

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on : 16.11.2016****Pronounced on : 24.05.2017****CORAM :****THE HON'BLE DR.JUSTICE S.VIMALA**

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W.P. (MD) Nos.21428 to 21430 of 2016**&****W.M.P. (MD) No.15314 of 2016**

M.Nainar Mohammed

... Petitioner in all W.Ps.

vs.

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to Govt.,
Environment & Forests (FRI) Department,
Secretariat, Chennai - 9
2. The Principal Chief Conservator of Forests,
No.15 Jeenis Road, Saidapet,
Chennai - 15

... Respondents in all W.Ps.

Prayer in W.P.No.21428 of 2016:- Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari-fied Mandamus to call for the records on the file of the first respondent in his Letter No.9804/FR.1/2015-12, dated 13.10.2016, ***quash the same and consequently to settle all the retirement benefits*** including service benefits namely, death cum retirement gratuity, provide fund, special provident fund, commutation of pension, encashment of leave, pension arrears and other benefits to the petitioner.

Prayer in W.P.Nos.21429 /16 & 21430/ 16:- Petitions filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Certiorari, to call for the records of the impugned orders passed by the first respondent in his proceedings in G.O. (3D) Nos.2 and 5, Environment and Forest (FR.1) Department, dated 22.01.2014 and 31.01.2014, and to quash the same.

For Petitioner in all W.Ps. : Mr. D.Selvanayagam

For Respondents in all W.Ps : Mr. A.Muthu Karuppan, AGP.,

C O M M O N O R D E R

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that



"in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time."

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2. Writ petition No.21428 of 2016 has been filed by the petitioner, challenging the impugned order of the rejection of retirement benefits to the petitioner, passed by the first respondent by the order, dated 13.10.2016.

2.1. This order is assailed on the following grounds:-

(i) When the **disciplinary proceedings** initiated against the petitioner by virtue of G.O.(D) No.90, dated 27.04.2015 and G.O. (D) No.91, dated 27.04.2015, **have been dropped**, there is no justification to deny the payment of retirement benefits.

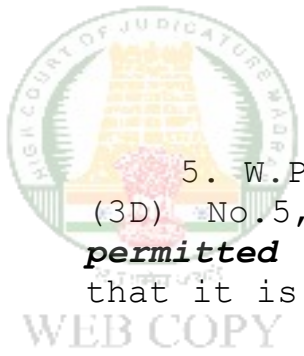
(ii) The order passed by the first respondent is a non-speaking order and the order is also on account of non-application of mind; the reason being that when the petitioner attained superannuation on 31.01.2014, the **sanction for prosecution was given only on 11.03.2014, i.e., after the retirement; mere sanction of prosecution cannot be a bar** for settling the retirement benefits.

(iii) The non-payment of retirement benefits is against the Fundamental Rule 56.

3. W.P.(MD) No.21429 of 2016 has been filed seeking to quash the proceedings of the first respondent, dated 22.01.2014, by which the petitioner was **not permitted to retire from service** and he was placed under suspension on the ground that grave charges in two disciplinary cases are pending against him.

4. Certain amount of money was seized from the custody of: (a) Forest Ranger, namely, T.Jayachandran, (b) Superintendent and Range Officer, namely, Baskaran; (c) Cashier, K.Manoranjitha Kaliselvi; (d) Assistant, K.Rashia Begum; and (e) Office Assistant, P.Chidambaram.

4.1. Since the petitioner was the Regional Manager, he was also implicated in the Criminal Case. The charge against the petitioner is that unaccounted amount of Rs.1,94,100/- was seized from his custody. The petitioner gave his explanation. Though the criminal case was registered, there was no further action, as there was no evidence. **Instead of criminal action, Departmental action was recommended.** After obtaining directions from this Court, seeking early disposal of the Departmental proceedings, the proceedings commenced and **ended by dropping of charges** (through G.O. (D) Nos.90 and 91, dated 27.04.2015).



5. W.P.(MD) No.21430 of 2016 has been filed to quash G.O. (3D) No.5, dated 31.01.2014, by which the **petitioner was not permitted to retire**. This order is under challenge on the ground that it is against G.O.Ms.No.144, dated 08.06.2007.

6. Since the issues involved in these writ petitions are common and inter-connected, these writ petitions are heard together and common order is passed.

Brief facts:-

7. The petitioner, M.Nainar Mohammed, attained superannuation in the post of Deputy Conservator of Forest on 31.01.2014. He was not permitted to retire on 31.01.2014 and this order came to be passed in view of the order of suspension passed on 22.01.2014, in respect of contemplation of disciplinary proceedings against the petitioner. Later, the departmental proceedings were dropped by two Government Orders Nos.90 and 91, dated 27.04.2015.

