



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.4842 of 2018

and

W.M.P(MD)Nos.4848 & 4849 of 2018

and

W.M.P(MD)No.14827 of 2018

and

W.P(MD)No.4843 of 2018

and

W.M.P(MD)No.4850 of 2017

V.Megavarnam

... Petitioner in both the writ petitions

Vs.

- 1.The Commissioner,
Department of Employment and Training,
Directorate,
Guindy,
Chennai-600 032.
- 2.The Joint Director (Craftsman Training),
Department of Employment and Training,
Directorate,
Guindy,
Chennai-600 032.
- 3.The Regional Joint Director,
Department of Employment and Training,
Muntrumavadi,
K.Pudur,
Madurai-625 007.
- 4.The Principal,
Government Industrial Training Institute,
Pudukkottai District.
- 5.Mr.T.Rajasekar,
The Joint Director (Craftsman Training),
Department of Employment and Training,
Directorate,
Guindy,
Chennai-600 032.

... Respondents in both the writ petitions

PRAYER in W.P(MD)No.4842 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of

<https://hcservices.ecourts.gov.in/hcservices/>



Certiorari, calling for the records relating to the impugned charge memo dated 27.02.2018 in Na.Ka.No.38728/OP2/2010 signed on 28.02.2018 issued by the second respondent and quash the same.

PRAYER in W.P(MD)No.4843 of 2018: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order of suspension dated 27.02.2018 proceeding No.38728/OP2/2010 signed on 28.02.2018 by the second respondent and the consequential order of retaining the petitioner in service passed by the first respondent vide proceeding No.38728/OP2/2010 dated 28.02.2018 and quash the same.

For Petitioner : Mr.T.Antony Arul Raj
For Respondents : Mr.VR.Shanmuganathan,
Special Government Pleader

COMMON ORDER

The petitioner in both the writ petitions is one and the same and the issue in both the writ petitions are interlinked and therefore, both the writ petitions are disposed of by this common order.

2. According to the petitioner, he joined the department of Employment and Training as Junior Training Officer in Training Wing on 04.02.1991. Subsequently, he was promoted as Assistant Training Officer in the year 1998. After completing 17 years of service in the said post, he was given promotion as Training Officer in the year 2015. While he was working as Training Officer in Government Industrial Training Institute, Pudukkottai, he was deputed to Government Industrial Training Institute, Viralimalai. Due to his ill-health, he filed a writ petition in W.P(MD)No.8896 of 2016. This Court granted an order of status quo. In view of the order passed by this Court, he continued in the service of Government Industrial Training Institute, Pudukkottai. He attained the age of superannuation on 28.02.2018. At 8.30 p.m., on the date of superannuation i.e., on 28.02.2018, the fourth respondent served the order of suspension dated 27.02.2018, signed by the second respondent on 28.02.2018 and another order, dated 28.02.2018, for retaining him in service under Rule 56(1)C of Fundamental Rules, on the ground that an enquiry is contemplated into the grave charges under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The fourth respondent has served a charge memo dated 27.02.2018, issued by the second respondent to the petitioner. According to the petitioner, all the proceedings were prepared by the second respondent on 27.02.2018 and actions of the respondents are wholly illegal and unsustainable in law. Charge memo dated 27.02.2018 relates to the occurrence of the year 2010.



3. By order dated 24.08.2010, the petitioner was suspended from service by the fourth respondent and charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was issued. Subsequently, by order dated 16.05.2011, the first respondent cancelled the charge memo issued by the fourth respondent and directed the third respondent to conduct an enquiry and submit the report within 30 days. The third respondent submitted the report in favour of the fourth respondent and therefore, the petitioner filed a writ petition in W.P.(MD)No.2387 of 2012, challenging the proceedings dated 16.05.2011, directing the third respondent to conduct an enquiry. This Court, by order dated 29.02.2012, granted interim stay for a period of four weeks. The third respondent, who conducted the enquiry in the year 2012, has issued present charge memo in the capacity of Joint Director. The third respondent with malafide intention, has placed the petitioner under suspension on the date of retirement. The petitioner, for the above reason, impleaded the fifth respondent in his personal capacity.

