IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.39224 of 2004
and
W.P.M.P. No.46802 of 2004

A. Saravana Bhavan ... Petitioner

Versus

1. The Commissioner of Municipal Administration, Chennai - 5.

2. The Commissioner, Avadi Municipality, Avadi. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in connection with proceedings issued in Na. Ka. No.542/2004/C1, dated 27.01.2004 by the 2nd respondent and quash the same and consequently to direct the respondents to settle all pensionary benefits admissible to the petitioner.

For Petitioner : Mr.S. Ilamvaludhi
For Respondents : Mrs.K.Bhuvaneswari Additional Government Pleader for R1
Mr.P. Srinivas for R2

O R D E R

The prayer sought for in this writ petition is to quash the proceedings issued in Na. Ka. No.542/2004/C1, dated 27.01.2004 by the 2nd respondent and direct the respondents to settle all pensionary benefits admissible to the petitioner.

2. The petitioner who was due to retire on 31.01.2004 was given a charge memo dated 28.01.2004, stating that he was liable to compensate the second respondent Municipality to the tune of Rs.1,42,510/- being the amount which he failed to collect as arrears of tax, while he was employed as Revenue Inspector.

3. It is now brought to the notice of this Court that the petitioner, who had retired on 31.01.2004 had received his entire retirement benefits and the second respondent has also permitted him to retire.

4. The Hon'ble Apex Court in the decision reported in 2015 4 SCC 334 (State of Punjab & Ors. versus Rafiq Masih(White Washer)) had observed that recovery from the retired employees is impermissible in law. In the instant case, if the respondents are permitted to proceed with the charge memo and thereby they are allowed to recover the money from the petitioner, the observation of the Hon'ble Apex Court that such a recovery is impermissible would be an impediment to initiate such recovery proceedings. Further more, the very fact that the respondents had permitted the petitioner to retire and also paid the entire retirement dues, would may amount to the respondents having condoned the charges levelled against the petitioner herein. It is seen that though there were no interim order directing the second respondent to disburse the entire retiral benefits even then the second respondent had chosen to disburse the entire benefits to the retired employee and as such, it would not be appropriate to have the charges pending as against the petitioner. Though the petitioner herein has challenged the intimation sent on 27.01.2004, In view of the fact that this Court has found that the entire disciplinary action would be a futile exercise, it would be appropriate to quash the charge memo itself.

5. In the light of the above observation, charge memo issued by the second respondent, dated 28.01.2004 is hereby quashed. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Commissioner of Municipal
   Administration, Chennai - 5.

2. The Commissioner,
   Avadi Municipality, Avadi.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.15496
+1cc to the Government Pleader, S.R.No. 15125

W.P.No.39224 of 2004

SAI(CO)
GN(20/03/2019)