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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 04.11.2019
Orders Pronounced on : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Petition No.8838 of 2018

K. Eswaramurthi
Sheristadar (under suspension).
Special District Court (MACT),
Erode. ... Petitioner

Versus

1. The Principal District Judge
Erode.
2. Special District Judge (MACT cases)
Special District Court (MACT)
Erode
3. Registrar General,
Madras High Court,
Chennai - 600 104.

(R3 impleaded vide Court order dated
19.12.2018, made in W.M.P.No.38255/2018
in W.P.No.8838 of 2018) ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned orders (i) D.No.3458 of A.No.419/2016 dated 28.03.2018 and (ii) D.No.3462 in A.No.419/2016 dated 28.03.2018 on the file of first respondent and quash the same; consequentially direct the respondents to permit the petitioner to retire from service with effect from 31.03.2018 and to disburse entire retirement benefits and all dues within a reasonable time to be fixed by this Court.

For Petitioner : Mr. R. Neelakandan
For Respondents : Mr. E. Kumaresan



O R D E R

R.SUBBIAH, J

Petitioner has filed this Writ Petition seeking to quash the orders passed in (i) D.No.3458 of A.No.419/2016 dated 28.03.2018 and (ii) D.No.3462 in A.No.419/2016 dated 28.03.2018 on the file of first respondent and consequentially direct the respondents to permit him to retire from service with effect from 31.03.2018 and to disburse the entire retirement benefits and all dues within a reasonable time to be fixed by this Court.

2. The Petitioner was working as Sherishtadar at Fast Track Mahila Court, Erode. During the course of such employment, on the basis of a complaint given by one Mrs. K. Revathi, working as Xerox Operator, complaining about the petitioner's misconduct towards her, the petitioner was suspended from service on 23.11.2016. In connection with this incident, a criminal case has also been registered against the petitioner in Crime No.648 of 2016 on the file of Erode North Police Station for the offence punishable under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. Subsequent thereto, a charge memo (with two charges) under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, was issued on 21.03.2017, alleging violation of Rule 20-B of The Tamil Nadu Government Servants Conduct Rules for having uttered offensive words against the said Revathi. On receipt of the charge memo, the petitioner submitted his explanation on 03.01.2017. Not being satisfied with the explanation offered, an enquiry was held and the enquiry officer, on completion of the enquiry, submitted his report on 31.08.2017 stating that the charges levelled against petitioner were proved. The Petitioner submitted a representation on 18.09.2017 to the report of the enquiry officer. However, first respondent/disciplinary authority passed an order on 03.01.2018 in A.No.419/2016 in D.No.214 withholding increment of petitioner for two years with cumulative effect under Rule 8 (iii) of The Tamil Nadu Civil Services (Discipline and Appeal) Rules. It was also ordered that the suspension period of the petitioner shall be regulated as earned leave and if it is not available, it has to be treated as extra ordinary leave on loss of pay. Challenging the same, the petitioner earlier filed W.P. No. 3527 of 2018, in which, this Court, by order dated 01.03.2018, has held as follows:

'4. Accepting the memo, this Court while confirming the finding of punishment, directs that the sum representing stoppage of increments for a period of two years with cumulative effect may be quantified and deducted from the sum of Rs.2,43,048/- payable to the petitioner towards Earned Leave.



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5. With the above direction, the writ petition is closed. No costs. Consequently, connected Miscellaneous Petition is closed. The present order will not have any bearing on the pensionary and other rights flowing from service.'

3. According to petitioner, an office order was also passed quantifying the amount and it was deducted from Rs.2,43,048/- payable to the petitioner towards unclaimed salary during the period of suspension, but the same is yet to be complied with. While so, the petitioner reached the age of superannuation and he was due to retire from service on 31.03.2018. At the verge of his retirement, the first respondent, by proceedings in D.No.3458 of A.No.419/2016 dated 28.03.2018, placed the petitioner under suspension from service with effect from 28.03.2018 until further orders in the light of G.O.Ms.No.40, Personnel & Administrative Reforms Department dated 30.01.1996 and in accordance with Rule 17(e) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, stating that the petitioner's suspension is necessary in public interest. The first respondent has also passed another order in D.No.3462 in A.No.419/2016 dated 28.03.2018 not permitting the petitioner to retire from service and retaining him in service under Rule 56 (1)(c) of Fundamental Rules until the criminal case pending in C.C.No.10 of 2017 on the file of learned Chief Judicial Magistrate, Erode, is concluded and final orders are passed thereon. Challenging the said orders, the present Writ Petition has been filed.

