



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.1826 of 2016 and
W.M.P.(MD).No.1570 of 2016

N.Hasan Hanifa

... Petitioner

Vs.

1. The Secretary to Government,
Revenue Department, Secretariat,
Fort St.George, Chennai-600 009.
2. The Additional Director of Survey and
Land Records, Chennai-600 005.
3. The Tahsildar,
Yercaud Taluk Office,
Salem District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari 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 second 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 Services (Discipline and Appeal) Rule in கடித எண்.19295/பணி-4(1)/2015-1 dated 30.12.2015 passed by the first respondent.

For Petitioner : Mr.R.Gowrishankar

For Respondents : Mr.K.Saravanan

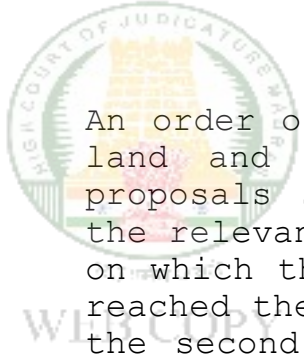
Government Advocate for R1 to R3

ORDER

Heard Mr.R.Gowrishankar, learned counsel, appearing for the petitioner and Mr.K.Saravanan, learned Government Advocate, appearing for the respondents.

2.By consent of both the parties, the main Writ Petition is taken up final disposal at the stage of admission itself.

3. The petitioner was working as a Sub Inspector of Survey and Land Records at Nilakottai Taluk Office. The petitioner and one Gurusamy, were directed to carry out the survey works at Kodaikanal.



An order of this effect was passed by the Assistant Directorate of land and survey records on 11.10.2007. It appears that the proposals submitted by the petitioner were not in conformity with the relevant rules. But nothing happened till 30.12.2015, the date on which the petitioner was to retire from service. The petitioner reached the age of superannuation on 31.12.2015. But on 30.12.2015, the second respondent herein passed impugned orders not permitting the petitioner to retire. He was retained in service. Charge memo was also issued on the same date. This is questioned in the present writ petition.

4.The learned counsel appearing for the petitioner raises three contentions:-

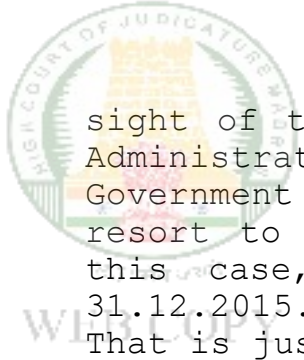
(i)Firstly, the subject matter of the charge memo related to the year 2007-2008. There is absolutely no justification for the inordinate delay issued in the charge memo. It is not the case of the respondents that there was any loss of revenue to the Government. The enquiry conducted at this point of 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)Secondly, 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)Thirdly, 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.

5.Per contra, the learned Government Advocate appearing for the respondents would contend that the allegation made against the petitioner was serious. It is beyond dispute that the charge memo has been issued with delay of more than seven years.

6.I had gone through the counter affidavit filed by the respondents. There is absolutely no explanation for the inordinate delay. This Court is conscious that a charge memo cannot be quashed solely on the ground of delay. If there is some explanation forthcoming for the delay, the same can be condoned. In this case, there is no explanation forthcoming. That apart, the petitioner would also put to grave prejudice on account of such belated issuance of the charge memo. In the affidavit filed in support of the writ petition, the petitioner had specifically alleged the discrimination on the part of the respondents. The case of Gurusamy is pointedly referred to. This aspect of the matter has not at all been dealt with in the counter affidavit. Though, the guidelines set out in G.O.MS.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, may not have a binding character, in the facts and circumstances of this case, this Court cannot lose



sight of the same. In the aforesaid G.O.MS.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, the Government had directed that the Disciplinary Authority should not resort to last minute suspension of the Government Servants. In this case, the petitioner was to reach the superannuation on 31.12.2015.. The impugned proceedings were issued on 30.12.2015. That is just one day earlier. Thus, the writ petitioner is entitled to succeed on all the three grounds projected by him.

7.The learned counsel appearing for the petitioner would draw my attention to the order dated 09.06.2014 passed by this Court in W.P.(MD).Nos.32563 and 32564 of 2012. This Court had taken serious note of the fact that even though the Government has been repeatedly issuing guidelines that last minute suspensions should be avoided, the departments are still resorting to the same. Since the disciplinary proceedings were initiated against the petitioner with an inordinate and un-explained delay of more than seven years, I am of the view that the impugned orders are liable to be set aside.

8.The Writ Petition stands allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Revenue Department, Secretariat,
Fort St.George, Chennai-600 009.
2. The Additional Director of Survey and
Land Records, Chennai-600 005.
3. The Tahsildar,
Yercaud Taluk Office,
Salem District.

+ 1 CC TO Mr.R.GOWRISHANKAR, ADVOCATE IN SR No. 40985

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 41302

TSG

TE/SKN-RSK/SAR-2 : 30/01/2018 : 3P/6C

W.P.(MD) No.1826 of 2016 and

W.M.P.(MD).No.1570 of 2016

08.01.2018