

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.08.2019

CORAM

THE HONOURABLE Mr. JUSTICE V.PARTHIBAN

W.P.No.23416 of 2019

M.Thenmozhi

... Petitioner

Vs.

1.The Principal Secretary,
Government of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai 600 009.

2.The Director of College Education,
Chennai - 600 006.

3.The Principal,
Kanthavai Naacchiyaar Government
Arts College For Women,
Thanjavur.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to permit the petitioner to retire from the service on 31st August 2019.

For Petitioner : Mr.D.Selvam

For RR 1 & 2 : Mr.V.Kathirvelu
Special Government Pleader

ORDER

The petitioner was appointed as Assistant Professor Chemistry at Government Girls College, Thirunelveli along with 17 others based on their employment seniority. A criminal case was filed against her for offences under Section 13(1)(2) read with 13(2) of the Prevention of Corruption Act, 1988, on 10.01.2013. Thereafter, a charge sheet was filed against the petitioner and her husband and the petitioner was shown as Accused No.2.

2. In the above circumstances, the 1st respondent issued a suspension order in G.O.(2D) No.4 dated 09.02.2018 placing the petitioner under suspension with immediate effect. Thereafter, on the basis of direction of this Court in W.P.No.15662 of 2018 dated 21.12.2018, suspension was revoked by the 1st respondent by his proceedings dated 02.04.2019. Thereafter, vide representation dated 06.05.2019 the petitioner submitted a written statement of defence, in response to the charge memorandum appears to have been issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, classification Discipline and Appeal Rules. The departmental charge was issued against the petitioner on 04.01.2017 .

3. While matter stood thus, the petitioner is before this Court seeking direction to the respondents to permit her to retire from service when she attains the superannuation on 31.08.2019.

4. This Court is unable to appreciate as to how such a prayer could be conceived and writ petition could be filed when the petitioner was proceeded against criminally as well as departmentally and she was facing charges under Section 17(b) of the Disciplinary Rules, which is a major penalty proceeding. Once the petitioner is facing criminal charges as well as departmental charges, no direction could be issued by this Court compelling the Government to pass orders retiring the petitioner from service on 31.08.2019.

5. It is always open to the Government to take a call as to whether the petitioner should be retained in service or not, when the petitioner attains the age of superannuation i.e. on 31.08.2019. This Court cannot pass any direction preempting any action to be taken by the Government in regard to the criminal action and the departmental action initiated against the petitioner. It is entirely within the power of the Government to deal with the petitioner as to whether her services need to be retained in order to complete the proceedings initiated against her.

6. This Court does not think that direction could be issued at the instance of the petitioner who is facing criminal as well as departmental action and if such direction is to be given, the same would completely result in petitioner escaping from the consequence of departmental as well as criminal action initiated against her.

7. Therefore, it does not lie within the power of this Court to interfere in such matters, when no final order has been passed by the Government in regard to the disciplinary action

initiated against her. Even otherwise, it is entirely within the discretionary power of the Government to take a decision in regard to the retirement of the petitioner or otherwise at the time of her superannuation. In the said circumstances, the present writ petition is premature and without any merits and therefore, the same is dismissed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Sgl
To

1.The Principal Secretary,
Government of Tamil Nadu,
Higher Education Department,
Secretariat, Chennai 600 009.

2.The Director of College Education,
Chennai - 600 006.

3.The Principal,
Kanthavai Naacchiyaar Government
Arts College For Women, Thanjavur.

+1 CC to Govt. Pleader sr 68966, 68449.

+1 CC to Mr.D.Selvam, Advocate sr 67836

W.P.No.23416 of 2019

RSI (CO)
SP(16/09/2019)

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