



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2018

CORAM

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THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD) No.17662 of 2018

R.Arivanandam
Son of Ramasamy,
Deputy Block Development Officer(Under suspension),
Special Area Development Programme(HADP),
Ooty, Nilgiris District.

Formerly working as

The Deputy Block Development Officer,
Thirupparankundram Panchayat Union,
Thirupparankundram,
Madurai District.

... Petitioner

Vs.

1. The District Collector,
Madurai District at Madurai.
2. The District Collector,
The Nilgiris District at Nilgiris.
3. The Project Director,
Special Area Development Programme(HADP),
Ooty, The Nilgiris District.
4. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Madurai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus calling for the records from the first respondent in R.O.C.No.50279/2017/RD.5, dated 30.7.2018 and ROC.No.6910/2018/RD-2, dated 31.7.2018 and to quash the same and consequently to direct the respondents to treat the Petitioner having retired from service on 31.7.2018 with all service and monetary benefits.

For Petitioner : Mr.N.Satish Babu

For Respondents : Mr.K.Mu.Muthu

Addl. Govt.Pleader

**O R D E R**

The petitioner has come forward with this Writ Petition seeking to issue a writ of Certiorarified Mandamus calling for the records from the first respondent in R.O.C.No.50279/2017/RD.5, dated 30.7.2018 and ROC.No.6910/2018/RD-2, dated 31.7.2018 and to quash the same and consequently to direct the respondents to treat the Petitioner as having retired from service on 31.7.2018 with all service and monetary benefits.

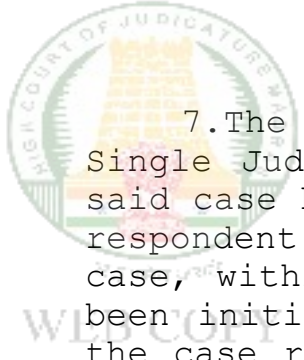
2.Mr.K.Mu.Muthu, learned Additional Government Pleader takes notice for the respondents. By consent of both parties, the main Writ Petition is taken up for final disposal at the stage of admission itself.

3.The case of the Petitioner is that he had joined the service of the respondent as Junior Assistant and while he was working as Deputy Block Development Officer, a surprise inspection was conducted by the fourth respondent and an amount of Rs.16,050/- was seized from the Petitioner. Based on the inspection report, a case was registered in Cr.No.14 of 2017 for the offences under Section 102 of Cr.P.C and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 by the fourth respondent on 17.10.2017. Though the Petitioner tendered his explanation, the fourth respondent did not accept the same. The Petitioner was thereafter transferred to Panchayat Union Office, Kallikudi and immediately on 30.11.2017, again he was transferred to a non-sensitive post. The Petitioner would submit that he was due to retire on 31.7.2018 and that on 30.7.2018, he was placed under suspension and thereafter, a proceeding dated 31.7.2018 was passed, placing the Petitioner to be continued under suspension till finalization of the proceedings.

4.The Petitioner would further submit that there is a judgement of this Court, dated 18.12.2014 in W.P(MD)Nos.16957 and 16958 of 2014,wherein this Court has considered G.O.Ms.No.144, dated 8.6.2007 and held that when the proceedings did not attain the finality and it is kept pending, the court is bound to interfere with the same.

5.Per contra,the respondent would contend that the incident had taken place in the year 2017 and immediately proceedings have been initiated and that he was due to retire on 31.7.2018 and was placed under suspension and impugned orders, dated 30.7.2018 and 31.7.2018 have been issued. He, however drew the attention of this Court in terms of Clause No.4 of G.O.Ms.No.144 and the same should not applicable to the DVAC Cases.

6.Heard both sides.



7. The Government Order has been well considered by the learned Single Judge of this Court. However, it is to be noted that the said case had arisen out of the incident of the year 2009 and the respondent therein kept the matter pending for five years. In this case, within a period of less than one year, necessary action had been initiated, as the incident took place on 16.10.2017. But in the case referred to supra, pursuant to the enormous delay, the Court has interfered with the proceedings in W.P(MD)Nos.16957 and 16958 of 2014, dated 18.12.2014.