4. When the matter is taken up for consideration, learned counsel for petitioner submitted that petitioner herein was already punished for the misconduct committed by him by imposing punishment of stoppage of increments for a period of two years with cumulative effect. While so, the respondents cannot retain the service of the petitioner beyond the period of his retirement and it would amount to double jeopardy. Even though in the impugned order it was stated that it was passed in public interest, absolutely there is no necessity to retain the petitioner in service beyond the period of retirement, in public interest. The reason assigned by first respondent for retaining the petitioner in service was that the criminal case against the petitioner is pending. As far as the Criminal case is concerned, investigation in the criminal case has been completed and charge sheet has also been filed and the case is pending trial. In such circumstances, the question of tampering with the evidence does not arise. Furthermore, there is no public interest involved in this case warranting suspension of the petitioner prior to his retirement from service. In such circumstances, by citing the pendency of criminal case, the petitioner need not be retained



in service and the order passed by the respondents, which would have the effect of withholding his terminal benefits, after his retirement, is legally not sustainable. Submitting as above, learned counsel prays this Court to quash the impugned orders (i) D.No.3458 of A.No.419/2016 dated 28.03.2018 and (ii) D.No.3462 in A.No.419/2016 dated 28.03.2018 on the file of first respondent and consequentially, direct the respondents to permit the petitioner to retire from service with effect from 31.03.2018 and to disburse entire retirement benefits and all dues within a reasonable time to be fixed by this Court.

5. Per contra, learned counsel appearing for respondents, relying on the counter affidavit of respondents 1 and 2, submitted that, after conducting due enquiry and finding that the charges were proved, first respondent passed an order withholding increment for 2 years with cumulative effect under Rule 8(iii) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, instead of imposing major punishment of removal from service or dismissal. Further, petitioner has wrongly interpreted the term 'Public Interest'. It is the case of petitioner that the offence committed by him does not affect the general public. It is not so. The occurrence had taken place in the office room of Magalir Neethimandram, Erode, which is constituted only to try the cases under POCSO Act and violence against women. No doubt, it is correct that no disciplinary proceeding is pending against the petitioner as on the date of his retirement. At the same time, Rule 56(1)(c) of The Fundamental Rules states that, the Government servant, against whom a complaint of criminal offence is under investigation or trial, shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until final orders are passed. In such circumstances, the order of first respondent retaining the petitioner in service and not permitting him to retire does not amount to double-jeopardy. Submitting as above, learned counsel appearing for the respondents prays for dismissal of the Writ Petition.

6. We have considered the rival submissions made on either side and perused the materials available on record.

7. During the course of employment of the petitioner, on the basis of the complaint given by one Revathi alleging misconduct, departmental proceedings were initiated against the petitioner. The departmental proceedings culminated in passing an order dated 03.01.2018 imposing the punishment of stoppage of increments for two years with cumulative effect. The order of punishment dated 03.01.2018 has been subjected to challenge by the petitioner by filing WP No. 3527 of 2018. This Court, by order dated 27.02.2018, finding that the petitioner is to retire



from service on 31.03.2018 and it is practically not possible to withhold the increments for a period of two years from the petitioner, directed that the amount representing and/or equivalent to the stoppage of increments for a period of two years with cumulative effect may be quantified and deducted from the amount payable to the petitioner towards Earned Leave. It is stated that such amount has also been deducted from the amount payable to the petitioner. Thus, the departmental proceedings initiated against the petitioner has been concluded much prior to the retirement of the petitioner on 31.03.2018. However, the respondents, three days prior to his retirement, has passed the impugned order suspending the petitioner from service and not permitting him to retire by citing the pendency of criminal case.