4. The learned counsel appearing for the petitioner contended that the present charge memo has been issued for the incident occurred in the year 2010, for which, already a charge memo was issued on 27.08.2010 and subsequently the same was cancelled. Thus, the present charge memo on the same set of allegation is liable to be set aside.

5. The learned counsel appearing for the petitioner further contended that the order of suspension and retaining the petitioner in service on the last date of retirement, is invalid and illegal. No reason was given by the respondents for the delay of 7 years in issuing the present impugned charge memo. The action of the respondent is contrary to G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 and relied on the judgment of this in **M.Janarthanan vs. Chairman, Tamil Nadu Slum Clearance Board reported in 2014(2) CWC 261.**

6. The respondents filed counter affidavit and denied the various allegations made by the petitioner. Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents submitted that the petitioner, during the year 2010, failed to obey the orders of the Principal and without any leave application or prior intimation, went on leave and subsequently, he applied for medical leave without any medical certificate. While reporting for duty after the period of absence, the petitioner without informing the Principal and without his permission, signed the Attendance Register. When the same was questioned by the Principal, he informed the Principal in a rude manner that he need not seek his permission and he consulted his lawyer. When the petitioner was sent to the medical board, he did not report before the Medical Board. For his misconduct, the petitioner was issued with



chargememo, dated 27.08.2010 and some mistakes have crept in the chargememo and therefore, the same was cancelled. The first respondent directed the fifth respondent, who was the then Joint Director, to enquire into the matter and submit his report within 30 days. The Enquiry was fact finding enquiry. While the enquiry was in progress, the petitioner filed a writ petition in W.P(MD)No.2387 of 2012, falsely alleging that the fifth respondent in a biased manner is going to give a report in favour of the Principal. This Court, by order dated 29.02.2012, granted interim stay. In view of the interim order granted in the said writ petition, the third respondent did not proceed with the enquiry. Now, on considering the fact that the petitioner is attaining the age of superannuation and the occurrence is of the year 2010 and all the materials on record, the petitioner was suspended from service and not permitted to retire on attaining the age of superannuation on 28.02.2018. A charge memo dated 27.02.2018, was served on the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as the petitioner has committed grave misconduct. The allegation that the charges in the earlier charge memo issued in the year 2010 and the present chargememo are one and the same, are not correct. Similarly, the allegation of bias made against the fifth respondent is without any basis. As per Rule 56(1)(c) of Fundamental Rules, the respondent has power to retain the petitioner in service till the disposal of the disciplinary proceedings and prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

8. From the materials on record, it is seen that the impugned order, dated 27.02.2018, suspending the petitioner was signed on 28.02.2018 and the impugned order retaining the petitioner in service is dated 28.02.2018. Both the orders were tried to be served on the petitioner on 28.02.2018 in the evening at 8.30 p.m. The petitioner refused to receive the said orders. Therefore, the same was affixed in the door of the petitioner at 10.30 p.m. The date of retirement of the petitioner is 28.02.2018. The impugned orders, according to the petitioner, were sought to be served on him after the office hours at his residence in the evening at 8.30 p.m. The said facts were not disputed by the respondent in the counter affidavit. The petitioner was suspended from service and not allowed to retire on the date of his superannuation due to the alleged misconduct committed by him in the year 2010. Earlier, the fourth respondent issued charge memo dated 27.08.2010, for the very same misconduct. Subsequently, by the order dated 26.05.2011, the second respondent cancelled the said charge memo. The fifth respondent, when he was working as Regional Joint Director, was directed to enquire into the matter and find out the correct facts, as the petitioner has denied the alleged misconduct committed by him. The petitioner filed a writ petition in W.P(MD)No.2387 of 2012 filed by the



