

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.720 of 2019

and

WMP.No.794 of 2019

K.Murugesan

...Petitioner

vs

1. The Commissioner,
Rippon Building,
EVR Periyar Street,
Greater Chennai Corporation,
Chennai - 600 003.

2. The Deputy Commissioner (Works),
Greater Chennai Corporation,
General Department,
Chennai.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ or order or orders or direction particularly in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the order dated 28.12.2018 in G.D.C.No.E4/44253/2018 of the 2nd respondent herein and quash the same and consequently direct the respondents herein to permit the petitioner to retire from service with effect from 31.12.2018 with all attendant benefits.

For Petitioner : Mrs.AL.Gandhimathi

For Respondent : Dr.C.Ravichandran
(Standing Counsel for Corporation)

O R D E R

The order of suspension dated 28.12.2018 is under challenge in the present writ petition.

2. The writ petitioner was employed as Junior Engineer in Greater Chennai Corporation and placed under suspension on the

eve of his retirement on 28.12.2018. The impugned order of suspension states that, an enquiry into grave charges initiated vide charge memo dated 01.12.2012, two vigilance cases in regular case RC No.87/2013/LB/CC-I in Vigilance and Anti-Corruption, are pending against the writ petitioner. Thus, the writ petitioner is placed under suspension and his services are also retained under the relevant rules and it is stated that, the writ petitioner is eligible to receive subsistence allowance as admissible.

3. The writ petitioner states that, proceedings were started as early as during the year 2012, all original charges were sought to be not proved and subsequently, another charge was initiated on same set of charges and held that the charges were proved. For the past 5 years, the said allegations are kept pending. The charges are yet to be finalized and on the eve of his retirement, the writ petitioner was placed under suspension without any fault on his part. The writ petitioner states that he has not in charge of collection of amount and he is only a recommending authority and as such he has not liable and responsible for any of the allegations set out in the charges.

4. All such factual aspects and the defence stated in the affidavit filed in support of the writ petition cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. It is left open to the writ petitioner to adjudicate all the merits and demerits in an appropriate proceeding by availing opportunity provided to him by the Competent Authorities.

5. The writ petitioner has to establish his innocence or otherwise by producing documents and by adducing evidences during the course of the departmental disciplinary proceedings. Contrarily, the disputed facts and circumstances can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

6. This being the factum, the writ petitioner has to participate in the process of enquiry as well as to defend the criminal cases which all are pending against him. This Court is of an opinion that, the writ petitioner has attained the age of superannuation. On account of the fact that, the criminal cases are pending and the departmental disciplinary proceedings are also initiated, he was not allowed to retire from service and placed under suspension.

7. Under these circumstances, by revoking the order of suspension, the writ petitioner cannot be allowed to retired from service as he serious allegations and the criminal cases are pending against him. The order of suspension can be reviewed

only after the disposal of his criminal cases and after the conclusion of the departmental disciplinary proceedings initiated against the writ petitioner.

8. The writ petitioner has attained the age of superannuation on 31.12.2018, this Court is of an opinion that, he is retained in service under the fundamental rules and therefore, the writ petitioner has to defend his case in the manner known to law and only after the conclusion of these proceedings, he is entitled to claim the benefits as well as to seek revocation of the order of suspension.

9. This being the factum, the writ petitioner has not established any acceptable legal ground for the purpose of quashing the order of suspension. Accordingly, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Pkn

To

1. The Commissioner,
Rippon Building,
EVR Periyar Street,
Greater Chennai Corporation,
Chennai - 600 003.
2. The Deputy Commissioner (Works),
Greater Chennai Corporation,
General Department, Chennai.

+1cc to Mrs.AL.Gandhimathi, Advocate, S.R.No.26195

+1cc to Dr.C.Ravichandran, Advocate, S.R.No.25624

W.P.No.720 of 2019

GJII(CO)
CS/25/04/2019