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W.P(MD)No.17790 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.17790 of 2014

N.Mahendran

... Petitioner

vs.

1)The District Collector,
Madurai District,
Madurai.

2)The Assistant Project Officer (Infrastructure 2),
District Rural Development Agency (DRDA),
Madurai-20.

3)The Block Development Officer, (Village Panchayat),
Kottampatti Panchayat Union, Kottampatti,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent in his proceedings in Roc.No.36319/2014/RD-2 dated 31.10.2014, thereby suspending the petitioner from service and Roc.No.36319/2014/RD-2 dated 31.10.2014, by not permitting the petitioner to retire from service and quash the same and consequently direct the respondents to treat the petitioner having retired from service on 31.10.2014 with all service and pensionary benefits.

For Petitioner : Mr.N.Satishbabu

For Respondents : Mr.D.Muruganandam

Additional Government Pleader

ORDER

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his proceedings in Roc.No.36319/2014/RD-2 dated 31.10.2014, suspending the petitioner from service and Roc.No.36319/2014/RD-2 dated 31.10.2014, not permitting the petitioner to retire from service, quash the same and consequently direct the respondents to treat the petitioner having retired from service on 31.10.2014 with all service and pensionary benefits.

2.The petitioner has joined the service in the Department of Survey and Settlement as Section Writer on daily wage basis on 03.12.1984 and subsequently, he was promoted as temporary Surveyor on 29.03.1990. Thereafter, he was transferred to the Rural



Development and Panchayat Raj Department where he joined as Junior Assistant on 02.05.1996 and posted at Thiruvidaimaruthur Panchayat Union, Thanjavur District and on his request, he was transferred to Madurai District and posted as Junior Assistant in Usilampatti Union, on 03.01.2005 and later he was deputed as Boothan Inspector in the year 2008. The petitioner was placed under suspension on public interest on 25.03.2013 and charges under rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules have been framed against the petitioner. Later on, the suspension was revoked and he was reinstated into service. The enquiry officer was appointed and the petitioner has filed W.P(MD)No.10658 of 2014 with a prayer to direct the 1st respondent to pass final orders in the disciplinary proceedings which was disposed of directing the 1st respondent to pass orders on the disciplinary proceedings within a period of eight weeks.

3.It is further submitted that though the enquiry officer held the charges against the petitioner as not proved, the disciplinary authority by order dated 30.09.2014, imposed the punishment of stoppage of increment for 3 years with cumulative effect. Consequent thereto, the 3rd respondent passed an order dated 20.10.2014 to recover a sum of Rs.26,660/- being the increment granted from 01.11.2011 to 31.10.2014, as the petitioner attained the age of superannuation on 31.10.2014 and the petitioner also paid that amount without prejudice. According to the petitioner, he was not issued with any show cause notice or enquiry report before passing the above punishment order violating the principles of natural justice. Therefore, challenging the said punishment, he filed W.P(MD)No.17206 of 2014, and this Court by order dated 27.10.2014 ordered notice of motion by four weeks. While so, the present impugned order of suspension and another order not allowing him to retire by retaining him in service on the date of his superannuation were passed. It is stated that the alleged suspension is due to the pendency of the criminal case in Crime No.194 of 2013 and by invoking Rule 56(1)(c) of the Fundamental Rules.

4.According to the learned counsel for the petitioner, the impugned orders are contrary to G.O.Ms.No.144, Personnel and Administrative Reforms Department, dated 08.06.2007, in which it is stated that the disciplinary authority shall not resort to last minute suspension of the government employee namely, on the date of retirement. For a proposition that once the punishment is imposed, the departmental authorities cannot subject the delinquent for a fresh punishment on the very same allegation which is impermissible, the learned counsel would rely on the judgment reported in (2014) 6 MLJ 489, C.Govindan vs. Joint Director of Agriculture, Dharmapuri. Thus, he would pray for setting aside the impugned orders.



5.The 1st respondent has filed a detailed counter affidavit. The learned Additional Government Pleader appearing for the respondents would state that since the criminal proceedings are pending, rightly, the petitioner was not allowed to retire from service and he is kept under suspension. Therefore, the interference of this Court is not necessary.

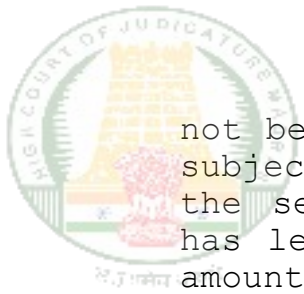
6.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents.

