

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4489 of 2018
and W.M.P.Nos.5519 & 5520 of 2018

A.Pannerselvam

... Petitioner

Vs.

1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai-600 009.

2.The Special Commissioner & Commissioner
for Revenue Administration,
Chepauk, Chennai-600 005.

3.The District Collector.
Krishnagiri.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned orders of show cause notice No.12244/2017/A1, dated 04.07.2017 of the third respondent is concerned and the consequential orders of removal from service passed by the third respondent herein in and by proceedings No.12244/2017/A1, dated 07.08.2017 and to quash the same insofar as the show cause notice and the orders of removal from service are concerned and consequentially direct the respondents to restore all the service benefits and to allow the petitioner to retire from service consequent on attaining the age of superannuation as on 30.04.2011 forthwith along with all consequential benefits.

For Petitioner : Mr.SP.Patel

For Respondents: Mr.R.S.Selvam,
Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the impugned order passed by the District Collector, Krishnagiri/third respondent herein in proceedings

No.12244/2017/A1 dated 07.08.2017 imposing the punishment of removal from service specified under clause VII of Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2.The learned counsel appearing for the petitioner, assailing the same, contended that when the petitioner was charge sheeted in Crime No.3/AC/2008/KG by the Vigilance and Anti Corruption, Krishnagiri District, for the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, the learned Chief Judicial Magistrate/Special Judge, Krishnagiri, on completion of the trial, found him guilty and awarded a sentence of Rigorous Imprisonment for six months and imposed fine amount of Rs.1000/-, in default, to undergo simple imprisonment for one month for the offence under Section 7 of the Prevention of Corruption Act, 1988 and he was also sentenced to undergo Rigorous Imprisonment for one year and imposed fine amount of Rs.1000/-, in default, to undergo simple imprisonment for one month for the offence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, in C.C.No.1 of 2010 by judgment dated 24.03.2017. When the petitioner also gave his explanation, the third respondent, instead of imposing the punishment of removal from service, should have chosen to impose a lighter punishment of compulsory retirement. Finally, it is contended that the show cause notice dated 04.07.2017 issued by the third respondent/District Collector, Krishnagiri, clearly indicates that the District Collector has prejudged the issue. The reason is, even in the show cause notice, the third respondent/District Collector has come to a conclusion to impose a punishment of dismissal from service. Moreover, the impugned order also does not show as to why the third respondent/District Collector has not rejected the request of the petitioner to impose the punishment of compulsory retirement.

3. Learned counsel appearing for the petitioner further contended that issuance of notice calling upon the petitioner to submit his explanation as to why he should not be removed from service pursuant to the order of conviction and sentence passed by the learned Chief Judicial Magistrate/Special Judge, indicates the prejudged mind of the District Collector which is wholly unsustainable and bad in law.

4. Heard Mr.R.Selvam, learned Government Advocate appearing for the respondents.

5. In this context, it is pertinent to refer to Article 311 (2) (a) of the Constitution of India. Article 311 (2) (a) makes it clear that when the petitioner has been removed from service on the ground of his conviction imposed by the learned Chief Judicial Magistrate/Special Judge, Krishnagiri, in C.C.No.1 of

2010 dated 24.03.2017 for the offence under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, he cannot take a defence that the Criminal Appeal No.201 of 2017 filed by him against the said conviction and sentence is pending and the sentence alone has been suspended, and there is no order of stay against the conviction. Therefore, when the petitioner has been convicted and his sentence alone has been stayed, the third respondent/ District Collector is perfectly right in imposing the punishment in question under Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and hence, the impugned show cause notice dated 04.07.2017 and the consequential order passed by the third respondent/District Collector dated 07.08.2017 imposing the punishment of removal from service cannot be found fault with. Therefore, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

abr/jrl
To

- 1.The Principal Secretary to Government,
Revenue Department,
Secretariat, Chennai-600 009.
- 2.The Special Commissioner & Commissioner
for Revenue Administration,
Chepauk, Chennai-600 005.
- 3.The District Collector.
Krishnagiri.

+ 1 cc to Mr.Special Government Pleader Sr.15249
+ 1 cc to Government Pleader SR.15907

W.P.No.4489 of 2018

(CS-DR)
EU(21/03/2018)