



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.16756 of 2015

K.Ramachandran

... Petitioner

vs.

The Superintendent of Police,
Thanjavur District,
Thanjavur.

... Respondent

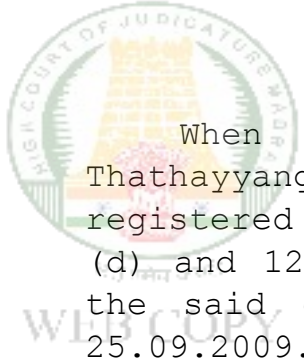
Prayer:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings in C.No.K4/1675/2013 and D.O.90/2013 dated 28.01.2013 issued by the respondent herein and quash the same and consequently direct the respondent herein to allow the petitioner to retire from service and disburse all the retirement benefits, arrears of salary, difference of payment due to pay commission recommendations, and other benefits within the time stipulated by this Court.

For Petitioner	: Mr.B.Jameel Arasu
For Respondent	: Mr.D.Muruganantham
	Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings in C.No.K4/1675/2013 and D.O.90/2013 dated 28.01.2013 issued by the respondent herein and quash the same and consequently direct the respondent herein to allow the petitioner to retire from service and disburse all the retirement benefits, arrears of salary, difference of payment due to pay commission recommendations, and other benefits.

<https://hcservices.courts.gov.in/hcservices/> facts, which are required to be noticed for the disposal of the writ petition, are as follows:



When the petitioner was working as Head Constable at Thathayyanganar Police Station, Trichy District, a criminal case was registered in Crime No.1 of 2005 under Sections 7, 13 (2) r/w 13 (i) (d) and 12 of the Prevention of Corruption Act, 1988 and based on the said case, the petitioner was placed under suspension from 25.09.2009.

3. Thereafter, on investigation, the Vigilance and Anti Corruption Department filed a charge sheet in S.C.No.53 of 2011 on the file of the Special Court for Vigilance and Anti Corruption Cases, Trichy. The said case was tried and ultimately, the trial Court, by the judgment dated 24.12.2014, acquitted the petitioner.

4. It is the case of the petitioner that, even though, the criminal case was registered in the year 2005, after completion of trial, only after 10 years the petitioner was acquitted. All these 10 years, the petitioner had been under suspension. In the meanwhile, the petitioner reached superannuation on 31.01.2013. However, because of the pendency of the criminal case, the petitioner was not permitted to retire and by proceedings dated 28.01.2013, the petitioner was not permitted to retire from service and his service was retained.

5. It is the further case of the petitioner that all these years, no disciplinary proceedings were initiated, as no charge has been framed or filed or served on the petitioner. Therefore, in the absence of any disciplinary proceedings and in view of the acquittal made by the trial Court, since the petitioner has been acquitted from all the charges framed against him, the petitioner seeks indulgence of this Court against the said order dated 28.01.2013, not permitting the petitioner to retire from service and seeks direction to the respondent to allow the petitioner to retire from service and further directing the respondent to disburse all the retirement benefits including the arrears of salary etc., to the petitioner.

6. The respondent has filed the counter affidavit stating that, though the criminal case ended in acquittal, it was decided to initiate departmental action for the same set of allegations as various grounds are available as per the provisions laid down in Government Letter. No.326, P&AR(N) dated 19.08.2004 and a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, is under contemplation at Trichy District and on issuance of charge memo and the disposal of the above proceedings his case for allowing him to retire from service would be considered.



7.I have heard Mr.B.Jameel Arasu, learned counsel for the petitioner, who would submit that it is an admitted fact that the alleged occurrence taken place in the year 2005, where the petitioner has been unnecessarily dragged into the criminal case and after having faced the said criminal case with ordeal of one decade he has come out acquitted of all the charges framed against him and all these years, the petitioner has been placed under suspension and the suspension was never revoked. In the meanwhile, since the petitioner attained the superannuation on 31.01.2013, he was not permitted to retire from service by order impugned dated 28.01.2013. Even though, the criminal case was ended in acquittal on 24.12.2014, the respondent did not initiate any disciplinary proceedings against the petitioner and even in the counter affidavit filed by them, they stated that they decided to initiate the disciplinary proceedings, but the fact remains that so far no charge memo has been served on the petitioner.

8.Therefore, the learned counsel for the writ petitioner, would submit that, the ordeal has already been undergone by the petitioner for decades together like a punishment without any offending act on the part of the petitioner and therefore, the present impugned order dated 28.01.2013 not permitting the petitioner to retire from service shall be interfered with and the retirement benefits of the petitioner shall be given by regularizing his service during the suspension period.