7.Perusal of record shows that for the same incident in the criminal proceedings, departmental proceedings have been initiated against the petitioner and though the enquiry officer found the charges as not proved, punishment of withholding of increment for 3 years with cumulative effect was imposed and consequent to the recovery order dated 20.10.2014 passed, recovery of Rs.26,660/- was made from the petitioner. Admittedly, the departmental proceedings reached its finality. Once when the disciplinary proceedings reached its finality, the respondents ought not to have retained the petitioner in service by not allowing him to retire by placing him under suspension on the last day. In this context, it is relevant to consider the judgment relied on by the counsel for the petitioner reported in (2014) 6 MLJ 489, C.Govindan vs. Joint Director of Agriculture, Dharmapuri, wherein, it has been held as follows:-

'10.Simultaneously, the Department initiated departmental proceedings by issuing the charge memo dated 20.10.2011, under Rule 17(b) of TNCS (D&A) Rules on the alleged incident took place on 02.03.2009, for which, a criminal proceeding is pending, as stated above.

11.The disciplinary proceeding ended in the punishment order dated 11.06.2013 and the petitioner was imposed the punishment of stoppage of increment without cumulative effect for a period of three months.

12.Since the Department decided to take departmental action in relation to the incident that took place on 02.03.2009, the pendency of criminal case relating to the said incident has no consequence, in view of the Division Bench judgment of this Court in *D.Narayanan v. District Revenue Officer, Virudhunagar* LNIND 2009 MAD 550 : (2009) 4 MLJ 708, i.e., even assuming that the criminal case would result in conviction, the Department cannot proceed against the petitioner, since the department had chosen to take action departmentally on the same incident and also imposed the punishment. It has been by the Division Bench that it is open to the department authorities either to follow the procedure contemplated under Rule 17(b) or the procedure under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, when Rule 17(b) has already been followed and a punishment is imposed, it would



not be permissible for the department authorities to again subject the very same delinquent to a fresh punishment on the self-same-allegation on the ground that such conduct has led to his conviction in a criminal case, which would amount to double jeopardy.''

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8.Since the petitioner has withdrawn W.P(MD)No.17206 of 2014 filed against the punishment and recovery proceedings, I am not inclined to interfere into the merits of the punishment order. Since the disciplinary proceedings have been concluded, the respondents ought to have allowed the petitioner to retire from service. All the more, it is the specific case of the respondents that since the criminal proceedings are pending, the petitioner was not allowed to retire. Such a stand cannot be taken by the respondents in view of the above referred judgment.

9.It is really an unfortunate case where though the enquiry officer has found the charges against the petitioner as not proved, punishment of withholding of increment for 3 years with cumulative effect was imposed on the petitioner and though the petitioner has challenged the said punishment in W.P(MD)No.17206 of 2014, subsequently he has withdrawn the same and it appears that he has withdrawn the above writ petition as on the date of his retirement, he was not allowed to retire. For each and every occasion, the petitioner has come before this Court and it appears that his act of knocking the doors of this Court for justice has put him into more turmoil, but unfortunately though the petitioner has challenged the punishment, he has withdrawn the same as orders were passed not allowing him to retire from service and placing him under suspension in the last minute which should have more impact on a government servant's life which includes his family that had compelled the petitioner to withdraw the above writ petition. Now, it is brought to the notice of this Court that the criminal case filed against the petitioner also ended in acquittal and therefore, I am inclined to set aside the impugned orders and considering the above attitude of the respondents, I am inclined to order interest at 12% on the retirement benefits payable to the petitioner.

10.Accordingly, the impugned proceedings in Roc.No.36319/2014/RD-2 dated 31.10.2014, suspending the petitioner from service and Roc.No.36319/20144/RD-2 dated 31.10.2014, not permitting the petitioner to retire from service are quashed and the respondents are directed to treat the petitioner having retired from service on 31.10.2014 and settle all the retirement benefits with 12% interest within a period of twelve weeks from the date of receipt of a copy of this order and the arrears of pension payable to the petitioner from 31.10.2014 till December 2019 shall also carry interest at 12% and shall be paid within the above stipulated time.



With the above direction, this writ petition is allowed. No costs.

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Sd/-

Assistant Registrar(CS-I)

/ /2020

Sub Assistant Registrar(CS)

To

1)The District Collector,
Madurai District,
Madurai.

2)The Assistant Project Officer (Infrastructure 2),
District Rural Development Agency (DRDA),
Madurai-20.

3)The Block Development Officer, (Village Panchayat),
Kottampatti Panchayat Union, Kottampatti,
Madurai District.

+1 CC to M/s.SPL GP (SR-104196[F] dated 10/12/2019)

+1 CC to M/s.N.SATHISHBABU, Advocate (SR-104328[F] dated 11/12/2019)

ORDER MADE IN

W.P(MD)No.17790 of 2014

DATED : 09.12.2019

SGS(CO)

TR(28.01.2020) 5P 6C