



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. (MD) No. 1356 of 2018
and
C.M.P. (MD) Nos. 9663 of 2018

1. The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.

2. The Commissioner of Survey and Settlement,
Survey House,
Chepauk,
Chennai - 600 005.

... Appellants/Respondents

-vs-

S. Velu

... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, against the order of this Court dated 09.03.2018 made in W.P. (MD) No. 2501 of 2018 and allow this Writ Appeal.

Prayer in WP(MD)No. 2501/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned Suspension order vide proceedings in G.O(2D)No. 64 dated 26/02/2016, impugned Consequential Retention order retaining the petitioner in service beyond his date of superannuation vide proceedings in G.O(2D)No.76 dated 26/02/2016 and impugned Charge Memo under 17(b) of Tamilnadu Civil Services(Discipline and Appeal) Rules vide proceedings in Letter No.19295 / Pani-4(1) / 2015-6 dated 30/12/2015, issued by the 1st respondent and quash the same and consequently direct the respondents to settle all the retirement benefit to the petitioner with in a time frame..

For Appellant

: Mr. K. Chellapandian,
Additional Advocate General
Assisted by Mr. A.K. Baskarapandian,
Special Government Pleader.



For Respondent : Mr. R. Gowrishankar

JUDGMENT

(Judgment of the Court was delivered by P.D.AUDIKESSAVALU, J.)

The intra-Court Appeal arises from the judgment dated 09.03.2018 passed by the Learned Judge in W.P. (MD) No. 2501 of 2018. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner had joined in the services of Survey and Land Records Department in 1980 as Field Surveyor and had been promoted as Taluk Deputy Inspector of Survey and thereafter as Assistant Director of Survey and Land Records and he was to attain the age of superannuation on 29.02.2016. However, by the suspension order vide proceedings in G.O. (2D) No. 64 dated 26.02.2016 passed by the First Respondent, viz., the Secretary to the Government of Tamil Nadu, the Petitioner, who was then working at Kodaikanal, was placed under suspension pending disciplinary proceedings initiated against him pursuant to the charge memo under 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules vide proceedings in Letter No. 19295/Pani-4(1)/2015-6 dated 30.12.2015 issued by the First Respondent relating to an incident involving the Petitioner while he was working as Deputy Inspector of Survey, Kodaikanal along with certain other officials. The Petitioner was not permitted to retire on reaching the age of superannuation on the evening of 29.02.2016 but retained in service until the charges contemplated against him were concluded and final orders passed by the competent authority. It was further directed that during that period, his salary shall not exceed the pension which shall accrue to him on that day. Aggrieved thereby the Petitioner had filed W.P. (MD) No. 2501 of 2018 in this Court.

3. During the course of arguments before the Writ Court, the Learned Counsel appearing for the Petitioner made the following submissions:-

"(i) The subject matter of the charge memo related to the year 2007-2008. There is absolutely no justification for the inordinate delay issued in the charge memo. It is not the case of the Respondents that there was any loss of revenue to the Government. The enquiry conducted at this point of time would cause grave prejudice to the Petitioner. Because, he will not be in a position to gather materials in support of his defence.



(ii) The impugned orders are not in conformity with the binding guidelines set out in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007.

(iii) The impugned proceedings suffer from the vice of discrimination. The Petitioner was deputed for this work along with one Gurusamy. The survey was jointly conducted by them. While Gurusamy was allowed to retire peacefully, the Petitioner was alone being selectively targeted."

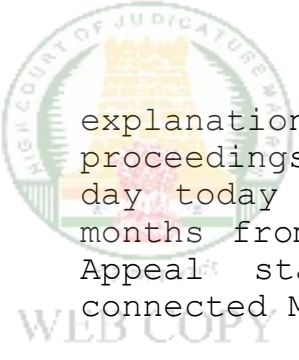
As the aforesaid contentions were accepted by the Learned Judge, the impugned charge memo was quashed.

4. We have heard Mr. R. Gowrishankar, Learned Counsel for the Petitioner and Mr. K. Chellapandian, Learned Additional Advocate General appearing on behalf of the Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

5. The Learned Judge has found that there has been inordinate delay in issuing the charge memo for which no explanation was forthcoming, the suspension of the Petitioner at the last minute when he was to attain the age of superannuation is an infraction of the guidelines set out G.O.Ms. No. 144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 and that another similarly placed employee, viz., Gurusamy was allowed to retire, which amounts to discrimination and has accordingly, quashed the charge memo impugned in the Writ Petition.

6. We are unable to subscribe to any of the aforesaid reasons assigned by the Learned Judge in view of the consistent legal position reiterated by the Hon'ble Supreme Court of India in Special Director -vs- Mohammed Ghulam Ghouse [(2004) 3 SCC 440], Secretary, Ministry of Defence -vs- Prabhash Chandra Miradha [AIR 2012 SC 2250] and Life Insurance Corporation of India -vs- A. Masilamani [(2013) 6 SCC 530] that a charge memo cannot be quashed before enquiry and disciplinary proceedings cannot be interfered with in the interregnum till it reaches its logical conclusion. At the same time, we hasten to add that the aforesaid grounds raised by the Petitioner could be placed by him in the reply to the charge memo in the disciplinary proceedings and it is incumbent upon the disciplinary authority to consider each of the same and pass appropriate orders thereon and no opinion is expressed by the Court in that regard at this pre-mature stage.

7. In this view of the matter, the order dated 09.03.2018 in W.P. (MD) No. 2501 of 2018 is set aside and the Writ Petition is dismissed with the aforesaid observations. Having regard to the fact that the Petitioner has attained the age of superannuation, we direct that if the disciplinary authority does not accept the



explanation of the Petitioner, the enquiry in the disciplinary proceedings shall be expedited by conducting the same preferably on day today basis so that it is concluded within a period of six months from the date of receipt of a copy of this order. The Writ Appeal stands allowed on the aforesaid terms. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Secretary to Government of Tamil Nadu,
Revenue Department, Fort St. George,
Chennai - 600 009.
2. The Commissioner of Survey and Settlement,
Survey House, Chepauk,
Chennai - 600 005.

+1CC to Mr.R.Gowri Shankar, Advocate, SR.No.95965

W.A. (MD) No. 1356 of 2018
19.11.2018

VJT/SJ

ES/SKN/RSK/SAR 2/19.12.2018/4P/4C