



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 09.08.2019

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THE HONOURABLE MR.JUSTICE **K.RAVICHANDRABAABU**

AND

THE HONOURABLE MR.JUSTICE **SENTHILKUMAR RAMAMOORTHY**

Writ Appeal (MD)Nos.188 to 190 of 2019

and

C.M.P(MD)Nos.1541 to 1545 to 2019

AND

WP(MD)NOS.21428 OF 2016,21430 OF 2016 AND 21429 OF 2016

1.The State of Tamil Nadu

rep. by its Principal Secretary to Government,
Environment & Forest (FRI) Department,
Secretary,
Chennai - 9.

2.The Principal Chief Conservator of Forests,
No.15, Jeenis road, Saidapet,
Chennai - 15.

.. Appellants in all W.As

Vs.

M.Nainar Mohammed,
Son of MMN Meera Shah Routhar,
No.49, Kamarajar Street,
Peraiyur & Taluk,
Madurai - 625 703.

.. Respondent in all W.As

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent, to set aside the common order made in W.P(MD)Nos.21428 to 21430 of 2016 dated 24.05.2017.

Prayer in WP(MD). 21428/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to calling for the records on the file of the 1st Respondent in his letter no. 9804/FR.1/2015-12, dated 13.10.2016 quash the same and consequently to settle all the retirement benefits including service benefits namely, Death Cum Retirement Gratuity, Provident Fund, Special Provident Fund, Commutation of Pension, Encashment of Leave, Pension Arrears and other benefits to the petitioner.



Prayer in WP(MD). 21430/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Mandamus to calling for the records on the file of the 1st Respondent his Proceeding G.O(3D) No.5 dated 31.01.2014 and quash the same consequently allow the petitioner to retire on 31.01.2014.

Prayer in WP(MD). 21429/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records of the impugned order passed by the 1st Respondent his proceeding in G.O.(3D) No.2 environment and Forest (FR-1) Department dated 22.01.2014 and quash the same.

In all writ appeals;

For Appellant : Mr.V.R.Shanmuganathan
(in all cases) Spl. Govt. Pleader
For Respondents : Mr.D.Selvanayagam
(in all cases)

JUDGMENT

(Judgment of the Court was delivered by **K.RAVICHANDRABAABU, J.**)

These three writ appeals are filed against the common order passed by the Writ Court in W.P(MD)Nos.21428, 21429 and 21430 of 2016, dated 24.05.2017.

2.The appellants are the respondents before the Writ Court. The first respondent herein is the writ petitioner. He filed W.P (MD)No.21428 of 2016 challenging the order, dated 13.10.2016 of the Government, wherein and whereby, the writ petitioner was informed that encashment of Earned Leave is admissible only after finalization of the disciplinary proceedings and regularization of the suspension period also by indicating that till the conclusion of the criminal proceedings and the issue of final order thereon, the petitioner is not entitled for retirement benefits. Consequently, the writ petitioner sought for settling all the retirement benefits including service benefits, namely, death-cum-retirement gratuity, special provident fund, commutation of pension, encashment of leave pension arrears and other benefits.

3.W.P(MD)No.21429 of 2016 was filed challenging the order of suspension, dated 31.01.2014. W.P(MD)No.21430 of 2016 was filed challenging the order retaining the service of the writ petitioner pending completion of the disciplinary proceedings.



