IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2020

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.29515 of 2005

M.Mohamed Rasheed Maricar ..Petitioner

Vs

1.The Special Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai.

2.District Revenue Officer,
Nagapattinam. ..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of certiorarified mandamus, calling for the records of the respondents resulting in the impugned order of the first respondent in R.C.No.4(4)/1930/2005, dated 28.04.2005 confirming the order of the 2nd respondent passed in R.C.No.1418/2004/A2 dated 27.11.2004 and quash the same and direct the respondents to settle the petitioner's retirement benefits.
(Prayer amended as per order of this Court dated 28.07.2020 in W.M.P.No.3608 of 2019 in W.P.No.29515 of 2005)

For Petitioner : Mr.P.Ravi Shankar Rao
For Respondents : Mr.K.Magesh
Special Government Pleader

O R D E R

The relief sought for in this writ petition is to quash the impugned order passed by the first respondent dated 28.04.2005, confirming the order of the second respondent dated 27.11.2004 and consequently to direct the respondents to settle the petitioner's retirement benefits.

2.The case of the petitioner is that he was initially appointed as Junior Assistant in the year 1971 by the District Collector, Thanjavur through Tamil Nadu Public Service Commission. At the time of bifurcation of Thanjavur District, he was working as Assistant at Kilvelur Taluk, Nagapattinam District and had completed nearly 27 years of service. While so, he submitted an application dated 20.11.1998 to the District

Collector, Nagapattinam, seeking for voluntary retirement. Subsequently, the second respondent vide letter dated 30.11.1998 rejected the said application stating that the disciplinary proceedings against the petitioner was pending. Thereafter, enquiry was conducted and charges were proved. The Disciplinary Authority passed an order imposing punishment of removal from service. Though, the appeal before the Government was also dismissed, challenging the same the present writ petition.

3.The learned counsel for the petitioner would submit that the District Collector, Nagapattinam is the appointing authority of the petitioner, whereas, the District Revenue Officer, Nagapattinam has passed the order imposing punishment of removal from service. He would further submit that as per Rule 18(1)(iv) of the Tamil Nadu Public Service Commission, Regulations 1954, the Disciplinary Authority should have obtained necessary concurrence from the Commission on any disciplinary proceedings affecting a person serving in connection with the affairs of the State. Therefore, the impugned order is liable to be set aside.

4.The learned Special Government Pleader for the respondents would submit that though the petitioner had unauthorisedly absented for his duty from 21.3.1999, the second respondent initiated disciplinary proceedings against the petitioner and charges levelled against him were also proved. He would further submit that the District Revenue Officer, Nagapattinam is the appointing authority for the post of Assistants and hence, he has empower to pass the said order. He would further submit that getting approval from the Tamil Nadu Public Service Commission is not mandatory for imposing punishment on the Government Servant. Therefore, he submitted that this petition may be dismissed.

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

6. Admittedly, the petitioner was initially appointed as Junior Assistant, subsequently, he was promoted as Assistant. At the time of bifurcation of Thanjavur District, the petitioner was transferred to Nagapattinam District. When the petitioner was working as Assistant in Kilvelur Taluk, Nagapattinam District, the following charges were framed against the petitioner :

> ''Charge No.1: That I absented myself without attending the duty from 22.3.1999 when my voluntary retirement application was not approved or permitted in view of the pendency of the disciplinary proceedings.

Charge No.2 : Absented to attend the duty and has committed dereliction of duty and not attending the office without giving leave application and any notice.

Charge No.3 : Did not appear for enquiry on 17.2.2004 and 29.2.2004 inspite of notice issued.

Charge No.4 : Without obtaining permission I had gone to abroad and consequently the notices were not served on 17.2.2004 and 29.2.2004.''

During the pendency of the disciplinary proceedings, the petitioner submitted the application seeking voluntary retirement to the District Collector, Nagapattinam and the same was rejected. After completion of enquiry, the District Revenue Officer, Nagapattinam passed the order of imposing punishment of removal from service.

7. On a perusal of the records and the submission made by the learned Special Government Pleader for the respondents, though the District Collector is the appointing authority, whereas as per Rule 10 of Tamil Nadu Ministerial Service Rules read with Annexure II, the District Revenue Officer of the District is the competent authority for the post of Assistant,. Therefore, order passed against the petitioner is in accordance with law and hence, the petitioner was not allowed to retire from service voluntarily. Further, getting approval from the Commission of Tamil Nadu Public Service is not mandatory for taking action in the disciplinary proceedings in the cadre of Assistant and imposing punishment.

8. Under these circumstances, the contention of the learned counsel for the petitioner is not sustainable in law. Since charges levelled against the petitioner were proved, the second respondent by proceedings dated 27.11.2004 passed the order of imposing punishment of removal from service. As per Rule 10 of Tamil Nadu Ministerial Service Rules, the District Revenue Officer of the District is the competent authority for the post of Assistants.

9. Considering the above facts and circumstances, since the petitioner was unauthorisedly absented for his duty and disobeyed the order of the superior officer, this Court does not find any merit in this writ petition and the writ petition is liable to be dismissed. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Commissioner and
   Commissioner of Revenue Administration,
   Chepauk, Chennai.

2. The District Revenue Officer,
   Nagapattinam.

+1cc to Mr.A.Ilango, Advocate, S.R.No.36161
+1cc to the Government Pleader, S.R.No.36330

W.P.No.29515 of 2005

SRA(CO)
RV(08/12/2020)