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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. 1355 of 2018

and

C.M.P. (MD) Nos. 9662 of 2018

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

2. The Additional Director of Survey and Land Reforms,
Chennai - 600 005.

3. The Tahsildar,
Yercaud Taluk Office,
Salem District.

... Appellants/Respondents

-vs-

N. Hasan Hanifa

... Respondent/Writ Petitioner

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, against the order of this Court dated 08.01.2018 made in W.P. (MD) No. 1826 of 2016 and W.M.P.(MD) No. 1570 of 2016.

Prayer in WP(MD) . 1826/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Suspension Order of the 2nd Respondent in Rc.Y2/44164/2015(sy)(1) dated 30.12.2015, consequential impugned order retaining the Petitioner in service beyond his date of superannuation issued by the 2nd Respondent in his proceedings in Rc.Y2/44164/2015 (sy) (2) dated 30.12.2015 and consequential impugned charges under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rule in கடித எண் 19295(பணி4(1)/2015-1 dated 30.12.2015 passed by the first respondent.

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

**JUDGMENT**

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

The intra-Court Appeal arises from the judgment dated 08.01.2018 passed by the Learned Judge in W.P. (MD) No. 1826 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 1983 as Section Writer and had been promoted as Sub-Inspector of Survey and Land Records and thereafter as Deputy Inspector of Survey and Land Records and he was to attain the age of superannuation on 31.12.2015. However, by the order No. Rc. Y2/44164 of 2015 (sy) (2) dated 30.12.2015 passed by the Second Respondent, the Petitioner, who was then working at Yercaud Taluk Office, Salem District was placed under suspension pending disciplinary proceedings initiated against him pursuant to the G.O. (2D)No. 612 Revenue [Ser.4(1)] Department dated 28.12.2015 issued by the Secretary to Government of Tamil Nadu relating to an incident involving the Petitioner while he was working as Sub-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 on 31.12.2015 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. 1826 of 2016 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 set aside.

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. Though the Learned Judge has observed that a charge memo cannot be quashed solely on the ground of delay, the same has been set aside in the present case for the reason that there has been inordinate delay for which no explanation was forthcoming and that the Petitioner would be put to grave prejudice on account of the same. It has been further held that though the guidelines set out G.O.Ms.No. 144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 may not have a binding character, relying on the order dated 09.06.2014 passed by this Court in W.P. (MD) Nos. 32563 and 32564 of 2012, resorting to last minute suspension at the time of attaining the age of superannuation has been deprecated. Insofar as the case of Gurusamy referred to by the Petitioner in the affidavit filed in support of the Writ Petition is concerned, it has been pointed out that the same had not been dealt with in the counter affidavit.

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- Prabhaskh 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 08.01.2018 in W.P. (MD)No. 1826 of 2016 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.

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Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar(CS-II)

To

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

2.The Additional Director of Survey and Land Reforms,
Chennai - 600 005.

3.The Tahsildar,
Yercaud Taluk Office,
Salem District.

+1CC to M/s.R.Gowri Shankar, Advocate, SR.No.95964
+1CC to the Special Government Pleader SR.No.96018

W.A. (MD) No. 1355 of 2018
19.11.2018

VJT/SJ

ES/SKN/RSK/SAR 2/19.12.2018/4P/6C