8. In the case on hand, there cannot be a delay at all. If the contention of the Petitioner is accepted, then a person, who was caught red-handed cannot be placed either under suspension or retained him in service for the purpose of continuing his duty.

9. Hence I am of the view that the decision referred to by the Petitioner is not applicable to the facts of the present case. It is pertinent to mention here that the incident is of the year 2017 and within eight months, no finality can be attained. Hence without prejudice to the pendency of the criminal proceedings against the Petitioner, the respondents are directed to proceed with departmentally, as pendency of criminal proceedings is not a bar for proceeding with the departmental enquiry. The respondents are directed to proceed with the departmental enquiry, if commenced, on day-to-day basis without adjourning the case beyond seven working days at any point of time and pass final orders thereon.

10. It is pertinent to mention here that as held by the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Chandrabhan Tale**, reported in **(1983) 3 SCC 387**, any departmental enquiry made without payment of subsistence allowance contrary to the provision for its payment is violative of Article 311(2) of the Constitution of India. But, at the same time, it is to be noted that the employees, who have been suspended from service, have been stalling the entire disciplinary proceedings, under some pretext or the other, by taking a stand that on account of pendency of criminal proceedings, they are unable to participate in the departmental proceedings. Therefore, in order to bring such issues to a logical conclusion or standstill, this Court is of the view that the provisions of payment of subsistence allowance to the suspended Government employees and also the Payment of Subsistence Allowance Act, 1981 have to be amended suitably as under:

- i) When an employee is under suspension, initially, he/she has to be paid 75% of the salary as subsistence allowance;
- ii) if, for any reason, the enquiry is not completed within six months from the date of suspension, the payment of subsistence allowance has to be reduced from 75% to 50%, even if an employee has obtained an interim order from any Court of law;



iii) If the enquiry is not completed or has been concluded after expiry of one year, the subsistence allowance has to be further reduced to 25%;

iv) In case of demise of an employee, after period of suspension of one year and if it is found that the delay is purely on the part of the employee in proceeding with the enquiry, then the employer need not pay the balance subsistence allowance to his/her legal heirs.

11. In fact, the Payment of Subsistence Allowance Act, 1981 is very clear that for whatsoever reason, the enquiry is not able to be completed within the maximum period of 180 days, the payment of Subsistence Allowance can be reduced to 50%. Under the pretext of any order of the Court, except an order preventing reduction of the payment of subsistence allowance, proceedings of any Court case or an interim order, stalling the enquiry proceedings would not enable the employer to pay 100% subsistence allowance, and it can be reduced to 50% immediately after 180 days, as approaching the Court and getting an order, preventing the employer from proceeding with the enquiry is directly attributable to the employee.

12. In olden days, an employee, who was placed under suspension, used to feel that he/she was insulted or humiliated, as getting a suspension order was a shameful one for him/her. In the present days, the employees feel that it is a great pleasure to get a suspension order and that they can commit any offence and thereafter, obtain maximum subsistence allowance by stalling the entire enquiry proceedings till the age of retirement.

13. With the above observations and directions, this petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-II)

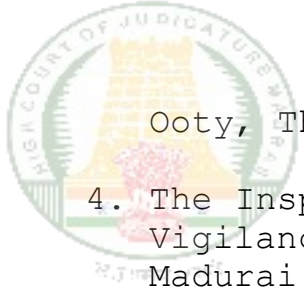
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Sub Assistant Registrar (CS-I)

To:

1. The District Collector,
Madurai District at
Madurai.
2. The District Collector,
The Nilgiris District at Nilgiris.

<https://hcservices.ecourt.gov.in/hcservices>
3. The Project Director,
Special Area Development Programme (HADP),



Ooty, The Nilgiris District.

4. The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Madurai.

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+ 1 cc TO Mr.N.Sathish Babu, Advocate in SR No. 77704
+ 1 cc TO The Special Government Pleader in SR No. 77787

vsn

AE/MK/SKN/SAR1/03.09.2018/5P/7C

order made in
W.P. (MD) No.17662 of 2018
09.08.2018