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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.09.2018

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.19060 of 2018

and

W.M.P (MD) Nos.16904 and 16905 of 2018

A.R.K.Prabu

... Petitioner

Vs.

1.The Principal Secretary to Government,
Public Works Department,
Fort. St. George,
Secretariat,
Chennai - 600 009.

2.The Engineer-in-Chief (Buildings),
& Chief Engineer, (B) Chennai Region,
Chief Engineer (General)
Public Works Department,
Chepauk,
Chennai - 5.

3.The Chief Engineer,
Water Resources Department,
Madurai Region,
Madurai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in its Letter No.4474/E2/2018-1 dated 27.02.2018 and quash the same and consequently, direct the respondents to permit the petitioner to retire from service with effect from 01.03.2018.

For Petitioner : Mr.V.Vijayshankar

For Respondents : Mr.S.Dhayalan
Govt. Advocate

ORDER

This writ petition has been filed to challenge the impugned order of the first respondent vide Letter No.4474/E2/2018-1 dated 27.02.2018 and consequently, to direct the respondents to permit the petitioner to retire from service with effect from 01.03.2018.



2.The case of the petitioner is as follows:-

The petitioner was appointed as Assistant Engineer in 1987 in the Public Works Department. In 2007, he was promoted as Assistant Executive Engineer and further promoted as Executive Engineer in 2015. He attained the age of superannuation on 28.02.2018. According to him, he has rendered 31 years of unblemished record of service, except the charge memo issued to him, which is the subject matter of the present writ petition.

3.The petitioner on apprehension that some action would be taken against him on the eve of his retirement, has approached this Court by way of the writ petition in W.P(MD)No.4065 of 2018 seeking a direction to retire him peacefully with effect from 28.02.2018. However, the said writ petition came to be dismissed by this Court by observing that no order could be passed merely based on certain apprehension expressed by the petitioner herein.

4.As anticipated, on 28.02.2018, the day of the petitioner's retirement, two orders were issued, one placing the petitioner under suspension and the other retaining him in service. Therefore, the petitioner was once again constrained to approach this Court in W.P (MD)No.4804 of 2018 and notice was issued in the writ petition and the same is pending finalization before this Court. Thereafter, by proceedings dated 27.02.2018, a charge memo was issued against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules). The allegation against the petitioner was that in respect of the work sanctioned vide G.O.Ms.No.216, PWD, dated 13.10.2014 that "Rehabilitation of Pallapatti Old anicut, Kollankulammanicut across palur at Pallapatti village and Kottankulamkanmol surplus course of Kottampatti village in Melur Taluk of Madurai District under NABARD scheme, the Contractor, who was entrusted the work had put up substandard construction causing huge financial loss to the Government. The charge memo contained only one article of charge against the petitioner as above stated.

5.According to the petitioner, the charge is without any basis and unfounded and the same has been invented only to deny the benefit of petitioner's peaceful retirement after 31 years of service. According to the petitioner, the contract was funded by the NABARD to the extent of 95% and the contract was awarded in April 2015 by the Superintending Engineer, who was the competent authority for award of such contract. According to the petitioner, he joined in the Melur Division as Executive Engineer only in August 2015 after the award of such contract. He would further submit that the work was completed in June 2016 and a sum of Rs.90.71 lakhs had been paid in various stages out of 1.06 crores due to the contractor. The balance of about Rs.17/- lakhs was 5% of the contract value which is usually withheld is yet to be paid to the contractor. The remaining payment is withheld pending financial certification to be issued by the Superintending Engineer and the



said certificate still has not been issued. In fact, in order to get the remaining payment, the contractor has also assured to rectify any deficiency in his work, if the same is pointed out.

6. According to the petitioner, till date no deficiency has been pointed out by the Department and the balance amount is also yet to be paid. The petitioner in the abovesaid circumstances, is before this Court challenging the charge memo dated 27.02.2018.

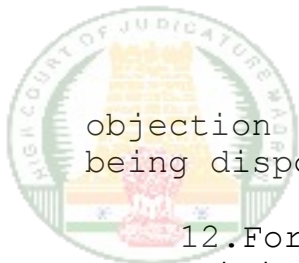
7. Mr. V. Vijayashankar, learned counsel for the petitioner would at the outset, submit that the petitioner has served 31 long years in Public Works Department and held various sensitive positions and served the department in all capacities with distinction and without any blemish. At the fag-end of his carrier, at the instance of the vested interest, such allegation has been made against the petitioner in order to sully otherwise blemishless record of service.

8. The learned counsel would also submit that the charges, as it is framed, is without factual or legal basis and the same is unfounded and the same cannot be established against the petitioner. As far as the petitioner was concerned, he discharged his duties with utmost devotion to duty and was not responsible for any deficiency of work executed by the contractor in the subject contract. In any case, the petitioner's superior, who was responsible for awarding the contract, has not initiated any action so far against the contractor and therefore, the present charge memo issued under major penalty proceedings cannot be countenanced both in law and on facts. Several grounds have been raised in assigning the charge memorandum.

9. The learned counsel would also during the course of argument expressed apprehension that the pendency of litigation before this Court would not serve the interest of the petitioner, as he prepared to face the enquiry and he expressed confidence of coming out unscathed by establishing his innocence. Therefore, the learned counsel would submit that though the larger relief is prayed for quashing of the charge memorandum, he would confine his relief only to direct the respondents to complete the enquiry within the time stipulated by this Court, so that the petitioner can be assured of certainty in conclusion of the enquiry proceedings initiated against him within the reasonable time frame.

10. Heard Mr. S. Dhayalan, learned Government Advocate, who took notice on behalf of the respondents.

11. Since the learned counsel appearing for the petitioner is confined his arguments only to direct the respondents to complete the enquiry initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) within the time to be fixed by this Court, this Court does not think the counsel appearing for the respondents would have any legitimate



objection to such direction being granted and the writ petition being disposed of at the admission stage itself.

12. For the abovesaid reasons, this Court, without expressing any opinion on the merits of the claim of the petitioner, disposes of the present writ petition with the following directions:-

"the respondent/competent authority shall complete the disciplinary action initiated against the petitioner vide charge memorandum dated 27.02.2018 within a period of six months from the date of receipt of a copy of this order by affording reasonable opportunity to the petitioner in terms of the Tamil Nadu Civil Services (Discipline and Appeal Rules) and complete the enquiry."

13. The time stipulated as above is in view of the fact that the charge memorandum contained only one article of charge and the documents relied on by the prosecution as per Annexure - II are only two in number and the witnesses proposed to be examined are only five.

14. The competent authority is directed to complete the entire action within the time stipulated above and final order on the enquiry proceedings to be passed within the said time. In case, no final order is passed by the disciplinary authority within the time stipulated, it is made clear that the disciplinary action initiated against the petitioner vide charge memorandum, dated 27.02.2018, shall automatically be lapsed. It is also made clear that the petitioner shall co-operate with the enquiry for early conclusion of the same.

15. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Principal Secretary to Government,
Public Works Department, Fort. St. George,
Secretariat, Chennai - 600 009.

2. The Engineer-in-Chief (Buildings),
& Chief Engineer, (B) Chennai Region,
Chief Engineer (General)

<https://hcservices.ecourts.gov.in/hcservices/>
Public Works Department, Chepauk,
Chennai - 5.



3.The Chief Engineer,
Water Resources Department,
Madurai Region,
Madurai.

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+1CC to Mr.V.Karthikeyan, Advocate, SR.No.81871
+1CC to the Special Government Pleader SR.No.81919

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and
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