7.1. Even thereafter, as the retirement benefits were not disbursed, the petitioner filed a writ petition in W.P.(MD) No.8391 of 2015. This Court directed the respondents to disburse the retirement benefits, in tune with the statement of the Government that the retirement benefits would be disbursed within a reasonable time and further directed that retirement benefits shall be disbursed within a period of four months from the date of receipt of a copy of the order.

7.2. But, by the order, dated 13.10.2016, of the first respondent, the petitioner was deprived of getting the retirement benefits on the ground that criminal cases registered under Sections 167 and 409 IPC and Section 13 (2) of the Prevention of Corruption Act, are pending against the petitioner. It was specifically stated in the order that the petitioner is retained in service in accordance with Rule 56 (1) (c) of the Fundamental Rules and is not entitled to any retirement benefits till the conclusion of criminal proceedings.

7.3. This order is under challenge in W.P.(MD) No.21428 of 2016.

8. The impugned order dated 13.10.2016 passed by the Principal Secretary to Government gives an impression that the order has been passed in accordance with Rule 56 (1) (c) of the Fundamental Rules and that the first respondent was careful enough to pinpoint the criminal case pending against the petitioner in respect of serious charges of corruption and therefore, the order is a valid order. But, the detailed analysis of the entire case history would go to show that it is an order passed, without considering the details of representation made by the petitioner on 29.04.2015. The order reads that "the representation dated 29.04.2015 has been examined in detail". But, it is not known what is considered in detail.



9. In the representation dated 29.04.2015, the petitioner has submitted the following details:-

1. The petitioner was called upon to give explanation in respect of unaccounted money of Rs.1,94,100/- seized from his custody and he submitted an explanation for the same.
2. Criminal Case was registered on the basis of seizure of money from the custody of Forest Ranger, Superintendent and Range Officer, Cashier, Assistant and Office Assistant, who were employed in the Office of the Tamil Nadu Plantation Corporation, of which, the petitioner was a Regional Manager; in respect of the amounts seized from those persons, the petitioner herein was added as accused, on the basis of the vicarious liability in the capacity as Regional Manager of the Corporation.
3. Though a criminal complaint was registered against all the staff members and the petitioner as there was no evidence, the prosecution / department recommended departmental action in the place of criminal action.
4. Though the incident took place on 26.08.2009 and a case was registered on 27.08.2009, it is alleged that in respect of the very same criminal charges, departmental actions were initiated in which it was found that the charges are not proved and hence, the departmental actions were dropped.

9.1. Placing all these facts, the petitioner has sought for disposal of his representation dated 29.04.2015.

10. The learned counsel appearing for the petitioner contended that the suspension and the consequent order, not permitting the petitioner to retire, have been made against the Government Order No.144, dated 08.06.2007.

11. It is appropriate to quote the said Government Order for the benefit of the Officers passing last minute orders of suspension and also for the benefit of those employees who suffer the same:

"Avoiding suspension on the date of retirement -
Not applicable to cases of Directorate of Vigilance and
Anti-Corruption enquiry and criminal cases.

G.O. (Ms) No. 144

Dated : 08.06.2007

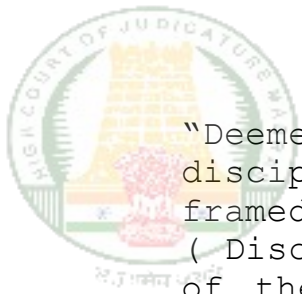
Personnel and Administrative Reforms (N) Department

Read :

1. Lr. (Ms) No. 1118/Par N/89, dated 22.12.87

2. G.O. (Ms) No. 439, P&AR (Per N) Department, dated 27.7.1989

3. D.O. letter No. 44626/2004-1 P&AR(N) Department dated 3.8.2004



"Deemed Proceeding". Such deemed proceedings in disciplinary cases are possible only if charges are framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, but not under Rule 17(a) of the said rules. The Government have got powers to withhold or withdraw a pension or part thereof from any Government Servant and also to withhold his Death-Cum-Retirement-Gratuity, if any, recovery is to be effected for the pecuniary loss causes to the Government by the retiring Government servant

4. After detailed examination, the Government have decided that, as a general principle, issue of suspension orders on the date of a Government servant should be avoided by examination of the case well in advance (i.e) 3 months prior to the date of retirement on superannuation of the Government servants concerned.

5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in super session of orders issued in the reference second read above.

(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.