9.Per contra, Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondent on instructions would submit that, as has been set out in the counter affidavit, the Department already decided to initiate disciplinary proceedings unmindful of the fact that the petitioner has been acquitted in the criminal case. Accordingly, charge memo under Section 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, was prepared and the same has been sent for approval to the Tamil Nadu Vigilance and Anti Corruption Department. In this regard, the learned Additional Government Pleader would rely upon the letter issued by the respondent to the Director of Vigilance and Anti Corruption, Chennai, dated 18.04.2018, which reads thus:

"I invite attention to the references cited.

2. The draft charge memo u/r 3 (b) of TNPSS (D&A) Rule, 1955, against Tr.V.P.Pandiyan, Inspector of Police, (Now under suspension and not allowed to retire from service), and HC.1156, K.Ramachandran, (Now under suspension and not allowed to retire from service), Thathaiyangarpettai PS, Tiruchirappalli District have already been sent in the



reference 5th cited. I request that the same may please be vetted and returned to this office for taking further action."

10. Along with the said letter, a copy of the charge memo dated 14.03.2018, has been annexed, wherein, two charges have been framed against him. On a perusal of the said charges, it shows that the said charges were made purely on the basis of the criminal case under the Tamil Nadu Vigilance and Anti Corruption Department.

11. Since it is the prerogative of the Department to initiate disciplinary proceedings, even though on the same said of charges if the criminal case ended in acquittal, in the present case, the charge has been now made only on 14.03.2018 and the same has not been finalized, as it has been sent to the Department of Vigilance and Anti Corruption for approval only on 18.04.2018 i.e., yesterday (18.04.2018).

12. Though, this alleged incident taken place in the year 2005 and the Department of Vigilance and Anti Corruption case was pending before the concerned Criminal Court for all these years, atleast in the year 2014, i.e., 24.12.2014 had ended in acquittal. Even thereafter, till yesterday the charge memo has not been sent for approval to the Department of Vigilance and Anti Corruption by the respondent, which shows that by their cavalier nature of action, the respondent lethargically prepared this charge memo after 3½ years of the acquittal made in the criminal case against the petitioner and only yesterday it has been sent for approval to the Department of Vigilance and Anti Corruption, though such power to initiate disciplinary proceeding separately unmindful of the fate in the criminal case, is available with the respondent. The same in the opinion of this Court, ought not to have been exercised in such a manner, as has been done in this case.

13. Be that as it may, the fact remains that as on today, the draft charge has been sent for approval to the Department of Vigilance and Anti Corruption and it is for the Department of Vigilance and Anti Corruption to approve or not to approve and once it is approved, the disciplinary proceedings must be taken care of and it should be completed at the earliest possible time, because the petitioner has been out of service for the past more than 8 years from 2005 to 2013 i.e., from the date of the Department of Vigilance and Anti Corruption arrest and till he attained superannuation on 31.01.2013. Even, after his superannuation, since he was not permitted to retire from service, he is not able to get his retiral benefits, pay arrears, pension etc.,

<https://hcservices.ecourts.gov.in/hcservices/>

14. In the circumstances of the case, the following orders are

passed in this writ petition.

"(i) That the respondent is hereby directed to expedite the approval process from the Department of Vigilance and Anti Corruption and if at all the Department of Vigilance and Anti Corruption given any approval, the same shall be served on the petitioner immediately and thereafter enquiry shall be conducted by appointing an enquiry officer and it shall be concluded at the earliest.

(ii) The aforesaid action shall be undertaken by the respondent within the outer limit of six months from the date of receipt of a copy of this order.

15. It is further made clear that if within the six months, the aforesaid action directed to be undertaken, has not been completed, it shall be presumed that there is no disciplinary proceeding in the eye of law against the petitioner and on completion of the six months period without completing the disciplinary proceeding, the petitioner shall be permitted to retire from service and consequentially, he shall be entitled to claim all service benefits.

16. It is further made clear that, since a time bound direction is given to complete the enquiry, the petitioner shall co-operate with the authorities during enquiry and unnecessary adjournment shall not be asked for by the petitioner.

17. With these directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (SAR-2)

To

The Superintendent of Police,
Thanjavur District,
Thanjavur.

+1 CC to Mr. B. JAMEEL ARASU, Advocate in SR.No.62531

+1 CC to the Special Government Pleader, SR.No.62479

MM

RJ/RSK/SAR-2/23/07/2018 - 5P/4C

W.P. (MD) No.16756 of 2015

19.04.2018