



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.07.2017

CORAM :

**THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

W.A(MD)No.624 of 2011
and
M.P(MD).No.2 of 2011

The Agricultural Production Commissioner
and Secretary to Government,
Fort St. George, Chennai-600 009.

... Appellant

Vs.

G.Chakrapani
Formerly J.E., Now A.E.E.,
O/o. The Superintending Engineer,
Agricultural Engineering Department,
Virudhunagar

... Respondent

Prayer : This Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 17.08.2010 made in W.P(MD) No. 10645 of 2010 on the file of this Court.

Prayer in WP(MD). 10645/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS, to call for the records relating to the impugned charge memo issued by the Respondent in his proceedings Lr.No.14893/AA8 (2) 2003-15 dated 29-08-2009 and consequential order passed by the Respondent in his proceedings G.O.(3D).No.129 Agriculture (AA-8) Department dated 31-08-2009 and quash the same as illegal and consequentially to direct the Respondents to disburse the retirement benefits within the period that may be stipulated by this Honourable Court.

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

For Respondent : Mr.C.Sureshkumar for Mr.V.P.Rajan

J U D G M E N T

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

This writ appeal is directed against the order dated 17.08.2010 allowing WP(MD).No.10645 of 2010 filed by the respondent herein.

2.The respondent herein was appointed as Senior Mechanic in the year 1976 and he was promoted as Junior Engineer in the year 1984. His post was re-designated in Assistant Engineer in December, 2007. Two days prior to his retirement, the writ petitioner was served with the charge memo dated 29.08.2009. It was alleged that the writ petitioner caused loss to the tune of Rs.1,030/- to the Government. The writ petitioner questioned the said charge memo and also the consequential order dated 31.08.2009 in G.O(3D).No.129, Agriculture (AA-8) Department whereby he was allowed to retire from service, but, without prejudice to the disciplinary proceedings pending against him. This was questioned by the writ petitioner by filing WP(MD).No.10645 of 2010. The learned Judge allowed the writ petition by placing reliance on the decision reported in (2009) 1 MLJ 761 (*Kootha Pillai v. Commissioner, Municipal Administration, Chennai and Others*). The learned Judge held that the writ petitioner having been allowed to retire, no disciplinary proceedings can be continued against him. The learned Judge quashed the charge memo dated 29.08.2009 and also the conditions attached to the order dated 31.08.2009. Aggrieved by the said order allowing the writ petition, this intra Court appeal has been filed.

3.The learned Additional Government Pleader appearing for the appellant pointed out that in view of the Full Bench decision of this Court reported in 2013(1) CWC 753 (*C.Mathew v. Secretary to Government, Revenue Department*), it is open to the Government to continue the disciplinary proceeding under the pension rules. In other words, the earlier view that departmental action cannot continue after retirement no longer holds good.

4.It is true that the writ petition was allowed only on the strength of the Koothapillai decision and that the said foundation stands undermined view of the subsequent Full Bench decision. While agreeing with the learned Additional Government Pleader with regard to the legal position, we do not want to interfere with the order passed by the learned single Judge. The respondent herein reached the superannuation as early as 2009. As the writ petition was allowed in the year 2010, at this point of time no purpose will be served by the reviving the disciplinary action. We make it clear that while the reason set out in the order allowing the writ petition is no longer holding good, the final order passed in the writ petition is not interfered with.



5.The writ appeal is disposed of with the above observation.
No costs. Consequently, connected miscellaneous petition is
closed.

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Assistant Registrar (AE)

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Sub-Assistant Registrar

+One cc to The Special Government Pleader, SR.No.69002

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