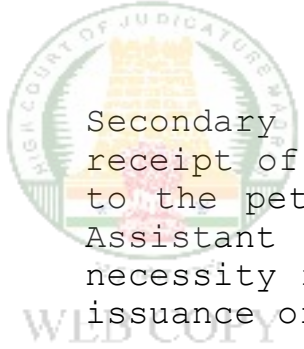
2. The facts set out in the affidavit filed in support of this Writ Petition are as follows:



i) The petitioner joined as Assistant Engineer in the year 1983 in the Public Works Department. Thereafter, he was promoted as Assistant Executive Engineer and again in June, 2015, he was further promoted as Executive Engineer. He is presently serving as Executive Engineer in Water Resources Department Grounds Water Division, Madurai-2 and on 31.05.2017, he is going to retire from service on attaining the age of superannuation. While so, the first respondent has issued the impugned charge memo dated 03.05.2017. The only charge levelled against the petitioner in the charge memo was based on a complaint made by a contractor namely M.Sankarapandi for having demanded a sum of Rs.16,000/- as bribe for issuance of a cheque to the said contractor for the works he completed. The allegation made against the petitioner is that on 07.05.2016, the said contractor met the petitioner at his residence and during the conversation, the petitioner demanded a sum of Rs.16,000/- in order to clear the cheque payment to the contractor. Further, the said contractor had recorded the conversation secretly and on that basis, he lodged a complaint against the petitioner. However, the first respondent has never called the petitioner with regard to the complaint made against the petitioner and made any enquiry thereafter for about one year and as the petitioner is going to retire on 31.05.2017 on attaining the age of superannuation, now the first respondent issued the impugned charge memo to prevent the petitioner from retiring the service and to cause mental agony to him.

(ii) It is further stated in the affidavit that the said contractor has the habit of making wild allegations especially against the officers of the Public Works Department. Since the contractor had already received a cheque for a sum of Rs.1,85,608/- on 31.03.2016 and acknowledged the same, the allegation made against the petitioner is obviously false. Further, the authority, who has the jurisdiction to issue cheque, namely, the Assistant Executive Engineer, has already issued the cheque, it is wholly illogical for the contractor to approach the petitioner for payment. Thus, the whole allegation made against the petitioner is false and baseless and it has been made only to tarnish the reputation of the petitioner and to humiliate him. However, there is no justification on the part of the first respondent to wait for nearly about one year and to initiate action against the petitioner while he is going to retire on attaining the age of superannuation.

3. The learned counsel appearing for the petitioner would submit that the allegation in the charge memo that the petitioner demanded bribe of a sum of Rs.16,000/- from the said contractor for issuance of a cheque to him on 07.05.2016 is false, as the contractor has already received a cheque on 31.03.2016 from the Assistant Executive Engineer, for a sum of Rs.1,85,608/-, towards the payment for the repair works done in the Government Higher

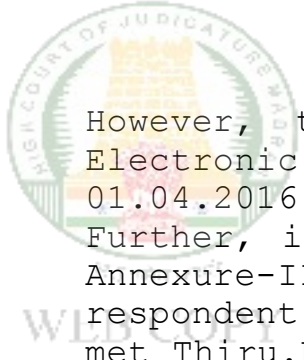


Secondary School at T.Kallupatti and he has also acknowledged receipt of the same. The said transaction had been duly intimated to the petitioner's office in the monthly account reports by the Assistant Executive Engineer. While so, absolutely there is no necessity for the contractor to meet the petitioner with regard to issuance of cheque.

4.The learned counsel for the petitioner further submitted that it is pertinent to note that that Government have abolished the mode of cheque payments to the contractors by issuing a Government Order vide G.O.Ms.No.72, Finance (Letter of Credit) Department, dated 29.02.2016 and directed the Public Works (PWD-Buildings/WRD), Highways, Forest Department, etc., to make payments only by way of Electronic Clearance System directly to the bank with effect from 01.04.2016. In such circumstance, the alleged incident said to have taken place on 07.05.2016 with regard to demand of bribe for releasing of cheque, could not have taken place at all and the alleged incident has been invented by the contractor in order to humiliate and harass the petitioner. The learned counsel for the petitioner would further submit that though the contractor had received a cheque on 31.03.2016 and as per the Government Order referred to above, the payment to contractors through cheque has been abolished and Electronic Clearance System for making payment to contractors has been introduced with effect from 01.04.2016, the alleged demand of bribe from the contractor could not have made by the petitioner. Therefore, the impugned charge memo issued by the first respondent dated 03.05.2017 has to be quashed as it has been issued mala fide.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Advocate General assisted by the Government Advocate for the respondents and perused the materials available on record.

