



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)Nos.19121 & 22066 of 2016

and

W.M.P(MD)Nos.13804 & 15775 of 2016

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S.Arumugam

... Petitioner in both W.Ps'

vs.

The Revenue Divisional Officer,
Kodaikanal,
Dindigul District.

... Respondent in both W.Ps'

PRAYER in W.P(MD)No.19121 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order vide Roc.No.1857/2016/A1, dated 29.09.2016 issued by the respondent and quash the same and consequently direct the respondent to permit the petitioner to retire from service with effect from 30.09.2016 ie., on the date of his superannuation with all retirement benefits.

PRAYER in W.P(MD)No.22066 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order vide Roc.No.1857/2016/A1, dated 30.09.2016 issued by the respondent and quash the same and consequently direct the respondent to permit the petitioner to retire from service with effect from 30.09.2016 ie., on the date of his superannuation with all retirement benefits.

For Petitioner : Mr.D.Venkatesh
(in both W.Ps')

For Respondent : Mr.VR.Shanmuganathan,
(in both W.Ps') Special Government Pleader.

COMMON ORDER

Since the issue involved in the Writ Petition is one and the same, these Writ Petitions are heard together and disposed of by way of this common order.

2.The petitioner has come forward with the present Writ Petitions challenging the impugned orders of the respondent, dated 29.06.2016 and 30.09.2016 respectively.



3.The petitioner joined as a Village Administrative Officer on 08.07.1984 in Vendasandur Taluk. After posting in various places in and around Dindigul District, he was working at Poondi, Kodaikanal from 2013. He has to retire from service on 30.09.2016 on attaining the age of superannuation. The respondent by an order, dated 29.09.2016 suspended the petitioner, without any enquiry, stating that two criminal cases, viz., a case in Crime No.26 of 2010 on the file of the District Crime Branch, Dindigul and another case in Crime No.97 of 2014 on the file of the Inspector of Police, Land Grabbing Special Wing, Dindigul, are pending. Further, by an order, dated 30.09.2016, ie., on the date of retirement, the petitioner was not allowed to retire from service, but to continue in service till the disposal of the criminal cases. Hence, the petitioner has come up with the present Writ Petitions challenging the order of suspension, dated 29.09.2016 and the order, dated 30.09.2016, not allowing him to retire from service.

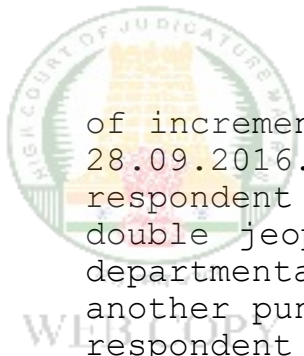
4.The brief facts of the case leading to the filing of these Writ Petitions are as follows:

4.1.According to the petitioner, the respondent has passed the impugned order of suspension, without holding any enquiry and without giving any opportunity to the petitioner to putforth his case; that the petitioner was not aware of two criminal cases; that the impugned order of suspension on the previous date of retirement is against the guidelines of Government Orders in G.O.Ms.No.105, dated 18.01.1989 and G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department dated 08.06.2007.

4.2.The first charge is that the petitioner transferred patta in the name of one Vasanthi Janakiraman from Swamidas. In the proceedings initiated against the said order before the Revenue Divisional Officer, an order of status quo was passed and the same was challenged before the District Revenue Officer and the same was confirmed. The petitioner obtained a certificate from the Sub-Inspector of Police, District Crime Branch, Dindigul on 27.09.2016 to the effect that there is no case is pending in respect of Crime No.26 of 2010.

4.3.The second charge is that the petitioner issued possession certificate in favour of one Sandhanadurai. According to the petitioner, he issued possession certificate only after verifying the occupation in favour of one Sandhanadurai. In the complaint given by one R.A.Pandiarajan, the petitioner's name was not found in the FIR. The said Sandhanadurai initiated civil proceedings and obtained an order of status quo.

4.4.The disciplinary proceedings were initiated against the petitioner in respect of the second charge for issuance of possession certificate to Sandhanadurai and punishment of stoppage



of increment for six months without cumulative effect was imposed on 28.09.2016. On the next day of punishment ie., on 29.09.2016, the respondent placed the petitioner under suspension, which amounts to double jeopardy and contended that after imposing punishment in a departmental proceedings, the respondent has no power to impose another punishment based on the conviction in the criminal case. The respondent has not considered the punishment imposed in respect of the second charge and included the said charge also for suspending the petitioner on 29.09.2016 and retained him in service by the impugned order, dated 30.09.2016.

