



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2018

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WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.14207 of 2017

and

W.M.P.(MD).No.11108 of 2017

M.Kalimuthu

... Petitioner

Vs.

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.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records, on the file of the first 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 first respondent to permit the petitioner to retire from service and also to settle the retirement benefits to the petitioner within a time to frame which may be fixed by this Court.

For Petitioner : Mr.R.Viduthalai
Senior Counsel

For Respondents : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

ORDER

Heard Mr.R.Viduthalai, learned Senior Counsel, appearing for the petitioner and Mr.J.Gunaseelan Muthiah, learned Additional Government Pleader, appearing for the respondents.

2.By consent of both the parties, the main writ petition is taken up for final disposal.

3.The petitioner was appointed as Junior Assistant on 08.06.1981. He became Assistant on 24.11.1984. He was promoted as Deputy Tahsildar on 10.03.2006. He became Tahsildar on 22.01.2009. He was then promoted as Deputy Collector in July 2015. Thereafter, he was transferred and posted as Regional Manager in Civil Supplies Corporation in November 2016. He was due to reach the age of superannuation on 30.06.2017. In his affidavit, the petitioner has submitted that he had an unblemished record of 36 years of service. Literally, on the verge of his retirement, the petitioner was suspended from service vide G.O. (2D).No.214 dated 29.06.2017 and vide G.O.(2D).No.219 dated 30.06.2017, he was not permitted to retire from service, but retained in service. These two Government Orders are assailed in this writ petition.

4.The petitioner seeks a direction to the first respondent to allow him to retire from service and also to settle his retirement benefits within a time frame.

5.The respondents 1 & 3 have filed a common counter affidavit and the fourth respondent has filed separate counter affidavit.

6.The learned Senior Counsel appearing for the petitioner called upon this Court to peruse the impugned Government Orders, wherein it is alleged that the petitioner has committed irregularities by issuing patta in respect of the Government Inam lands to private persons, which enabled them to convert it into housing plots. In this regard, a regular case was registered by the appropriate Investigating Authority and the same was pending. Therefore, considering the gravity of the delinquency committed by the petitioner, he was placed under suspension. The order dated 30.06.2017, which retains the petitioner in service, states that since the petitioner was placed under suspension, on account of the aforesaid misconduct and a regular case was registered against him, which is still pending, he shall not be permitted to retire from service, on his reaching the age of superannuation i.e., 30.06.2017.

7.The learned Senior counsel categorically asserted that the petitioner was not a party to the aforesaid patta transfer orders and no criminal case was ever registered against him. The premises on which the impugned Government Orders came to be passed are factually non-existent. The learned Senior counsel would



invoke Rule 56 (1) of the Fundamental Rules in this regard. A Government servant shall retire from service on the afternoon of the last date of the month, in which he attains the age of 58 years. He can be retained in service only under certain circumstances. If the Government servant is under suspension on a charge of misconduct or if an enquiry into grave charges of criminal misconduct or allegations of misconduct is pending or against whom an enquiry into grave charges is contemplated or is pending or against whom a complaint of criminal offences is under investigation or trial.

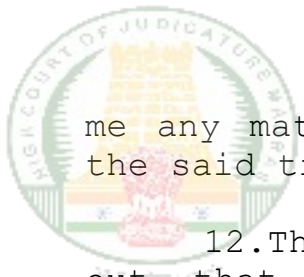
8.The learned Senior Counsel would contend that none of the circumstances can be said to be present in this case. The learned Senior Counsel would also contend that even assuming that the petitioner was said to be guilty of some delinquency, the same dates back to the year 2007. The impugned proceedings are issued in the year 2017. There is absolutely no explanation for this inordinate delay. On account of this belated initiation of disciplinary action, the petitioner would be gravely prejudiced. He also drew the attention of this Court to the materials enclosed in the typed set of papers which would show that the District Collector, Madurai District, vide communication dated 23.06.2017, addressed to the second respondent specifically certified as follows.:-

- i.No charges are pending or contemplated;
- ii.No criminal cases or vigilance enquiry are pending;
- iii.No Government dues are pending recovery;
- iv.No allegation petitions are pending.

9.Refuting the stand taken by the fourth respondent Inspector of Police in his counter affidavit with regard to the signature attributable to the petitioner, the learned Senior Counsel drew the attention of this Court to the report dated 21.06.2017, submitted by the Revenue Divisional Officer, Madurai, stating that the petitioner cannot be said to be a party to the patta transfer which triggered the present proceedings.

