

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2019

Coram

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.3111 of 2019
and
C.M.P.No.19769 of 2019

K.Rajendran ... Appellant

vs.

1. Government of Tamil Nadu
Rep.by its Additional Chief Secretary
Rural Development and Panchayat Raj
(E2) Department
Fort St.George
Chennai 600 009.
2. The Director
Directorate of Rural Development
and Panchayat Raj
Department,
Office at Saidapet,
Chennai 600 015.
3. The District Collector,
Villupuram District. ... Respondents

Writ appeal is filed under clause 15 of the Letter Patent against the order of the learned single Judge dated 14.06.2019 made in W.P.No.16266 of 2019.

Prayer in W.P.No.16266 of 2019:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorarified Mandamus to call for the entire records which culminated in passing the order in G.O.D. No.73 Rural Development and Panchayat Raj (E.2) Department dated 28.03.2019 suspending the petitioner from service and the subsequent order of the first respondent issued in G.O.2D. No.49 Rural Development and Panchayat

Raj (E.2) Department dated 29.03.2019 not allowing the petitioner to retire from service quash both the orders and consequently direct the respondents to disburse all the terminal benefits due to the petitioner from the date of his retirement within a time limit as stipulated by this Honourable Court.

For Appellant : Mr.E.Manikandan

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

JUDGMENT

(Judgment of the Court was made by S.MANIKUMAR,J.)

This writ appeal is filed against the order dated 14.06.2019 made in W.P.No.16266 of 2019.

2. Writ Court declined to quash G.O.(D)No.73, Rural Development and Panchayat Raj (E-2) Department dated 28.03.2019, suspending the appellant from service. Writ Court also declined to quash the order of the Government G.O.(2D) No.49, Rural Development and Panchayat Raj (E-2) Department dated 29.03.2019, by which the appellant was not permitted to retire. Order of the writ Court is impugned on the following grounds.

"A. Writ Court did not consider the effect and applicability of G.O.Ms.No.144, P & AR Department dated 08.06.2017, which the appellant had verbatim extracted in para No.5 of the affidavit filed in support of the writ petition. As per G.O.Ms.No.144 dated 08.06.2017 a Government servant should not be placed under suspension at the fag end of his or her retirement and a decision either to allow or suspend him from service has to be taken well in advance i.e., three months prior to his retirement on superannuation. When the aforesaid G.O.Ms.No.144 dated 08.06.2017 is in force, the order passed in (i) G.O.(D) No.73, Rural Development and Panchayat Raj (E-2) Department dated 28.03.2019 suspending the petitioner from service pending contemplation of grave charges and (ii) G.O.(D) No.49, Rural Development and Panchayat Raj (E-2) Department dated 29.03.2019, two days prior to the retirement of the petitioner, which are impugned in the writ petition, are unwarranted besides being contrary to

G.O.Ms.No.144 dated 08.06.2007. while so, the Hon'ble Judge ought to have allowed the writ petition filed by the appellant herein instead of dismissing it.

B. G.O.Ms.No.144 dated 08.06.2007 was issued after the Government received flak for suspending its employees at the fag end of his or her retirement and clipping them from enjoying the terminal benefits. This Government order dated 08.06.2007 was passed after several orders passed by this Hon'ble Court reprimanding the Government for passing such orders at the fag end of the retirement of Government servant, even though the occurrence alleged against the Government servant would have taken place several years prior to his or her retirement. When such a policy decision has been taken by the Government the orders which are impugned in the writ petition, ought to have been set aside by the writ Court.

C. On receipt of the order of suspension and the order not permitting him to retire from service, the petitioner was groping in dark as to what prompted the respondents to withhold his service beyond the period of his retirement. On enquiry the appellant came to know that the Vigilance and Anti Corruption Department had received complaint with respect to execution of Thai Scheme during the financial year 2012-2013 in the matter of erecting borewell and laying pipelines in the villages called Periyeri, Sadhasivapuram, Lathuvadi, veppampoondi, Kaamakkapalayam, Govindhampalayam situated in Thalaivasal Panchayat alone. This project was executed by the appellant herein when he was working as Block Development Officer for which administrative sanction was accorded by the District Collector on 21.06.2012. The complaint is with respect to execution of this project in Govindampalayam village. As far as this village is concerned tenders were called for with an estimated value of Rs.2 lakhs. Tenders were received on 11.07.2012 and permission to commence the work was issued on 16.07.2012. After verifying the expenses incurred by the contractor, based on the bills produced this appellant conducted a field inspection and sanctioned Rs.1,86,320/- to the contractor on 02.08.2013 as against the sum of Rs.1,99,934/- quoted by the contractor and a sum

of Rs.1,86,320/- was issued to the contractor by way of cheque. The entire contract was over in the year 2013. While so, based on a complaint received from some villager alleging improper erection of pipelines, after about six years after completion of the project, the appellant was not permitted to retire two days ahead of his retirement. When the work was completed even in the year 2013, various departments where the petitioner had worked have also issued No Objection three months prior to his retirement, the respondents ought to have pointed out any alleged irregularities then and there. However, two days to his retirement, the appellant was unceremoniously suspended from service which was lost sight of by the writ Court.

