

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.8152 of 2018
WMP.Nos.10134 & 10135 of 2018

R.Mathaiyan

..Petitioner

Vs

1.The Commissioner,
Municipal Administration,
Chennai-600 005

2.The Commissioner,
Erode City Municipal Corporation,
Erode District

...Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings made in ROC No.C1/816/2012 dated 27.03.2013 on the file of the second respondent quash the same and consequently direct the second respondent to disburse all terminal benefits by considering the petitioner's representation dated 07.07.2017.

For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr.Raja Mathivanan for R2
Mr.J.Pothiraj, Spl G.P. for R1

ORDER

This writ petition has been filed seeking for issuance of a Certiorarified Mandamus to call for the records pertaining to the proceedings made in ROC No.C1/816/2012 dated 27.03.2013 on the file of the second respondent, quash the same and consequently direct the second respondent to disburse all terminal benefits by considering the petitioner's representation dated 07.07.2017.

2. The petitioner was appointed as Record Clerk in the

Bhavani Municipality on 28.02.1979. Thereafter, he was promoted as Junior Assistant on 30.04.1985. On 06.04.1998, the petitioner was promoted as Assistant and posted at Ooty Municipality. On 12.01.2009, he was promoted as Superintendent and posted at Erode Municipality. On 14.06.2012, he was promoted as Accounts Officer and posted in the same Municipality. According to the petitioner, till the date of suspension i.e., on 27.03.2013, he rendered unblemished record of service. The second respondent by his proceedings dated 01.03.2013, issued a charge memo to the petitioner containing two articles of charges, charging the petitioner for causing loss to the Municipality to the tune of Rs.22,50,251/- covering various periods while the petitioner was in-charge of the second respondent Municipality. In response to the charge memo, the petitioner submitted a detailed representation dated 19.03.2013 denying the charges levelled against him. While so, just on the eve of his retirement, the petitioner was placed under suspension on 27.03.2013. Thereafter, an enquiry officer was appointed on 16.04.2013. On conclusion of enquiry, the enquiry officer submitted his report on 29.05.2013 holding both the charges were not proved. The petitioner was also furnished a copy of the enquiry report dated 29.05.2013 and he has also submitted his explanation on the enquiry report on 03.06.2015 followed by two other representations dated 25.03.2016 & 07.07.2016 respectively. However, till date, no final order has been passed. But the petitioner continued to be placed under suspension. In the above circumstances, the petitioner is before this Court, challenging the order of suspension dated 27.03.2013.

3. The learned counsel for the petitioner would submit that for more than six years, the petitioner was placed under suspension and was also not allowed to retire from service. In view of the continued suspension, the petitioner was not paid any terminal benefits which are otherwise admissible to him. Even, the enquiry initiated against the petitioner has ended in enquiry officer exonerating him from the charges. Thereafter, further representation has also been submitted by the petitioner, but unfortunately, despite enquiry findings being submitted as early as on 29.05.2013, till date no final orders have been passed by the disciplinary authority and on the other hand, the petitioner has been continued under suspension for over six years.

4. The above facts are not disputed by the respondents. However, for not passing the final orders in the disciplinary proceedings, there has been no proper answer forthcoming from the respondents. Moreover, it is an admitted fact that in the disciplinary enquiry, which was concluded wherein, charges against the petitioner were not even proved by the enquiry officer by his report dated 29.05.2013. Though, more than six

years have elapsed, yet no final orders have been passed by the disciplinary authority.