writ petitioner, challenging the order of the first respondent dated 26.5.2011, directing the fifth respondent to enquire the matter, this Court granted an order of interim stay. The writ petition is of the year 2012 and the same was dismissed only on 27.03.2018 subsequent to the retirement of the petitioner. The respondents have not taken any disciplinary proceedings against the petitioner from the date of interim order granted by this Court in 2012 till 28.02.2018, i.e., the date of superannuation of the petitioner. The action of the authorities suspending the Government servant at the verge of his retirement and retaining him in service in contemplation of disciplinary proceedings or pendency of the disciplinary proceedings or criminal case, is deprecated by this Court, in number of cases. The Government also issued guidelines, in G.O.Ms.No.144 Personnel and Administrative Reforms (N) Department, dated 08.06.2017, in this aspect. This Court also in the case of **M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board reported in 2014(2) CWC 216**, has considered the issue of suspension of an employee at the verge of his retirement and retaining him in service and by the order dated 09.06.2014 held that the employer should initiate disciplinary proceedings atleast three months prior to the date of retirement and must complete the disciplinary proceedings on war-footing. In that case, even after completion of the disciplinary proceedings, the employer did not pass final orders. This Court, in paragraph No.11 of the order dated 09.06.2014 has held as follows:-

"11.The above observation of the Apex Court deprecating the practice of initiating Departmental Proceedings with a huge delay of then years, in my view, can be applied to the present case as well because, in the case on hand, the impugned Charge Memo was issued with a huge and unexplained delay of 14 years for the alleged commissions and omissions said to have taken place during the month of August, 1997 when the petitioner was serving as Executive Engineer, totally contrary to the G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 8.6.2007 directing the Disciplinary Authority not to resort, to last minute suspension of the Government Employee, namely, on the date of retirement. In this context, the following directions issued by the Government to avoid last minute Suspension Order on the date of retirement of the Government Servant may also be usefully referred to in the present case:

"5. The Government direct that the following Guidelines be followed to avoid Suspension Orders on the date of retirement of the Government Servants in supersession of Orders issued in the reference second reas 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)... ..

(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)

(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)(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.



9. In the present case, the alleged misconduct is of the year 2010. After issuing the charge memo and cancelling the same, the first respondent has ordered an enquiry to find out the correct facts so as to initiate the disciplinary proceedings. The said enquiry was stayed by this Court in W.P(MD)No.2387 of 2012 and the said writ petition was dismissed only on 27.03.2018 after the retirement of the petitioner. If really the respondents had materials to initiate disciplinary proceedings, they need not waited from 2012 till 28.02.2018. The respondents as held by this Court in the order referred to above, ought to have initiated disciplinary proceedings atleast three months prior to the date of retirement of the petitioner and completed the same before the date of retirement of the petitioner. The action of the respondents in suspending the petitioner and retaining him in service is illegal and contrary to the guidelines issued by the Government in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007.

10. For the above reasons, the impugned orders in Na.Ka.No.38728/OP2/2010 dated 27.02.2018 and 28.02.2018 are set aside and the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

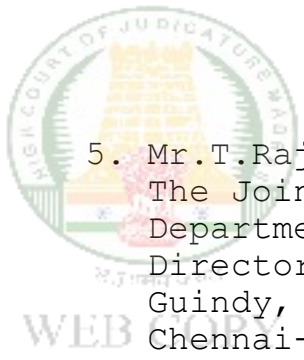
// True Copy //

Sub Assistant Registrar(CS)

To

1. The Commissioner,
Department of Employment and Training,
Directorate, Guindy,
Chennai-600 032.
2. The Joint Director (Craftsman Training),
Department of Employment and Training,
Directorate, Guindy,
Chennai-600 032.
3. The Regional Joint Director,
Department of Employment and Training,
Muntrumavadi,
K.Pudur, Madurai-625 007.
4. The Principal,
Government Industrial Training Institute,
Pudukkottai District.

<https://hcservices.ecourts.gov.in/hcservices/>



5. Mr.T.Rajasekar,
The Joint Director (Craftsman Training),
Department of Employment and Training,
Directorate,
Guindy,
Chennai-600 032.

+1 CC to Mr.T.ANTONY ARUL RAJ, Advocate (SR-92209[F] dated
16/10/2019)
+1 CC to SPL GP (SR-92476[F] dated 17/10/2019)

W.P. (MD) Nos. 4842 & 4843 of 2018
16.10.2019

am

MK (12.11.2019) 8P 8C