D. Writ Court did not consider the fact that mere receipt of a complaint against a Government servant need not be a ground to withhold his or her service beyond the period of retirement. It is also not clear as to whether the vigilance and Anti corruption Department had conducted a preliminary enquiry on the basis of the complaint received against the appellant. The petitioner is not even aware as to what exactly the complaint given against him till this date. Further, even after four months of suspension till date, the appellant could not precisely infer as to what exactly the complaint was which prompted the respondents to withhold his service beyond the period of his retirement. Writ Court ought to have allowed the writ petition on the ground of violation of principles of natural justice and this aspect require interference.

E. His legitimate expectation to enjoy a trouble-free post retirement period has been unreasonably clipped by the respondents by passing an order of suspension and not allowing him to retire from service, two days prior to his retirement, which has caused acute and immense mental agony to him.

F. Writ Court failed to consider that as against the orders which are impugned in the writ petitions, after retirement the petitioner can only file the writ petition under Article 226 of the Constitution of India. While so, in para No.4 of the order dated 14.06.2019, writ Court has rendered a finding that the writ petition is not maintainable and therefore, dismissed. Such an

observation of the writ Court is not correct and it requires interference.

G. For suspending a Government servant, there must be a definite charge. In the present case, the petitioner is not aware of the charge leveled against him and he was unceremoniously withheld in service just two days prior to his retirement."

3. When the matter came up for hearing on 16.09.2019, we directed the learned Special Government Pleader to produce the files pertaining to the letter of the Director of Rural Development and Panchayat Raj in letter No. 11458/19/GE 2.3, dated 11.03.2019. Reverting, Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader has produced the file.

4. Perusal of the file indicates that a criminal case has been registered against the petitioner and others under Section 120-B, 406, 420, 477-A IPC and 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 r/w 109 IPC. However Mr. Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader submitted that charge sheet has not been filed in Court. Order of suspension and order not allowing the appellant to retire are reproduced hereunder.

ABSTRACT

Public Services - Rural Development and Panchayat Raj Department - Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District -Certain grave charges pending- Placed under suspension from service -Orders-Issued.

Rural Development and Panchayat Raj (E2)
Department

G.O. (D) .No.73

Dated: 28.03.2019

Read :

The Director of Rural Development and Panchayat Raj
letter No.11458/19/GE 2.3, dated 11.03.2019.

Order:

WHEREAS an enquiry into grave charges against Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District is under investigation. The said investigation is under progress.

AND WHEREAS in the circumstances of the case, it is necessary in the public interest to place the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District under suspension from service.

NOW, THEREFORE under sub-rule (e) (1) (i) of rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District is placed under suspension from service, until further orders.

2. During the period of suspension, the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District will be paid subsistence allowance and dearness allowance as admissible under rule 53(1) of Fundamental Rules.

3. The headquarters of the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District, during the period of suspension shall be Villupuram District and the said Thiru.K.Rajendran shall not leave the headquarters without obtaining the prior permission of the authority concerned.

(BY ORDER OF THE GOVERNOR)

sd/-

(HANS RAJ VERMA)

ADDITIONAL CHIEF SECRETARY TO GOVERNMENT.

To

Thiru.K.Rajendran, formerly Block Development Officer,
Thalaivasal, Panchayat Union, Salem District
now Personal Assistant to Collector (NMP), Villupuram

District.

Through- The DRD & PR, Chennai -15.
(in duplicate for service and return of served copy)

Copy to:

The Director of Rural Development and Panchayat Raj,
Chennai - 15.

The Collector, Salem/Villupuram District.

The Accountant General, Chennai - 18.

The District Treasury Officer, Salem/Villupuram
District.

The Vigilance Commission, Chennai -9.

The Director of Vigilance and Anti-Corruption, Chennai
-16.

SF/SC.

