

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1501 of 2016 & C.M.P.No.18532 of 2016

Er.R.Mohana, M.E.

... Appellant

Vs.

1.State, Represented by
The Chief Secretary,
Secretariat, Chennai-9.

2.The Home Secretary,
Secretariat, Chennai-9.

3.The Secretary,
Public Works Department,
Secretariat, Chennai-9.

4.T.Tamilarasu,
Superintending Engineer,
Public Works Department,
Building (C&M) Circle, Salem.

5.The Additional Deputy Superintendent of Police,
Prohibition Enforcement Wing-Enquiry Officer,
Office of the District Superintendent of Police,
Nethimedu, Salem.

... Respondent

Writ Appeal filed under Clause 15 of Letters Patent as against the order dated 30.03.2016 passed by this Court in Writ Petition No.11738 of 2016 filed under Article 226 of Constitution of India seeking a writ of mandamus directing the respondent 3 to consider the representation on 8.3.2016 accordingly to stop all retirement benefits of said Mr.T.Tamilarasu the Superintending Engineer P.W.D (Bldg. C&M) Circle Salem who is in the verge in retirement on 31.3.2016 to the letter in spirit without any delay.

For Appellant : M/s.D.Nagasaila

For Respondents: Mrs.A.Srijayanthi,
Special Government Pleader

JUDGMENT

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

The appellant filed a Writ Petition in W.P.No.11738 of 2016 for issuance of Writ of Mandamus directing the Government to stop from paying the retirement benefits to the fourth respondent, who was due to retire on attaining the age of superannuation on 31 March 2016.

2. The learned Single Judge even without issuing notice to the fourth respondent, passed an order directing the State to initiate disciplinary proceedings against the appellant. The learned Single Judge arrived at a factual conclusion that, in case, the appellant is allowed to continue in service, the same would send a bad precedent diminishing the decorum and sanctity of the State Administration. Feeling aggrieved by the said order, the appellant has come up with this intra court appeal.

3. The learned counsel for the appellant contended that the learned Single Judge proceeded to hear the writ petition, which was filed for a different purpose and has gone to the extent of directing the Disciplinary Authority to take action against the appellant. The learned counsel contended that the direction given by the learned Single Judge was beyond the scope of the writ petition. The learned counsel further submitted that the appellant would have not pressed the writ petition, in case, the learned Single Judge was of the view that the prayer in the writ petition cannot be given on the facts and circumstances. The learned counsel finally submitted that the appellant has no intention to prosecute the very writ petition and as such, she should be permitted to withdraw the writ petition in W.P.No.11738 of 2016. सत्यमेव जयते

4. We have perused the order passed by the learned Single Judge.

5. The learned Single Judge appears to have considered the case of the appellant without there being a counter affidavit filed by any of the respondents. The learned counsel made a statement that the Writ Petition was disposed of by the learned Single Judge on the very day it came up for admission.

6. The learned Single Judge after negating the claim made by the appellant, directed the State to initiate disciplinary proceedings against the appellant. In view of the specific

direction not given to the State to consider as to whether a case is made out for initiating disciplinary proceedings against the appellant. Since the disciplinary proceedings would be initiated pursuant to the direction given by the Writ Court, the authorities would take every action to sustain the charge in spite of the fact that no such charge memo was issued to the appellant prior to the order passed by the learned Single Judge. We are therefore, of the view that liberty should be given to the appellant to withdraw the writ petition in W.P.No. 11738 of 2016.

7. We have also heard the learned Special Government Pleader with respect to the plea now made by the learned counsel for the appellant.

8. Since fourth respondent was not given notice in the writ petition, we are of the view that it is not necessary to hear him before permitting the appellant to withdraw the writ petition. We permit the appellant to withdraw the writ petition in W.P.No.11738 of 2016. The order dated 30 March 2016 is set aside. We make it clear that all actions taken by the authorities pursuant to the order dated 30 March 2016 in W.P.No.11738 of 2016 shall also stand set aside. However, it is clarified that only those proceedings initiated by the respondents pursuant to the direction given by the learned Single Judge alone would be cancelled pursuant to the order dismissing the writ petition. This order would not cover the proceedings initiated independently and without reference to the order dated 30 March 2016 in W.P.No.11738 of 2016.

9. The intra Court appeal is disposed of as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

abr/arr

Sd/-
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Assistant Registrar(co)

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Sub Assistant Registrar

To

1.The Chief Secretary,
The Government of Tamil Nadu,
Secretariat, Chennai-9.

2.The Home Secretary,
Secretariat, Chennai-9.

3.The Secretary,
Public Works Department,
Secretariat, Chennai-9.

4.The Superintending Engineer,
Public Works Department,
Building (C&M) Circle, Salem.

5.The Additional Deputy Superintendent of Police,
Prohibition Enforcement Wing-Enquiry Officer,
Office of the District Superintendent of Police,
Nethimedu, Salem.

Copy to:The Posting Clerk
Writ Posting
High Court, Madras

+1cc to M/s.D.Nagasaila, Advocate Sr.No.22113
+1cc to Government Pleader SR.No.22889

GMI (CO)
sm:12.4.2018

W.A.No.1501 of 2016

सत्यमेव जयते
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