4.The writ petitioner was functioning in the post of Deputy Conservator of Forests. On 11.09.2013, a charge memo was issued on the writ petitioner alleging that during the course of surprise check on 26.08.2009, it was found that the cash book was not maintained properly from 11.08.2009 to 26.08.2009 and the cash register was not maintained by the Accountant and that the Superintendent and the Regional Manager concerned have not supervised the same, thereby the delinquent has failed to maintain and exhibit absolute integrity and devotion to duty. It is seen that another charge was also issued against the petitioner stating that during the course of surprise check on 26.08.2009, an unauthorised and unaccounted amount of Rs.1,94,100/- was seized from his possession and he has failed to maintain and exhibit absolute integrity and devotion to duty, thereby contravened the provisions of Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. Consequently, the writ petitioner was placed under suspension on 22.01.2014. Though he attained the age of superannuation on 31.01.2014, the order impugned in the writ petition was passed on 31.01.2014 not permitting him to retire from service. The department conducted enquiry and in the enquiry, it was found that the charges framed against the writ petitioner were not proved. Consequently, by proceedings, dated 27.04.2015, the department dropped the charges. In the meantime, sanction for criminal prosecution was granted against the writ petitioner on 11.03.2014. Accordingly, a criminal case in F.I.R No.7 of 2009 on the file of Sivagangai Police Station was registered. Subsequently, a charge sheet was also filed in the said criminal case on 08.04.2015. Thus, the criminal case filed against the petitioner is still pending. However, since the department has dropped the charges issued against the writ petitioner, the above three writ petitions were filed before this Court with the relief as stated supra. The Writ Court, after considering the fact that charges were already dropped by the department, allowed all the writ petitions by a common order dated 24.05.2017. Thus, these three writ appeals are filed before this Court.

5.Heard the learned Special Government Pleader appearing for the appellants and the learned counsel appearing for the first respondent/writ petitioner.

6.In these appeals, following three issues arise for consideration:

- (a) whether the writ petitioner is entitled to all the retirement benefits as sought for in W.P(MD)No.21428 of 2016, in view of the fact that he attained the age of superannuation on 31.01.2014, though he was not allowed



the time of disposal of the writ petition was very much available before the Writ Court. However, the Writ Court has chosen to allow the writ petitions against the order of the suspension and the order retaining the service only on the reason that the charges levelled against the petitioner were dropped by the department subsequently, without taking note of the pendency of the criminal proceedings as stated supra.

9. At this juncture, it is pertinent to note that Rule 56(1)(c) (iv) of the Fundamental Rules specifically contemplates that a 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 the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegation of criminal misconduct or the enquiry into contemplated charges or disciplinary proceedings taken under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or Rule 3(c) of Tamil Nadu Police Subordinate 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. Therefore, it is evident that even though the departmental proceedings ended in dropping the charges against the writ petitioner, in view of the admitted position that the criminal prosecution has already been launched even before dropping of such charges by the department and that the charge sheet was also filed in the criminal case on 08.04.2015 much earlier to the dropping of the charges by the department, we are of the view that clause 56 (1)(c)(iv) of the Fundamental Rules would come into operation against the petitioner for placing him under suspension as well as retaining his service due to the pendency of the criminal case. Therefore, we are of the view that the Writ Court was not justified in setting aside the order of suspension as well as the order retaining his service simply because the charges levelled against the petitioner by the department were dropped.

11. Accordingly, the W.A(MD)Nos.189 and 190 of 2019 are allowed and the order passed by the Writ Court in W.P(MD)Nos.21429 and 21430 of 2016 are set aside. It is made clear that though the order of suspension and order of retention of service were passed based on the pendency of the departmental proceedings, in view of our observations made supra, those two orders shall be treated as the orders passed on the reason of pendency of the criminal prosecution against the petitioner. Needless to say that the petitioner is at liberty to work out his remedy after the disposal of the criminal case accordingly. No costs. Consequently,



connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Secretary to Government,
State of Tamil Nadu
Environment & Forest (FRI) Department,
Secretary,
Chennai - 9.

2.The Principal Chief Conservator of Forests,
No.15, Jeenis road, Saidapet,
Chennai - 15.

skn

+1 CC to M/s.SPL GP (SR-81507[F] dated 13/08/2019)

+1 CC to M/s.D. SELVANAYAGAM, Advocate (SR-81624[F] dated
14/08/2019)

Judgment made in
Writ Appeal (MD)Nos.188 to 190 of 2019

and
C.M.P(MD)Nos.1541 to 1545 to 2019

AND
WP(MD)NOS.21428 OF 2016,21430 OF 2016 AND 21429 OF 2016

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