5.The learned counsel appearing for the petitioner relied on the Judgment of the Division Bench of this Court in **D.Narayanan Vs. District Revenue Officer and others** reported in **2009 (4) MLJ 708**, wherein the relevant portion at paragraph Nos.14, 17 and 27 reads as follows:

"14..... As already indicated, but for the proviso to Article 311(2) of the Constitution of India, an enquiry is required to be held before imposition of major penalty. Similarly, but for the provision in Rule 17(c) (i) (1), an enquiry, as contemplated in Rule 17(b), is required to be held. It is nowhere contemplated that on the basis of the self-same misconduct, a person is required to be punished twice, once because he has been found guilty in a departmental enquiry and subsequently because he has been convicted in a criminal case on the basis of the self-same conduct.

17..... However, when Rule 17(b) has already been followed and a punishment is imposed, it would not be permissible for the departmental 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, in our considered opinion, would amount to double jeopardy.

27.In the present case, the disciplinary authority himself has imposed the second punishment on the basis of the very same allegation of temporary misappropriation. Such order of the disciplinary authority cannot be considered as an exercise of power of review of punishment, inasmuch as such punishment has been imposed beyond the period of limitation contemplated under the relevant service Rules".

6.The learned counsel for the petitioner has relied on the Judgment of this Court in **W.P.Nos.27100 and 27101 of 2013, dated 02.07.2014 (C.Govindan Vs. The Joint Director of Agriculture, Dharmapuri)**, wherein at paragraph Nos.11 and 12 reads as follows:

"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 Vs. District Revenue Officer, Virudhunagar* reported in 2009 (4) MLJ 708, ie., 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."

7. The learned counsel for the petitioner has also relied on the Judgment of this Court in **W.P(MD)Nos.16957 and 16958 of 2014, dated 18.12.2014 (R.Manavalan Vs. The Additional Director of Agriculture and others)**, wherein at paragraph Nos.9 and 10 read as follows:

"9. A close reading of the aforesaid Government Order also makes it clear that a decision either to allow the government employee to retire from service or to suspend him from service should be taken well in advance, that is three months prior to the date of superannuation, and that such decision should not be taken at the last minute of the date of retirement, in any case. In the present case, as mentioned above, when a report dated 13.7.2009 had already been filed by the Director of Vigilance and Anti Corruption, keeping quiet for about five long years without issuing any charge memo or holding any enquiry or initiating disciplinary proceedings, this Court finds no justification whatsoever to keep the said report in cold storage, inasmuch as paragraph-5 (ii) of the guidelines issued in the G.O.Ms.No.144



dated 8.6.2007 clearly indicates that if an irregularity or an offence committed by the government employee 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 employee to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension depending upon the gravity of irregularities committed by him. Paragraph 5(iii) of the guidelines also clearly indicates that in respect of Directorate of Vigilance and Anti-Corruption cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government, as the cases are dragged on for a long time. It also speaks that in unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision to place the concerned government employee under suspension well in advance, prior to the date of retirement and not on the date of retirement.

10.....Besides, the protracted disciplinary enquiry against a government employee should be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employee. Therefore, finding no justification whatsoever for the respondents in not initiating the disciplinary proceedings for about five long years, at this stage, it is necessary to draw a curtain, since for the mistake committed by the department in not following the aforesaid Government Order, the petitioner should not be made to suffer, that too just four days before his retirement, as the very purpose of initiating such action gets defeated."

8. The learned counsel appearing for the petitioner contended that even if a criminal case is pending, the respondent has to take action to complete the departmental proceedings three months prior to the date of retirement. The learned counsel appearing for the petitioner further contended that in **W.P(MD)Nos.16957 and 16958 of 2014, dated 18.12.2014 (R.Manavalan Vs. The Additional Director of Agriculture and others)**, this Court has considered the guidelines issued in the Government Order in G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department dated 08.06.2007 and prayed for allowing the Writ Petition.



9.The submissions of the learned Special Government Pleader are as follows:

9.1.The petitioner was appointed as a Village Administrative Officer and while he was working, two criminal cases have been registered against the petitioner in Crime No.26 of 2010 on the file of the District Crime Branch, Dindigul and another case in Crime No.97 of 2014 on the file of the Inspector of Police, Land Grabbing Special Wing, Dindigul. As per Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Government servant can be suspended pending disciplinary proceedings or investigation into criminal case or pendency of criminal case.

9.2.As per Rule 56(1)(c) of the Fundamental Rules, a Government servant can be retained in service till the disposal of disciplinary proceedings and criminal proceedings.

9.3.In respect of the criminal case in Crime No.26 of 2010 on the file of the District Crime Branch, Dindigul, the same was transferred to Kodaikanal Police Station and the same is pending for filing charge sheet. Further, in respect of the case in Crime No.97 of 2014 on the file of the Inspector of Police, Land Grabbing Special Wing, Dindigul, charge-sheet has been filed and the same is pending before the Anti-Land Grabbing Court in C.C.No.6 of 2016, for trial.

