

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.1.2018
CORAM
THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.202 of 2018
and
C.M.P.No.1538 of 2018

V.Selvakumar

Appellant

Versus

The District Collector,
Kanchipuram District, Kanchipuram.

Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.9.2017 passed in W.P.No.43230 of 2016 on the file of this court.

WP.No.43230/2016:Petition is filed to issue a writ of certiorari calling for the records pertaining to the order of the respondent framing and issuing charge memo on the eve of the petitioners retirement from service on attainment of superannuation on 30.11.2016 in R.C. No.7290/ 2008/ PA3 dated 30.11.2016 and quash the same as is against all cannons of law.

For appellant : Mr.R.Viduthalai, Senior Counsel for
Mr.Punniakotti
For respondent : Mr.R.Prathapkumar, AGP

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. Challenging the order passed by the learned Single Judge dismissing the writ petition filed seeking the relief of certiorari calling for the records pertaining to the order of the respondent framing and issuing charge memo on the eve of the petitioner's retirement from service on attainment of superannuation on 30.11.2016 in R.C.No.7290/2008/PA3, dated 30.11.2016 and quash the same as is against all cannons of law, the present writ appeal has been filed.

3. It appears that the learned Single Judge after going through the averments in the petition, opined that the grounds raised in the writ petition cannot be considered on merits when the matter is pending enquiry in disciplinary proceedings and also on the ground of nature of misconduct alleged viz., the writ petitioner had received bribe and therefore, the charge memo cannot be quashed on the ground of delay and as such ordered the petitioner to submit his explanation on the charge memo and to prove his innocence in the departmental proceedings.

4. The learned Senior Counsel appearing for the appellant submits that the order of the learned Single Judge is without taking into consideration the catena of decisions of the Apex Court in respect of suspension of the person on the last date of retirement and also inordinate delay in issuing the charge memo and concluding the departmental proceedings. He relied upon the decisions in MINISTRY OF DEFENCE v. PRABHASH CHANDRA MIRDHA ((2012) 11 SCC 565), P.V.MAHADEVAN v. MD.T.N.HOUSING BOARD ((2005) 6 SCC 636) and G.M.TANK v. STATE OF GUJARAT AND OTHERS ((2006) 5 SCC 446 in support of his contention that inordinate delay and protraction in initiating departmental enquiry without convincing explanation would be prejudicial to the employee and when the criminal proceedings against the employee ends in acquittal, the finding recorded in the departmental proceedings contrary to the same would be unjust, unfair and oppressive.

5. In the case on hand, the appellant had been discharged from the criminal case in the year 2009 by the Special Sessions Judge cum Chief Judicial Magistrate, Chingleput seven years ago. However, it appears that the Department had not proceeded to file any appeal or revision immediately and now, it is contended that the Department had filed a revision with a petition to condone the delay.

6. The alleged misconduct is said to have taken place on 21.4.2005 and from 25.4.2005, he had been kept under suspension and he was not permitted to retire, which fell due in the year 2016. On this ground, the learned Senior Counsel for the appellant would submit that when the appellant had been discharge from the criminal proceedings on merits, there is no reason why unnecessarily the Department is still keeping the matter pending without holding or concluding enquiry and therefore, the ground of delay and laches the appellant is entitled to be exonerated.

7. Be that as it may, now, it appears that the Department had filed a revision with a petition to condone the delay and charges had been framed against the appellant in the year 2016. At this stage, we cannot come to a conclusion as to whether the delay is on the part of the delinquent or on the part of the State in concluding the enquiry. Such being the case, we are of the view that the Department has to conduct enquiry and complete the disciplinary proceedings within a period of three months from the date of receipt of a copy of this judgment.,

8. It is left open to the appellant to raise all his contentions including the defence of delay in issuing the charge memo, the acquittal in the criminal proceedings in his favour and the delay in filing revision against the order of acquittal in the criminal proceedings. All these things could be looked into in the disciplinary proceedings. In that view of the matter, we direct the respondent authority to conclude the disciplinary proceedings within a period of three months from

the date of receipt of a copy of this judgment.

The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

ssk.

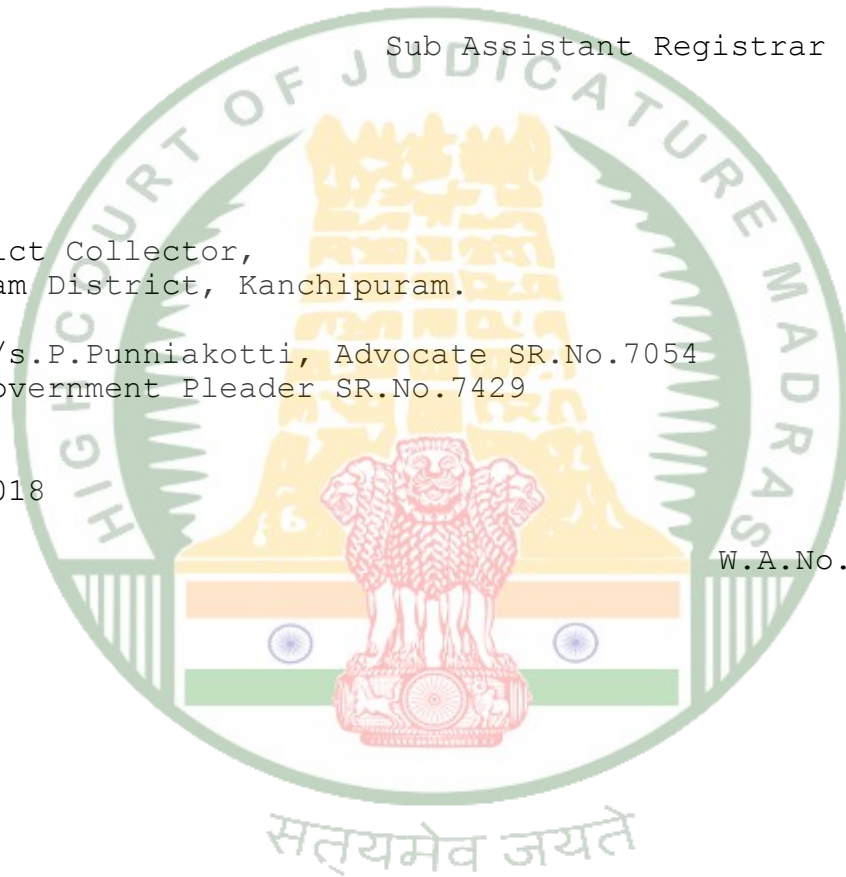
To:

The District Collector,
Kanchipuram District, Kanchipuram.

+1cc to M/s.P.Punniakotti, Advocate SR.No.7054
+1cc to Government Pleader SR.No.7429

NRI (CO)
sm:23.2.2018

W.A.No.202 of 2018



WEB COPY