6.At the out set, on a perusal of the record would show that the Government has passed an order vide G.O.Ms.No.72, Finance (Letter of Credit) Department, dated 29.02.2016 withdrawing the system of Letter of Credit for Public Works (Buildings & Irrigation), Highways and Forest Departments and to bring them under the purview of Treasury mode of Electronic Clearance System with effect from 01.04.2016. Pursuant to the said Government Order, the Assistant Executive Engineer, PWD, Buildings (C&M) Sub Division, Usilampatti, vide communication dated 06.04.2016 addressed to the Branch Manager, State Bank of India, Usilampatti, had surrendered the unused cheque leaves in the prescribed format. Further, as submitted by the petitioner in the affidavit that the contractor had received a cheque on 31.03.2016 for a sum of Rs.5,60,00/- and acknowledged the same, there is no necessity for him to meet the petitioner on 07.05.2016 for issuance of a cheque and release of payment as alleged by the said contractor.



However, the mode of cheque payments has been abolished and Electronic Clearance System has been implemented with effect from 01.04.2016 which is one month prior to the alleged incident. Further, it is pertinent to note here that in paragraph 3 of the Annexure-II to the charge memo dated 03.05.2017, the first respondent has stated that "Thiru.M.Sankarapandi, Contractor had met Thiru.R.Krishnamoorthy, Executive Engineer at his residence on 07.05.2016 in connection with the payment for the work completed by him." and in Sl.No.1 of the Annexure-III-List of documents by which the charges framed against Thiru.R.Krishnamoorthy, Executive Engineer, P.W.D. Are proposed to be sustained, the first respondent has stated as "1.Petition of Thiru.M.Sankarapandi, Contractor with regard to the allegation against Thiru.R.Krishnamoorthy, Executive Engineer, P.W.D., dated 05.05.2016." From the above statements of the first respondent in the impugned charge memo, this Court is at a loss to understand how a complaint could be made two days prior to the alleged incident, namely, the said contractor had given a petition on 05.05.2016 and he met the petitioner on 07.05.2016 at his residence. Therefore, it is clear from the records, the first respondent has not applied his mind while issuing the charge memo and also for the complaint received on 05.05.2016, he has issued the impugned charge memo on 03.05.2017 nearly after a period of one year that too, the petitioner is going to retire on 31.05.2017 on attaining the age of superannuation with a mala fide intention. For all the reasons stated above, the impugned charge memo dated 03.05.2017 issued by the first respondent is liable to be quashed.

7.In the result, this Writ Petition is allowed and the charge memo dated 03.05.2017 issued by the first respondent is quashed and consequently, the respondents are directed to permit the petitioner to retire peacefully on attaining the age of superannuation on 31.05.2017 and disburse all consequential and attendant pensionary benefits to the petitioner. No costs. Consequently, the connected W.M.P.(MD) Nos.7083 to 7085 of 2017 are closed.

Sd/-
Vacation Officer(T&P)

/True Copy/

Sub Assistant Registrar.

To:

1. The Engineer-in-Chief (Buildings)
and Chief Engineer (B), Chennai Region,
Chief Engineer (General),
Public Works Department,
Chennai - 5.



2. The Principal Secretary to Government,
Public Works Departments,
Fort St. George,
Chennai - 9.

+3CC to M/S.V.Vijay Shankar, Advocate, SR.No. 57781
+1CC to the Special Government Pleader SR.No. 57444

Order made in
W.P. (MD) No. 9307 of 2017
26.05.2017

SKN
AM/MR/SAR 1/26.05.2017/5P/7C