9.4.The respondent has power to impose punishment under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, when a Government servant is convicted in a criminal case. To invoke the power under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, there must be an employer and employee relationship and hence, a Government servant is not allowed to retire from service pending criminal cases.

9.5.G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, referred to above, is not applicable to the petitioner and it has been specifically mentioned that the instructions are not made applicable to the case of Directorate of Vigilance and Anti-Corruption enquiry into criminal cases and prayed for dismissal of the Writ Petitions.

10.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

11.From the materials available on record, it is seen that two charges are levelled against the petitioner.

12.The first charge is that the petitioner, based on the verification of the document, issued patta to one Vasanthi Janakiraman. This was in the year 2010. On complaint, a criminal



case was registered in Crime No.26 of 2010 on the file of the District Crime Branch, Dindigul. Subsequently, according to the respondent, it was transferred to the Inspector of Police, Kodaikanal. According to the learned Special Government Pleader, the investigation is still pending in the said criminal complaint.

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13.From the materials available on record and the submissions of the learned Special Government Pleader, it is seen that no progress has been made from the year 2010 to till date. There is nothing on record to show that whether the complainant or any other witnesses were examined in the said crime number. A criminal complaint is kept in cold storage without any investigation for the past nine years.

14.The second charge is that the petitioner issued possession certificate to one Sandhanadurai in respect of the Government poramboke Tarisu land and thereby, caused loss to the Government. A complaint was registered in Crime No.97 of 2014 on the file of the District Crime Branch (Land Grabbing) and the same has been taken on file in C.C.No.6 of 2016 and the same is pending for trial.

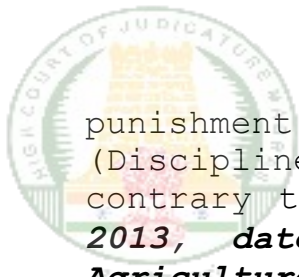
15.In pursuant to the departmental proceedings, the respondent imposed punishment of stoppage of increment for six months without cumulative effect on 28.09.2016.

16.The respondent, who has initiated disciplinary proceedings and imposed punishment, is not entitled to invoke power under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

17.This issue was considered by the Division Bench of this Court in the Judgment in **D.Narayanan Vs. District Revenue Officer and others** reported in **2009 (4) MLJ 708** referred to above. The Division Bench of this Court, after considering various Judgments in this issue, has held that the Department has no power to impose second punishment on conviction to Government employee after imposing punishment in disciplinary proceedings on an earlier occasion based on the very same set of facts. The Division Bench of this Court has also further held that after initiating the disciplinary proceedings and imposing punishment, the authority is not entitled to impose another punishment by invoking Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to the Government servant, who is convicted in a criminal case.

18.In the present case, the criminal case has not been taken for trial and even if the petitioner is convicted in the said criminal case, the respondent cannot impose another punishment based on the said conviction.

19.The contention of the learned Special Government Pleader that after conviction, the Department is entitled to impose another



punishment by invoking Rule 17(c) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, is without merits and the same is contrary to the order of this Court in **W.P.Nos.27100 and 27101 of 2013, dated 02.07.2014 (C.Govindan Vs. The Joint Director of Agriculture, Dharmapuri).**

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20.The learned Single Judge of this Court in **W.P (MD)Nos.16957 and 16958 of 2014, dated 18.12.2014 (R.Manavalan Vs. The Additional Director of Agriculture and others)**, quashed the impugned order of suspension and retention passed against the petitioner therein at the last minute violating G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 8.6.2007.

21.As far as Crime No.26 of 2010 is concerned, admittedly, no investigation is made for nine years. The respondent knowing fully well the pendency of the criminal case from the year 2010, did not take any steps to complete the investigation and to file a charge-sheet. Further, as per the guidelines in the Government Order, the Government must initiate action atleast three months before the date of retirement and complete the proceedings before the date of retirement. The action of the Government by placing on the Government Order on the last date of retirement of Government servant, was deprecated by this Court in a number of cases. Only for the said reason, the Government has passed G.O.Ms.No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, giving guidelines to complete the proceedings well in advance before the date of retirement of a Government servant. Further, it is pertinent to note that the respondent has mentioned both the criminal cases in the order, suspending the petitioner as well as not permitting him to retire from service. The respondent is not entitled to invoke Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in respect of charges, as the respondent has already imposed punishment.

22.For the above stated reasons, these Writ Petitions are allowed as prayed for. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

ps



W.P(MD)Nos.19121 & 22066 of 2016

To

The Revenue Divisional Officer,
Kodaikanal,
Dindigul District.

+2CC TO MR.D.VENKATESH, Advocate Sr. No.90017 & 90021
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 89831

W.P(MD)Nos.19121 & 22066 of 2016
25.09.2019

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