ABSTRACT

Public Services - Rural Development and Panchayat
Raj Department - Thiru.K.Rajendran, formerly Block
Development Officer, Thalaivasal Panchayat Union,
Salem District now Personal Assistant to Collector
(NMP), Villupuram District -Placed under suspension
from service for certain grave charges pending
against him- Not permitted to retire from service
on attaining the age of superannuation on
31.03.2019 A.N -Orders-Issued.

Rural Development and Panchayat Raj (E2) Department

G.O. (2D) .No.49

Dated: 29.03.2019

Read :

1. The Director of Rural Development and
Panchayat Raj letter No.11458/19/GE 2.3,
dated 11.03.2019.
2. G.O. (D) No.73, Rural Development and
Panchayat Raj (E2) Department, dated
28.03.2019.

Order:

WHEREAS Thiru.K.Rajendran, formerly Block
Development Officer, Thalaivasal, Panchayat Union,
Salem District now Personal Assistant to Collector
(NMP), Villupuram District was placed under
suspension from service with immediate effect in the

Government Order second read above.

AND WHEREAS in the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District who is on attaining the age of superannuation on the afternoon of 31.03.2019 and the inquiry into the grave charges is still pending against him.

AND WHEREAS in the circumstances of the case, it is necessary that the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District (under suspension) shall not be retire on his reaching the date of superannuation i.e., 31.03.2019 A.N but shall be retained in service.

NOW, THEREFORE it is hereby ordered, under rule 56(1)(c) of the Fundamental Rules, the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District(now under suspension) is not permitted to retire on his reaching the date of superannuation on the afternoon of 31.03.2019, but retained in service until disposal of pending case is concluded and final orders passed thereon by the competent authority.

2. During such extension of service, the service of the said Thiru.K.Rajendran, formerly Block Development Officer, Thalaivasal, Panchayat Union, Salem District now Personal Assistant to Collector (NMP), Villupuram District (under suspension) shall freeze at the level reached on the date of superannuation viz., 31.03.2019 A.N and the salary during that period shall not exceed the amount of pension which would have accrued to him on the date.

(BY ORDER OF THE GOVERNOR)

sd/-

(HANS RAJ VERMA)

ADDITIONAL CHIEF SECRETARY TO GOVERNMENT.

To
Thiru.K.Rajendran, formerly Block Development Officer,
Thalaivasal, Panchayat Union, Salem District
now Personal Assistant to Collector (NMP), Villupuram
District.

Through- The DRD & PR, Chennai -15.
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The Collector, Salem/Villupuram District.
The Accountant General, Chennai - 18.
The District Treasury Officer, Salem/Villupuram
District.
The Vigilance Commission, Chennai -9.
The Director of Vigilance and Anti-Corruption, Chennai
-16.
SF/SC.

5. Government have issued G.O.Ms.No.144, Personnel and
Administrative Reforms Department, dated 08.06.2007, is
extracted hereunder:-

Government of Tamil Nadu
Abstract

Avoiding suspension on the date of retirement - Not
applicable to cases of Directorate of Vigilance and
Anti-Corruption enquiry and criminal cases Personnel
and Administrative Reforms (N) Department G.O. (Ms)
No. 144 Dated : 08.06.2007

Read :

1. Lr. (Ms) No. 1118/Par N/89, dated 22.12.87
2. G.O. (Ms) No. 439, P&AR (Per N) Department,
dated 27.7.1989
3. D.O. letter No. 44626/2004-1 P&AR(N)
Department dated 3.8.2004

ORDER

The Government have issued detailed
instructions then and there to take expeditious
action on the pending Disciplinary Proceedings
within a specified time-limit in the letter first
read above, so as to avoid delay in processing of
disciplinary cases. Instructions have been issued in
the DO Letter third read above to make a bimonthly
review of all disciplinary cases pending at all

levels including at the Government level to speed up the disciplinary cases. The disciplinary action initiated against the Government servant should be completed and final orders issued within the time limit prescribed by the Government so as to ensure that there is no unwarranted delay in finalising the disciplinary proceedings.

2. Of late, it is noticed that in many of the disciplinary cases which are pending for quite a long time, the disciplinary authority considers the question of suspension and such suspension orders are issued by the competent authorities on the date of retirement of the Government servants which causes much hardship to them. This may, perhaps, due to the inability on the part of the disciplinary authorities concerned for not having finalised the disciplinary proceedings within the stipulated time. If the cases are processed by the disciplinary proceedings within the time schedule prescribed by the Government, in the letter first read above the need for suspending the Government servants on their date of retirement would not at all arise and it can very well be avoided. In such a long pending cases, there may not be any justification to wait until the date of retirement of the Government servants on superannuation and then raise the question of suspension of the Government servant on the date of retirement. If the gravity of lapse committed by the Government servant concerned is so serious as to warrant any one of the major penalties, then the question of suspension can be examined well in advance before the date of retirement and a decision taken before 3 months instead of waiting till the date of his attaining the age of superannuation.