(iii) In respect of Directorate of Vigilance and Anti-Corruption and Tribunal for Disciplinary Proceedings cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government. It is noticed that Directorate of Vigilance and Anti-Corruption and Tribunal for disciplinary Proceedings

cases are dragged on for a long time without adhering to the time limit prescribed by the Government in Letter



first read above. In such cases, the disciplinary authorities should take up the matter with the Directorate of Vigilance and Anti-corruption or Tribunal for disciplinary Proceedings to expedite such cases and final orders issued within the time limit prescribed. In unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision to place him under suspension well in advance (i.e) prior to the date of retirement of the Government servants and not on the date of retirement.

(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.

(iv) In cases where charges have been framed and the disciplinary authority is of the view that a pension cut or withholding of pension under the Tamil Nadu Pension Rules, 1978 would suffice for the delinquency committed, the disciplinary authority may allow the Government servant to retire from service without prejudice to the departmental proceedings.

(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.

(viii) The above instructions shall not be made applicable to cases of Directorate of Vigilance and Anti-Corruption enquiry and criminal cases.

(By order of the Governor)"

12. In the representation of the petitioner, it is very specifically stated that instead of criminal action departmental proceedings were recommended and accordingly, disciplinary proceedings were initiated against the petitioner. It is specifically alleged that the charges in respect of the criminal proceedings as well as the departmental proceedings are based on same facts.

13. A perusal of the records available would go to show that in respect of the charge of possession and seizure of unauthorized and unaccounted amount of Rs.1,94,100/- on 26.08.2009, during surprise check, an enquiry was conducted and according to the report of the enquiry officer, the charge is not proved.

13.1. This is supported by G.O.Ms.No.90, dated 27.04.2015.

13.2. A further perusal of records would go to show that in respect of other charges, namely, not obtaining permission before property was purchased in the name of his wife and in respect of non-maintenance of account books, the charges are not proved.

13.3. This is supported by G.O.Ms.No.91, dated 27.04.2015.

13.4. To get the findings in the departmental proceedings, the petitioner had to move this Court in W.P.(MD) No.22687 of 2013. Again the petitioner has to file W.P.(MD) No.6053 of 2014, seeking directions to pass final orders on the charge memo. Only thereafter, after a period of more than a year, from the expiry of the time limit, the Government passed orders, dropping the charges.

13.5. Even though the charges framed were ordered to be dropped as early as on 27.04.2015, the retirement benefits were not disbursed and then, again, the petitioner is compelled to move this Court for disbursement of retirement benefits.

13.6. No doubt, the charges alleged are serious in nature. But, why the matters were kept pending from 26.08.2009 and the authorities have been waiting to place the petitioner under suspension, till 22.01.2014, nearly for a period of four-and-half years. It is not as if that the nature of the offence committed was so secret that it came to the knowledge of the authorities only on the date of suspension / superannuation.



13.7. The case of the respondents themselves is that the amount (allegedly unaccounted) was seized on 26.08.2009. That being the case, why the Government Orders prohibiting / avoiding last minute suspension should be disobeyed is not explained.

13.8. When the petitioner specifically claims that instead of criminal action, departmental action was initiated, and departmental action ended in his favour, the order of the first respondent, once again, quoting that criminal case is pending, is unwarranted and it reflects only unfairness in passing such kind of orders. If really the criminal case is pending, the respondents would not have stated before this Court, during the hearing in W.P.(MD) No.8391 of 2015 that early steps would be taken to disburse the retirement benefits.

13.9. This Court has directed the disbursement of the retirement benefits in tune with the representation made before this Court. After giving such an undertaking, what made the first respondent to pass an order, stating that the criminal case is pending, when there was no criminal case pending according to the petitioner. Even assuming that criminal case is pending from the year 2009, when the seizure of the property itself has taken place in the year 2009, what is the necessity for keeping the criminal case pending, when the Government Order reads that the authorities should take expeditious steps to get the criminal case disposed of.

14. From the facts and circumstances narrated above, it is clear that the Government Order is not obeyed in letter and spirit, but the Government Order quoted are merely wishy-washy. Under such circumstances, the order passed by the first respondent is liable to be dismissed.

15. Contending that, both the departmental proceedings and the criminal case are based on identical set of facts and when the departmental proceedings, based on preponderance of probabilities cannot be established, it is not possible to establish proof beyond reasonable doubt, in a criminal case, and therefore, the contention that criminal cases are pending has no substance, the case reported in **AIR 1999 SC 1416 (Cap M.Paul Anthony v. Bharath Gold Mines)** is relied upon:-

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements,



came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex- parte departmental proceedings, to stand."

