

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2018

CORAM:

THE HON'BLE Dr.JUSTICE S.VIMALA

Writ Petition No.28541 of 2018

&

WMP No.33285 of 2018

M.Gajendiran

... Petitioner

..vs..

1. The Principal Secretary,
Government of Tamil Nadu,
Revenue Department and Disaster Management
Department, Secretariat, Chennai - 9

2. The Additional Chief Secretary,
Revenue Department,
Ezhilagam, Chennai - 5

3. The District Collector, Vellore

... Respondents

Prayer:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned charge memo, dated 11.10.2018, issued by the second respondent in SER.2(1)/59490/2007 and to quash the same.

For Petitioner : Mr. T.Thiyagarajan, for,
M/s. J.Nandagopal

For Respondents : Mr. A.N.Thambidurai, AGP.,
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O R D E R

This writ petition has been filed by the petitioner challenging the charge memo dated 11.10.2018 issued by the second respondent.

Brief facts:-

2. The petitioner joined the Government Service, as Junior Assistant, in the Revenue Department, under the physically challenged quota, on 06.06.1983. Thereafter, during the year 1999, he was promoted as Revenue Inspector. When the petitioner was working as Revenue Inspector at Gudiyatham, Vellore District, he was suspended for the charges of demanding bribe

and a case in Crime No.1 of 1999 was registered against him and thereafter, a charge sheet was filed.

2.1. The petitioner challenged the said suspension order before the Tamil Nadu Administrative Tribunal, Chennai, in O.A.No.3713 of 1999 and the Tribunal has granted an interim stay of the suspension of the petitioner. Thereafter, the Original Application was dismissed on 24.09.1999.

2.2. Again on 15.10.1999, the petitioner was suspended from service by the District Revenue Officer (DRO) and the petitioner herein contested the case which was registered against him under Sections 7, 13 (2), 13 (1) (d) of the Prevention of Corruption Act, before the Special Judge, Prevention of Corruption Act / Chief Judicial Magistrate, Vellore. Ultimately, the Criminal Court acquitted the petitioner of all the charges levelled against him under the Prevention of Corruption Act, on 20.11.2003.

2.3. On 27.12.2003, the suspension order was revoked and he was posted as Inspector in the Revenue Department, Gudiyatham, Vellore District. The petitioner's name was subsequently not included for promotion on the ground that the Vigilance Department has filed an Appeal in CA No.437 of 2004. Later on, C.A.No.437 of 2004 was also dismissed, confirming the acquittal of the petitioner and hence, the petitioner sought for inclusion of his name in the list of candidates for the promotion as Tahsildar. Pursuant to the directions issued by this Court in W.P.No.23612 of 2007, the petitioner's name was included for consideration of promotion and he was promoted as Deputy Collector / District Adi Dravidar Welfare Officer, Vellore District and he was functioning as said Officer on and from 10.05.2017. He was about to get retirement on super-annuation on 31.10.2018.

2.4. While the facts stood thus, the second respondent has passed the impugned charge memo under Section 17 (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules and framed two charges against the petitioner on 11.10.2018. On 12.11.2018, the first respondent has passed further orders putting the petitioner under suspension with effect from 31.10.2018, thus not permitting the petitioner to retire from service on reaching the age of super-annuation, i.e., on and from 31.10.2018. This order is stated to have been passed under Rule 56 (1) of the Fundamental Rules.

3. The learned counsel appearing for the petitioner would submit that the order passed by the first respondent dated 12.11.2018 is illegal, in the light of the facts which are pleaded by the petitioner herein. The learned counsel for the petitioner would submit that the charges, which are now framed

after 20 years from the date of occurrence i.e., twenty years from 28.04.1999, are consequently illegal and therefore, on the mere ground of delay, the charges have to be quashed. It is also stated that there is no impediment for the Department to have initiated disciplinary proceedings, even though the Criminal case had been pending against the petitioner.

4. The initiation of the disciplinary proceedings is highly unwarranted, when the criminal case on the identical set of facts had already ended in acquittal. It is not in dispute that the Government has already issued orders to all the Departments asking them not to issue any last minute suspension orders to the employees. Here is a case where already the charges of corruption have been held as not proved by the criminal court and on the identical set of facts, the Department wanted to initiate disciplinary proceedings, especially at the fag end of the retirement. The enquiry contemplated is not going to serve any justice, because already the petitioner has been found not guilty. It is also not in dispute that the charges levelled are on the same set of facts. There is no explanation as to why for the period of 20 years, no departmental proceedings have been initiated against the petitioner and it is initiated at the time when he is about to retire.

5. Under the above stated circumstances, the claim made by the petitioner that the charge memo is illegal has to be accepted and the charge memo stands quashed. The respondents are directed to pass further orders, permitting the petitioner to retire from service, within a period of four weeks from the date of receipt of a copy of this order.

6. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Revenue Department and Disaster Management
Department, Secretariat, Chennai - 9

2. The Additional Chief Secretary,
Revenue Department, Ezhilagam, Chennai - 5

3. The District Collector, Vellore

+1cc to M/s. J.Nandagopal, Advocate, S.R.No.79618
+1cc to the Special Government Pleader, S.R.No.80495

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& WMP No.33285 of 2018

svn(co)
cs/11/12/2018