5. In the above circumstances, this Court is of the considered view that continuing the petitioner under suspension and not allowing to retire, cannot either be countenanced in law or on facts. In fact, the Hon'ble Supreme Court has held in "Ajay Kumar Choudhary versus Union of India and others" reported in (2015) 7 SCC 291, that the Government servant need not be kept under continued suspension for more than three months and in case, suspension is required to be continued beyond three months, proper review has to be undertaken in order to place the Government servant under suspension. In this case, it appears that no review has been conducted and no final order has been passed in disciplinary proceedings for over six years. Even otherwise, when the charges were held to be not proved against the petitioner, the suspension became wholly unjustified and therefore, the petitioner is entitled to the relief as prayed for in this writ petition. The prolonged suspension like this, without any justification, has caused prejudice to the rights of the petitioner to have normal retirement and also the subsequent entitlements to be paid towards his terminal benefits. Unfortunately, though the petitioner has attained the age of superannuation on 27.03.2013 he was continued to be placed under suspension and at the end of the day, it appears that suspension is without any justification.

6. For the above said reasons, this Court is of the view that the petitioner is entitled to the relief as prayed for. Accordingly, the impugned order passed by the second respondent in ROC No.C1/816/2012 dated 27.03.2013 is hereby quashed. The second respondent is directed to disburse all the terminal benefits as admissible to the petitioner treating the petitioner having retired from service in the normal course and pass appropriate orders, granting all terminal benefits to the petitioner by regularizing the period of suspension within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

dn

To

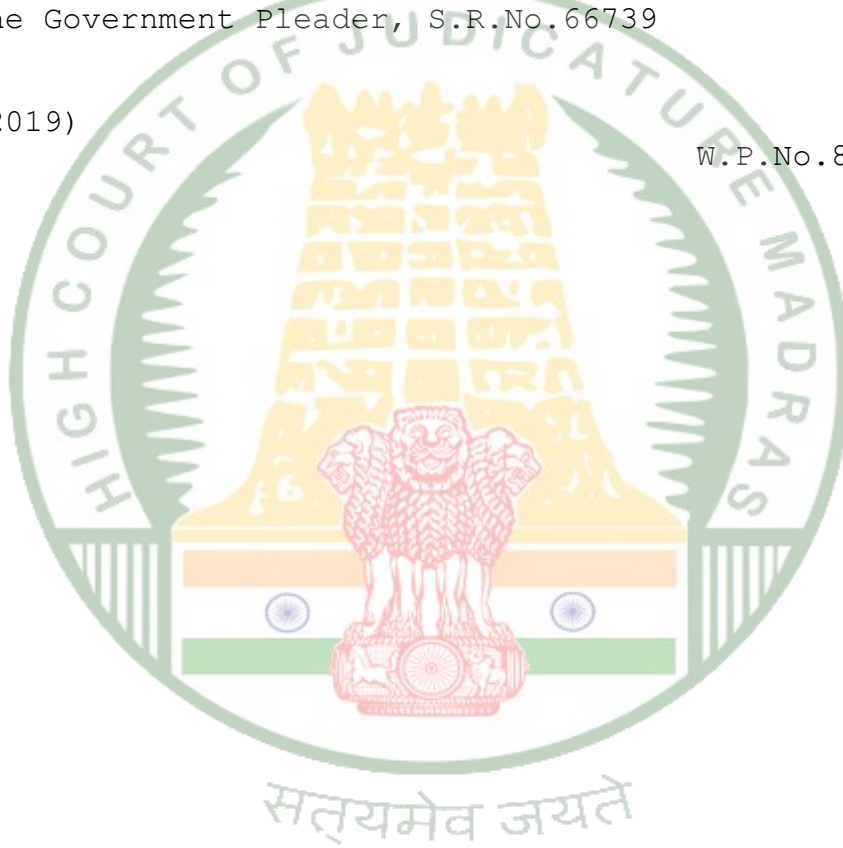
1.The Commissioner,
Municipal Administration,
Chennai-600 005

2.The Commissioner,
Erode City Municipal Corporation,
Erode District

+1cc to Mr.B.Kumarasamy Advocate, S.R.No.66054
+1cc to Mr.Raja Mathivanan Advocate, S.R.No.66109
+1cc to the Government Pleader, S.R.No.66739

RSI (CO)
CB(17/09/2019)

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