



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.08.2018

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

W.A.[MD].No.1002 of 2018 and
C.M.P.(MD).No.6976 of 2018

1. The Secretary to Government,
Revenue and Disaster Management Department,
Service Wing, Secretariat, Chennai.
2. The Principal Secretary
and Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai 600 005.
3. The District Collector,
Madurai, Madurai District. : Appellants

Vs.

1. M.Kalimuthu
2. The Inspector of Police,
City Special Unit III,
Vigilance and Anti Corruption,
Chennai. : Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 11.01.2018 made in W.P.(MD).No.14207 of 2017, on the file of this Court.

Prayer in WP(MD). 14207/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified mandamus direction of like nature to call for the records on the files of the 1st respondent pertaining to G.O.(2D) No.214 of service 2(1)sec.. dated 29/06/2017 suspending the petitioner and G.O.(2D) No.219 of service 2(1) sec dated 30/06/2017 refusing permission to retire from service and to quash the same and consequently direct the 1st respondent to permit the petitioner to retire from service and also to settle the retirement benefits to the petitioner.

For Appellants

: Mr.A.K.Baskarapandian
Special Government Pleader

For respondent No.1

: Mr.R.Viduthalai
Senior Counsel
For Mr.S.C.Herold Singh

**JUDGMENT**

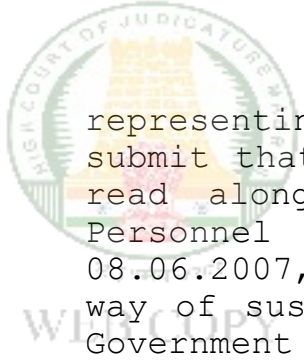
[Judgment of the Court was delivered by M.M.SUNDRESH, J.]

The first respondent herein was working as Zonal Deputy Tahsildar, Madurai North, between the year 2006 and 2008. Thereafter, he reached the age of superannuation on 30.06.2017. At that point of time, he was working as Regional Manager in Civil Supplies Corporation. At that stage, two orders were passed in G.O [2D].No.214, Revenue and Disaster Management Department, Services Wing, dated 29.06.2017 and G.O.[2D].No.219, Revenue and Disaster Management Department, Services Wing, dated 29.06.2017, by placing him under suspension and resultantly not permitting him to retire from service under Rule 17(e) of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, [for brevity, "the Rules"] and 56(1) (c) of the Fundamental Rules. These two orders were put into challenge before the learned Single Judge. By order dated 11.01.2018, the learned Single Judge was pleased to allow the Writ Petition, *inter alia* holding that there is no material to implicate the first respondent and till 30.06.2017, there was no case registered against the first respondent. Challenging the same, the present Writ Appeal has been filed by the State.

2. Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the appellants, would submit that a complaint was received from one Dr.H.S.Sheik Ibrahim, on 16.01.2017, alleging that the Government properties were sold through the pattas given treating them as private lands. On the aforesaid complaint, a direction was issued to the Inspector of Police, Vigilance and Anti-Corruption, to conduct a preliminary enquiry, vide letter dated 31.01.2017. The Inspector of Police, Vigilance and Anti-Corruption sent his report to the Directorate of Vigilance and Anti-Corruption, Chennai, on 30.03.2017, which was forwarded to the Vigilance Commission on 21.06.2017 to take a decision. The Vigilance Commission granted permission to register a regular case on 27.06.2017 and accordingly, the complaint was registered. In the interregnum, the first respondent had reached the age of superannuation on 30.06.2017. Therefore, keeping the aforesaid facts, the impugned orders were passed. The learned Special Government Pleader would further submit that Rule 17(e) of the Rules will have to be read along with Rule 56(1)(c) of the Fundamental Rules. At this stage, we are on the exercise of power pending further development in the investigation. Therefore, the learned Single Judge ought not to have gone into the merits of the case. What is relevant, at this stage, is the report submitted by the Inspector of Police, Vigilance and Anti-Corruption, which was accepted by the Vigilance Commission, resulting into the registration of the First Information Report. Thus, the order passed by the learned Single Judge, according to the learned Special Government Pleader, is required to be interfered with.

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3. Per contra, Mr.R.Viduthalai, learned Senior Counsel,



representing Mr.S.C.Herold Singh, learned counsel on record, would submit that Rule 56(1)(c) of the Fundamental Rules will have to be read along with the Government Order issued in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, which speaks of avoidance of disciplinary proceedings by way of suspension on the date of retirement. Though the aforesaid Government Order excludes the proceeding initiated by the Director of Vigilance and Anti-Corruption and the criminal cases, the object will have to be seen. It is not a case, where the enquiry has been initiated by the appellants departmentally, but, only an investigation by the Directorate of Vigilance and Anti-Corruption. Admittedly, the case was registered only on 21.03.2018, which is after the date of superannuation of the first respondent. Even the District Collector has given a clean chit on an earlier occasion. Thus, the order passed by the learned Single Judge does not require interference at the hands of this Court.

4. We have considered the above submissions made by the learned counsel on either side and perused the records carefully.