8. It is no doubt true that a criminal case is pending against the petitioner in C.C. No. 10 of 2017 on the file of Chief Judicial Magistrate, Erode in connection with the alleged offence committed by the petitioner under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 2002. It is stated that the criminal case is pending trial. While so, whether the pendency of criminal trial will be a bar for the retirement of the petitioner from service, especially when he was already inflicted with the punishment of stoppage of increment of two years in the departmental proceedings, has to be examined.

9. In the criminal proceedings initiated against the petitioner, if the charges framed against him are proved beyond reasonable doubt, he will be incarcerated or otherwise, he will be acquitted. It is also true that even during the course of service of the petitioner or to say before his retirement, the criminal proceedings were set in motion and he has to participate in the criminal proceedings and prove his innocence. If the criminal proceedings are concluded much before the retirement of the petitioner, then, the petitioner will be mulcted with punishment depending upon the outcome of the criminal proceedings by imposing the punishment of dismissal from service, removal from service or compulsory retirement from service as has been provided under Rule 8 of the Tamil Nadu Civil Servants (Disciplinary and Appeal) Rules. In the present case, even before the conclusion of the criminal proceedings, the disciplinary proceedings against the petitioner were concluded and he was already mulcted with punishment of stoppage of increment for a period of two years. While so, the outcome of the criminal proceedings in the present case, against the petitioner, will have no bearing on the petitioner in getting his terminal benefits. As mentioned above, if at all the criminal proceedings ended in conviction, the petitioner has to undergo incarceration. While so, retaining the service of the petitioner and withholding the terminal benefits payable to him,



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when already he was imposed with punishment in the departmental proceedings, would amount to double jeopardy. However, in the present case, by citing Rule 56 (1) (c) of Fundamental Rules, the petitioner's service was ordered to be retained beyond the age of his retirement. Rule 56(1)(c) of Fundamental Rules reads thus:

'56. (1) (c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension, (i) on a charge of misconduct; or (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or (iii) against whom an enquiry into grave charges is contemplated or is pending; or (iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17 (c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.'

10. It is evident that Rule 56(1) (c) of Fundamental Rules specifically states that if a Government servant is facing departmental proceedings with respect to any misconduct, he shall not be permitted to retire from service to facilitate the employer to conclude the departmental enquiry. Similarly, if the departmental proceedings are not initiated against a delinquent officer, but only criminal proceedings are initiated and pending trial, the employer is empowered to retain the service of the delinquent officer beyond the age of retirement. At the same time, we should bear in mind that Rule 56 (1) (c) can be pressed into service only when the departmental proceedings are not concluded or any punishment thereof is not imposed before the retirement of delinquent officer. In the present case, already the petitioner was imposed with the punishment in the departmental proceedings initiated against him. If the petitioner was not imposed with any punishment in the departmental proceedings, then the employer can retain him in service beyond the age of retirement. Or, if the department did not initiate any departmental proceedings, but only a criminal proceeding has been initiated and such case is pending trial before the competent Criminal Court, the employer is justified in retaining the service of the delinquent employee



beyond the period of retirement. However, in the present case, already punishment was imposed on the petitioner in the departmental proceedings. While so, by citing the pendency of the criminal proceedings, the respondents are not justified in retaining the service of the petitioner beyond the age of retirement. We reiterate that even assuming that the petitioner is slapped with any punishment by the criminal Court where he is tried for the offence punishable under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act is pending, it will have it's own implication on the petitioner, but it has nothing to do with the respondents retaining the service of the petitioner beyond the age of his retirement and withholding his terminal benefits, especially when he was already imposed with the punishment in the departmental proceedings initiated against him.

11. For all the reasons mentioned above, we set aside the orders passed by the first respondent in (i) D.No.3458 of A.No.419/2016 dated 28.03.2018 and (ii) D.No.3462 in A.No.419/2016 dated 28.03.2018. Accordingly, the writ petition is allowed. The writ petition is allowed and respondents are directed to permit the petitioner to retire from service and to settle all the terminal benefits arising therefrom within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gm/rsh

To

- 1.The Principal District Judge,
Erode.
- 2.The Special District Judge (MACT cases).
Special District Court (MACT),
Erode.
- 3.The Registrar General,
High Court Madras 104.

Writ Petition No.8838 of 2018

VD(CO)
SP(20/01/2020)