3. It may not be necessary to keep a retiring person under suspension just because there are some charges pending against him under Tamil Nadu Civil Services (Discipline and Appeal) Rules. In such cases, if the charges are not so grave and do not warrant any major punishment, the Government servant may be allowed to retire from service without prejudice to the case pending against him, since further action can be proceeded under Tamil Nadu Pension Rules, 1978, as "Deemed Proceeding". Such deemed proceedings in disciplinary cases are possible only if charges are framed under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, but not under Rule 17(a) of the said

rules. The Government have got powers to withhold or withdraw a pension or part thereof from any Government Servant and also to withhold his Death-Cum-Retirement-Gratuity, if any, recovery is to be effected for the pecuniary loss causes to the Government by the retiring Government servant.

4. After detailed examination, the Government have decided that, as a general principle, issue of suspension orders on the date of a Government servant should be avoided by examination of the case well in advance (i.e) 3 months prior to the date of retirement on superannuation of the Government servants concerned.

5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in super session of orders issued in the reference second read above.

(i) The Disciplinary authority should not resort to last minute suspension of the Government servants (i.e) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

(iii) In respect of Directorate of Vigilance and Anti-Corruption and Tribunal for Disciplinary Proceedings cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government. It is noticed that Directorate of Vigilance and Anti-Corruption and Tribunal for disciplinary Proceedings cases are dragged on for a long time without adhering to the time limit

prescribed by the Government in Letter first read above. In such cases, the disciplinary authorities should take up the matter with the Directorate of Vigilance and Anti-corruption or Tribunal for disciplinary Proceedings to expedite such cases and final orders issued within the time limit prescribed. In unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision to place him under suspension well in advance (i.e) prior to the date of retirement of the Government servants and not on the date of retirement.

(iv) Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government Servant concerned.

(v) Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56 (1) (c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are not issued on the date of retirement of the Government servants. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rule 56 (1) (c) have to be issued on the date of retirement only.

(vi) In cases where charges have been framed and the disciplinary authority is of the view that a pension cut or withholding of pension under the Tamil Nadu Pension Rules, 1978 would suffice for the delinquency committed, the disciplinary authority may allow the Government servant to retire from service without prejudice to the departmental proceedings.

(vii) If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three

months prior to the date of retirement of the Government Servant and charges could not be framed before the date of retirement of the Government servant, then also it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(a) (c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.

(viii) The above instructions shall not be made applicable to cases of Directorate of Vigilance and Anti-Corruption enquiry and criminal cases.

(By order of the Governor)

L.K.TRIPATHY

CHIEF SECRETARY TO GOVERNMENT

6. Though Mr.E.Manikandan, learned counsel for the appellant made submissions on the basis of the grounds stated supra, we are not inclined to reverse the order impugned for the reason that, there are sufficient materials to place the appellant under suspension and not to allow him to retire, pending disposal of the enquiry into grave charges contemplated against him. Though Mr.E.Manikandan, learned counsel for the appellant placed reliance on G.O. Ms.No.144, P&AR Department dated 08.06.2007, which states that at the fag end of career one should not unnecessarily be suspended, on the facts and circumstances of the instant case, we are of the view that G.O.Ms.144, P&AR Department dated 08.06.2007 is inapplicable. Each case has to be decided on its own merits. If an offence is detected even at the fag end of the career, employer should be given the latitude to take appropriate action including suspension if required. Consequently such a suspended employee should also be retained in service for the purpose of conducting a departmental enquiry. In the case on hand, serious offences are alleged to be committed by the petitioner as well as others and therefore, suspension has been resorted. The appellant has not made out a strong case for reversal of the order impugned in this appeal.

7. Hence the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dpq

To

1. Government of Tamil Nadu
Rep.by its Additional Chief Secretary
Rural Development and Panchayat Raj
(E2) Department
Fort St.George
Chennai 600 009.
2. The Director
Directorate of Rural Development
and Panchayat Raj
Department,
Office at Saidapet,
Chennai 600 015.
3. The District Collector,
Villupuram District.

+1 cc to Government Pleader Sr.No. 80203

W.A. No.3111 of 2019
and

C.M.P.No.19769 of 2019

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