

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.2546 of 2013
&
W.A.No.383 of 2016

P.Somakumaran ...Appellant in W.A.No.2546 of 2013

Tamilnadu Water Supply and Drainage Board,
rep by Chairman and Managing Director,
11, Kamarajar Salai, Chepauk, Chennai - 5.

...Appellant in W.A.No.383 of 2016

..Vs..

Tamilnadu Water Supply and Drainage Board,
represented by its Chairman and
Managing Director,
Kamarajar Salai, Madras - 5.

...Respondent in W.A.No.2546 of 2013

P.Somakumaran

...Respondent in W.A.No.383 of 2016

Prayer in W.A.No.2546 of 2013:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 13.12.2012 passed in W.P.No.33130 of 2012.

Prayer in W.A.No.383 of 2016:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 22.12.2010 passed in W.P.No.33140 of 2004.

WP.NO.33130/2012:

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records connected in Proc.No.75245/Estt(Disc)/A2/94-5 dated 30.7.1994 and Proc.No.C2/HO/EE/30552/2005-2 dated 29.5.2005 of the respondent and quash the same and direct the respondent to allow him to retire from service w.e.f.31.5.2005 without prejudice to the criminal case.

WP.NO.33140 of 2004:

Petition under Article 226 of the Constitution of India for issue of a writ of Certiorarified Mandamus to call for the records of the respondent proceeding made in B.P.No.Ms.44, dated 7.2.2002 containing the resolution No.5.10A of the Board of the respondent in the meeting held on 28.1.2002 and the consequential proceedings of the respondent made in B.P.No.Ms.83, dated 18.8.2003, to quash the same and to direct the respondent to reinstate the petitioner in service with all back-wages.

For Appellants : Mr.G.P.Arivusudar in W.A.No.2546 of 2013
: Ms.S.Thamizharasi in W.A.No.383 of 2016

For Respondents : Ms.S.Thamizharasi in W.A.No.2546 of 2013
: Mr.G.P.Arivusudar in W.A.No.383 of 2016

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The appellant in W.A.No.2546 of 2013 was not permitted to retire from service on account of the pendency of disciplinary Proceedings. A Writ Petition in W.P.No. 33130 of 2012, was filed, challenging the retention order and the same was dismissed by the learned single Judge by order dated 13 December 2012. Feeling aggrieved, the employee filed the Writ Appeal in W.A.No.2546 of 2013. The punishment imposed by the disciplinary authority was quashed by the learned single Judge in W.P.No.33140 of 2014, by order dated 22 December 2010. The said order is under challenge in W.A.No.383 of 2016.

2. We have heard the learned counsel for the appellant in W.A.No.2546 of 2013, who is also the respondent in W.A.No.387 of 2016, We have also heard the learned standing counsel for the appellant in W.A.No.383 of 2016, who is also the respondent in W.A.No.2546 of 2013.

3. The Management initiated proceedings against the appellant in W.A.No.2546 of 2016 (hereinafter referred to as employee) along with others. After conducting the enquiry, the disciplinary authority imposed a punishment stoppage of increment for three years with cumulative effect. The punishment was challenged by the employee in W.P.No.33140 of 2004. The learned single Judge quashed the punishment and allowed the Writ Petition. The issue is covered by a decision of a Division Bench Judgment of this Court in W.A.Nos.529 to 533

of 2013 dated 16 March 2016. Before the Division Bench, the very same punishment imposed by the disciplinary authority on other employees, which was quashed by the learned Judge was raised. The Division Bench restored the punishment. We are bound by the said Judgment and by following the same, we allow the appeal in W.A.No.383 of 2016.

4. The issue in W.P.No.33130 of 2012 was in respect of the order of retention passed by the disciplinary authority on account of the pendency of the proceedings against the employee. It is not in dispute that the criminal proceedings also pending against the employee. Such being the factual position, we are of the view that interference in the order passed by the writ court is not warranted.

5. The learned counsel for the employee by placing reliance on the order dated 13.12.2012 contended that another similarly situated employee by name V.Sathyamoorthy was permitted to retire from service pending disposal of the criminal proceedings. The issue relating to the permission given by the management to retire from the service pending disposal of the criminal case is not an issue raised in the appeal. The employee is at liberty to initiate independent proceedings in case, he is of the view that he is entitled to a similar relief.

6. The Writ Appeal in W.A.No.2546 of 2013 is dismissed and the Writ Appeal in W.A.No.387 of 2016 is allowed. No costs.

7. It is open to the employee to move the trial Court for an early disposal of the criminal proceedings pending against him. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

Tamilnadu Water supply and Drainage Board,
represented by its Chairman and
Managing Director,
Kamarajar Salai, Madras - 5.

+ 1 cc to M/s.Law Square, Advocate,SR.10577
+ 1 cc to Ms.S.Thamizharasi Advocate,SR.10564

W.A.No.2546 of 2013
&
W.A.No.383 of 2016

nr 20/03/2018