10.The learned Additional Government Pleader appearing for the respondents reiterated the stand taken in the counter affidavits.

11.In the counter affidavit, the authorities have taken a categorical stand that the petitioner was not allowed to retire, only because, according to them, the petitioner had committed irregularity in issuing patta in respect of some inam lands in Thennur Village, Madurai North Taluk. The said patta transfer orders have been enclosed in the typed set of papers. It is seen that the orders for issuance was signed by Mr.S.Ummer Kartha, who was the then Zonal Deputy Tahsildar, Samayanallur Region. The village falls in Samayanallur Region. The signature of the petitioner is nowhere found in the patta transfer proceedings. Even today, the respondents have not placed before



me any material to show that the petitioner had actually passed the said transfer orders.

12. The learned Senior counsel for the petitioner would point out that the petitioner was the Zonal Deputy Tahsildar of Othakadai Region. It appears that the Zonal Deputy Tahsildar of Samayanallur had used the format of Othakadai, Zonal Office, for effecting transfer proceedings. There is nothing on record to show that the petitioner was a party to the aforesaid irregularity. The factual basis for issuing the impugned Government Orders therefore goes. The petitioner is entitled to succeed on more than one ground. The patta transfer proceedings were issued in the year 2007. There is absolutely no justification for not initiating any proceeding for ten long years. It is submitted that the person who actually issued the said patta namely, Ummar Kartha, was allowed to retire. But proceedings are initiated against a person who is not a party, that too after a long gap of ten years. If so subjected, the petitioner would not be in a position to make good his defence. That is why, it is reiterated that any disciplinary action must be initiated as expeditiously as possible and not belatedly. Even in the counter affidavit, this Court is not able to find one sentence explaining the delay. Admittedly, no charge memo was issued and it cannot be said that any enquiry was pending. The impugned order of suspension does not state that he was suspended in contemplation of initiation of proceedings. On the other hand, it states that the petitioner has been suspended in view of registration of regular case by the appropriate Investigation Authority and that the same is pending. This is an incorrect statement. As on 29.06.2017, when G.O.(2D).No.214, was issued by the Secretary to Government Revenue and Disaster Management Department, no criminal case was registered against the petitioner. No charge memo was issued. If the communication dated 23.06.2017 sent by the District Collector, Madurai District to the second respondent is taken into account, Rule 56 1(C) of the Fundamental Rights cannot be applied in the present case. The Government of Tamil Nadu had issued G.O.Ms.No.144 dated 08.06.2007, Personnel and Administrative Reforms (N) Department, specifically directing that the Disciplinary Authority should not resort to last minute suspension of the Government servants. Of course, this Government Order will not apply if vigilance or criminal case are involved. There is nothing on record to show that the vigilance case was pending against the petitioner.

13. The learned Additional Government Pleader would draw the attention of this Court to paragraph 18 of the counter affidavit filed by the Inspector of Police, Chennai. In paragraph 18, the report of the Revenue Divisional Officer is referred to. The

<https://hccourtsonline.org/> would fairly admit that according to the Revenue Divisional Officer, who sent the report, the petitioner was not involved in the said patta transfer. The Revenue Divisional



Officer had duly informed the fourth respondent that the person who signed in the RTR 4189, Madurai North Taluk, dated 03.06.2007 alone would be responsible. In this regard, the fourth respondent sent an enquiry report to the Director of Vigilance and Anti Corruption Department, Chennai. On 21.06.2017, the Vigilance Commission granted permission to register the regular case. The counter affidavit filed by the fourth respondent is silent, as to whether any case was registered against the petitioner. There was nothing on record to show that the vigilance case was pending against the petitioner as on 30.06.2017. Grant of permission by the vigilance Commission to register a regular case with respect to patta transfer cannot be construed as pendency of vigilance case against the petitioner. The counter affidavits filed by the respondents are silent on this material question. Merely stating that the Government land was improperly transferred cannot prejudice the mind of this Court. The question is whether there is any credible material against the petitioner. This Court is of the view that there is no material against the petitioner. 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 are quashed. The respondents are directed to permit the petitioner to retire from service and also to settle the retirement benefits within a period of eight weeks from the date of receipt of a copy of this order.

14.The Writ Petition stands allowed. No costs Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

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.

+1CC to Mr.S.C.Herold Singh, Advocate, SR.No. 42103

+1CC to the Special Government Pleader SR.No.42270

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