5. The facts, as narrated above, are not in dispute. Therefore, we have to take into consideration of the fact that the complaint was given on 16.01.2017, the order was passed to conduct preliminary enquiry, on 31.01.2017, the report, after preliminary enquiry, was submitted on 30.03.2017, it was forwarded to the Directorate of Vigilance and Anti Corruption, on 21.06.2017 and the permission was accorded by the Vigilance Commission on 27.06.2017. Further, it is not in dispute that thereafter, the First Information Report was registered on 21.03.2018. Rule 17(e) of the Rules speaks about the suspension order to be passed in a given situation. Rule 17(e)(1) (ii) deals with the case against the delinquent officer, in which any criminal offence is under investigation, inquiry or trial. Therefore, it speaks about a criminal offence under investigation, inquiry or trial. Thus, at that stage, what is relevant is the existence of situation and nothing beyond that. Therefore, the merits of the case are not supposed to be gone into at this stage. However, we construe that this provision along with Rule 56(1)(c) of the Fundamental Rules, which speaks about the withholding of the age of superannuation makes the position very clear. For better appreciation and for the sake of brevity and clarity, Rule 17(e) of the Rules and Rule 56(1)(C) of the Fundamental Rules are extracted hereunder:-

"17(e) of the Rules:-

(e) A Member of a service may be placed under suspension from service, where-

(i) where a disciplinary proceedings against him is contemplated or is pending;

(ii). a case against him in respect of any criminal offence is under investigation."

56(1)(c) of the Fundamental Rules:-

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(c) Notwithstanding anything contained in clause (a), a Government Servant, who is under



suspension,

- (i) on a charge of misconduct; or
- (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or,
- (iii) against whom an enquiry into grave charges is contemplated or is pending; or
- (iv). against whom a complaint of criminal offence is under investigation or trial".

6. Rule 56(1)(c)(ii) of the Fundamental Rules speaks about the enquiry into the grave charges of criminal misconduct or allegations of criminal misconduct, which is stated to be pending. This provision speaks about the allegation of criminal misconduct. Therefore, what is required is a mere allegation of criminal misconduct, which would be pending. The enquiry may be by the disciplinary or by the Investigating Agency. Rule 56(1)(c)(iv) of the Fundamental Rules deals with a case, which involves of pendency of a complaint or criminal offence, which is under investigation or trial. Under this Rule, what is relevant is pendency of a complaint under investigation. Therefore, if Rule 56(1)(c)(ii) of the Fundamental Rules is not at all applicable to the case on hand, certainly, Rule 56(1)(c)(iv) of the Fundamental Rules is applicable.

7. Admittedly, as narrated above, there was a complaint at the relevant point of time and an investigation was pending. The investigation cannot be confused with the filing of the First Information Report. Even a preliminary investigation has to be treated as an investigation *per se*. The investigation by the Inspector of Police, Vigilance and Anti-Corruption, stands on a different footing. In the case on hand, at the time of superannuation of the first respondent, the Inspector of Police, Vigilance and Anti-Corruption, has already given his report. Not only that, it was forwarded by the Directorate of Vigilance and Anti-Corruption and then, it was accepted by the Vigilance Commission. A formal First Information Report was registered subsequently. Therefore, filing of the First Information Report cannot be confused and treated on par with the investigation. Therefore, there has to be an investigation either prior to the registration of the First Information Report or after the registration of the First Information Report has got no rational with the concerned Rule. Once it is stated that the complaint is pending investigation, then, the power under Rule 56(1)(c) of the Fundamental Rules can be exercised by the officer concerned. That is what done in the case on hand. Therefore, we are of the view that the order passed by the learned Single Judge cannot be countenanced in the eye of law. We are also making it clear that we are here to test the decision making process and cannot travel beyond that. Hence, we are not supposed to go into the facts of the case. When an Investigating Officer filed a report finding a *prima facie* case for proceeding further, which has been concurred with by the Vigilance Commission, which, in turn, got converted into the filing of case in



the form of a subsequent First Information Report, certainly, the order of suspension followed by the consequential order retaining the first respondent in service to proceed further, cannot be held to be one without jurisdiction.

8. The scope of judicial over the impugned orders is very limited. We are not supposed to go into the merits of this case. Similarly, the appellants are also not expected to go into the merits of the case. After all, the impugned orders cannot be termed as stigmatic and punitive in nature. They are passed only with the sole objective of finding out the truth at a later point of time.

9. In such view of the matter, we are unable to concur with the reasons arrived at by the learned Single Judge. Accordingly, the order dated 11.01.2018 made in W.P.(MD).No.14207 of 2017 is set aside and the Writ Appeal is allowed. After passing of this Judgment, the learned Senior Counsel would submit that this Judgment shall be clarified to mean that it is only for the purpose of deciding the issues involved in this Writ Appeal alone and therefore, it will not take away the rights of the first respondent in challenging the criminal proceedings. We concur with the submission made by the learned Senior Counsel in this regard. Thus, we make it clear that the observations made in this Judgment will have to be construed only for the purpose of deciding the issues raised before us. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Secretary to Government,
Revenue and Disaster Management Department,
Service Wing, Secretariat, Chennai.
2. The Principal Secretary
and Commissioner of Revenue Administration,
Ezhilagam, Chepauk, Chennai 600 005.
3. The District Collector,
Madurai, Madurai District.
4. The Inspector of Police,
City Special Unit III,
Vigilance and Anti Corruption,
Chennai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 79127

+ 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 79121

NB

TE/JM/SV/SAR-3 : 12/09/2018 : 5P/7C

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JUDGMENT MADE IN
W.A. [MD] .No.1002 of 2018
16.08.2018