IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.34142 of 2005
and M.P.No.37022 of 2005

G.Kalaiselvan .. Petitioner

Vs

1. State of Tamil Nadu
   rep. by Secretary to Government
   Handlooms, Handicrafts, Textiles and Khadi (E2) Department
   Fort St.George
   Chennai-600 009

2. The Commissioner of Handlooms and
   Textiles, Kuralagam, II Floor
   Chennai-600 108 .. Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records of the 1st respondent in Letter No.1249/E2/2005-5 and quash the proceedings therein dated 26.09.2005 and further direct the 1st respondent to grant all the retiral benefits to the petitioner herein to which he is entitled to on the date of his superannuation i.e. 30.04.2005.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.L.P.Shanmuga Sundaram, Spl.G.P

ORDER

The Petitioner challenges the notice of the 1st respondent in Letter No.1249/E2/2005-5 and seeks to quash the proceedings therein dated 26.09.2005 and further seeks direction to the 1st respondent to grant all the retiral benefits to the petitioner herein to which he is entitled to on the date of his superannuation i.e. 30.04.2005.

2. (a) The facts of the case is that the petitioner who lastly worked as Assistant Director, Handlooms and Textiles, Vellore, was due for superannuation on 30.04.2005. However he was served with suspension order and not permitted to retire on the date of superannuation.

(b) The second respondent issued charge memo dated 24.02.2003 levelling six charges against the petitioner. The petitioner submitted written explanation on 03.06.2003. In the enquiry held on 20.09.2003, the petitioner had no additional explanation, therefore, enquiry was concluded on 20.09.2003. But thereafter, no orders were passed in the departmental proceedings.

(c) The petitioner filed W.P.No.24731 of 2005 praying for a direction to the respondents to pass final orders on the enquiry report. This court passed order dated 03.08.2005 directing the respondents to pass final orders on enquiry report in accordance with law within four weeks from the receipt of the said order and it is also pointed out that if such an order is not passed within the time granted, it is deemed that the petitioner is relieved from all the charges in the enquiry. But, it is averred in the affidavit that no final orders were passed within the time granted by this court.

(d) The 1st respondent issued a letter dated 08.09.2005 enclosing a copy of the enquiry report and asked to submit further representation, if any, within seven days of the receipt of the letter.

(e) The petitioner submitted reply, for which, the 1st respondent issued G.O.(2D).No.29 dated 26.09.2005 revoking the order of suspension and permitting the petitioner to retire with effect from 30.04.2005 a.n. without prejudice to the disciplinary cases pending against the petitioner.

(f) The 1st respondent however, issued Lr.No.1249/E2/2005-05 dated 26.09.2005 stating that for the proven charges 1 to 5, the Government have provisionally concluded to impose the penalty, and asked for his reply. The petitioner submitted that in view of the fact that he retired from service, he has no submission to put forth on the proposed penalty.

(g) According to the petitioner, the impugned proceedings of the 1st respondent is illegal and without jurisdiction.

Therefore, challenging the said impugned proceedings, this writ petition is filed, seeking to quash the same.

3. A Counter affidavit has been filed by the respondents. The learned Special Government Pleader, appearing for the respondents, while reiterating the averments made in the counter affidavit, submits that the Government is competent to pursue disciplinary action against a Government servant even after retirement, as per provisions of Rule 9 of the Tamil Nadu Pension Rules, 1978. Besides in the retirement order itself, it has been mentioned that the petitioner is permitted to retire from Government service without prejudice to the pendency of the

disciplinary case against him. This conditional retirement order was issued by the Government only with a view to pursue the pending disciplinary case, after his retirement. Therefore, the contention of the petitioner that the departmental proceedings cannot be continued against him after his retirement is not correct. It is further averred in the counter affidavit that the course open to the Government is to pass an order of suspension and retain him in Government Service without allowing him to retire till the enquiry is completed and final orders are passed. However, the Government, later revoked the suspension and permitted the petitioner to retire from service w.e.f. 30.04.2005 only in order to comply with the order of this court made in W.P.No.24731 of 2005 dated 03.08.2005. A show cause notice was issued by the Government on 08.09.2005 itself, which was received by the petitioner on 15.09.2005. But the petitioner has not given reply to the show cause notice. The Government therefore, issued a show cause notice informing him about the proposed penalty for the proved charges under Rule 9 of Tamil Nadu Pension Rules, 1978, therefore, the Government is not in a position to dispose of the disciplinary case before the date fixed by this court.

4. It is apparent that the petitioner was permitted to retire from service pending disciplinary proceedings. Therefore, the ground raised by the petitioner that the respondents have no jurisdiction to pass the show cause notice, is incorrect and contrary to the facts. Further, while the show cause notice dated 26.09.2005 has been issued, proposing penalty, against the petitioner, without filing any reply to the said show cause notice, the petitioner approaching this court, is unsustainable in law.

5. It is an admitted fact that the petitioner already filed W.P.No.24731 of 2005 seeking direction to pass final orders on the enquiry report. Thereafter, the 1st respondent issued G.O.(2D).No.29 dated 26.09.2005 revoking the order of suspension and permitting the petitioner to retire with effect from 20.04.2005 a.n. without prejudice to the disciplinary proceedings pending against him. In such circumstances, the contention of the petitioner that the departmental proceedings cannot be continued against him after his superannuation, is unsustainable in law.

6. It is to be noted that for the show cause notice/impugned order dated 26.09.2005, petitioner filed reply on 08.10.2005 to the first respondent. Therefore, it is for the 1st respondent to consider the said explanation and pass final orders, on merits and in accordance with law.

7. In this regard, it is relevant to refer to a judgment of Honourable Supreme Court in the case of Union of India and another Vs. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304], wherein, it is held that a mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same ha been issued by a person having no jurisdiction to do so; it is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceeding and/or hold that the charges are not established. The Supreme Court also held that it is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone.

8. In view of the above discussion, this court is of the considered view that the writ petition sans merit and this court is not inclined to interfere with the show cause notice dated 26.09.2005 issued by the 1st respondent. However, it is open to the petitioner to submit his additional defence or additional documents to substantiate his stand against the penalty proposed in the show cause notice dated 26.09.2005, within a period of one week from the date of receipt of a copy of this order. The 1st respondent is directed to consider the petitioner's reply dated 08.10.2005 and additional documents, if any, submitted by the petitioner and pass appropriate orders on merits and in accordance with law as expeditiously as possible within a period of eight weeks thereafter.

9. The Writ Petition is dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy//

Sub Assistant Registrar

nvsri

To

1.The Secretary to Government
Handlooms, Handicrafts, Textiles and Khadi (E2) Department
Fort St.George
Chennai-600 009

2.The Commissioner of Handlooms and
Textiles, Kuralagam, II Floor
Chennai-600 108.

+1cc to Mr.A.Muthu Kumar, Advocate, SR.No.92550.
+1cc to Government Pleader, SR.No.93318.

W.P.No.34142 of 2005

BP(CO)
CSR: 04/02/2020