15.1. Pointing out the necessity of concluding the departmental proceedings / criminal proceedings, in the interest of the employee concerned, interest of the Government and the confidence to be inculcated in the minds of the Government employees, the decision reported in **2005 (6) SCC 636 (P.V.Mahadevan v. The Managing Director, TNHB)** is relied upon:-

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer. "

15.2. Emphasizing that right to speedy trial, includes the right to speedy conclusion of departmental proceedings and the ill-effects of the delay, the decision reported in **2015 (3) CTC 119 (Ajay Kumar Choudry v. Union of India)** is relied upon:-

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

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the



exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that - "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

15.2.1. Order, dated 18.12.2014, in W.P.(MD) No.16957 and 16958 of 2014 (R.Manavalan v. The Additional Director of Agriculture (Personnel Management), Director of Agriculture, Chennai) :-

"10. Admittedly, in the case on hand, even the said guidelines have not been followed when the report was submitted way back in the year 2009. Had there been an enquiry in the year 2009, after the submission of the report by the Vigilance and Anti Corruption, the department would have reached a finality, in the case of the petitioner. But there is absolutely **no explanation by the respondents for the inordinate delay of five long years in contemplation of enquiry against the petitioner.**



Therefore, when there is no justification on the part of the respondents in not initiating departmental proceedings in respect of the alleged incident that took place in the year 2008 against the petitioner, keeping in mind that the delay is abnormal and there is no explanation for the delay, as per the ratio laid down by the Apex Court in P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board, (2005) 6 SCC 636, the delinquent employee also can expect that the disciplinary proceeding, if any, initiated against him to be concluded expeditiously without any unnecessary delay, this Court, considering the long delay that has vitiated the contemplation of disciplinary proceedings, is of the opinion that allowing the respondents to proceed further with the departmental proceedings at this distance of time will be not only prejudicial to the petitioner, but also to the respondents. **Besides, the protracted disciplinary enquiry against a government employee should be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee.** Therefore, finding no justification whatsoever for the respondents in not initiating the disciplinary proceedings for about five long years, at this stage, it is necessary to draw a curtain, since for the mistake committed by the department in not following the aforesaid Government Order, the petitioner should not be made to suffer, that too just four days before his retirement, as the very purpose of initiating such action gets defeated. ..."

15.2.2. Order, dated 01.08.2016 in W.P.(MD) No.18218 of 2015 (R.Vanaraja v. The Additional Principal Secretary to Government and two others):-

"16. Further, respondents-2 and 3 have failed to consider not only G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996, but also the subsequent letter issued by the Principal Secretary to Government, Personnel Administration Reforms P & A. R. Department. The Apex Court in Ajay Kumar Choudhary's case has made it clear that the currency of suspension should not extend beyond three months; if within three months the memorandum of charges/charge sheet is not filed on the delinquent officer/employee or if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of suspension. In the light of the same, when the third respondent has sought opinion from the Assistant Director of Prosecution whether the case of the petitioner can be considered for revocation, the latter offered his opinion vide proceedings in



Na.Ka.No.376/2014/A2, dated 27.10.2014, to the effect that since charge sheet has been filed, there is no question of tampering of witnesses and hence the suspension of the petitioner may be revoked. Also, in the light of G.O.Ms.No.40, P & A.R.(N) Department dated 30.01.1996, the respondent **cannot unnecessarily keep the petitioner under a prolonged suspension by paying 75% of his salary as subsistence allowance."**

15.3. The principles enunciated and the dictum laid down in those cases apply to the facts of the case and the petitioner had been unnecessarily had been driven to the battle field, to battle incessantly when he is expected to have a peaceful life, after retirement.

16. As the departmental proceedings have been concluded on the basis that charges are not proved, the suspension order dated 22.01.2014 and the order not permitting the petitioner to retire, are to be set-aside and they are set-aside accordingly.

16.1. The petitioner is deemed to have been retire on 31.01.2014 and the respondents are directed to pass orders permitting the petitioner to retire as on 31.01.2014. The respondents are directed to disburse the retirement benefits to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

17. In the result, all the writ petitions are allowed. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Govt.of Tamil Nadu,,
Environment & Forests (FRI) Department,
Secretariat, Chennai - 9
2. The Principal Chief Conservator of Forests,
No.15 Jeenis Road, Saidapet,
Chennai - 15

+3cc to Mr.D.Selvanayagam , Advocate Sr.No.57450

srk

vb/sv-mms/sar4/07.06.2017/13p/6c

**W.P. (MD) Nos.21428 to 21430 of 2016
& W.M.P. (MD) No.15314 of 2016**