IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :17.09.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.13091 of 2018
and
WMP.NOs.24283, 15386 & 15387 of 2018

M.Manoharan .. Petitioner

- Vs -

1. The Principal Secretary,
   Revenue Department,
   Fort. St.George, Secretariat,
   Chennai 600 009.

2. The Principal Secretary,
   Commissioner of Revenue Administration,
   Ezhilagam, Chepauk,
   Chennai 600 005.

3. The District Collector,
   Nagapattinam District,
   Nagapattinam 611 003.

4. The District Revenue Officer,
   Nagapattinam District,
   Nagapattinam 611 003. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified mandamus, to call for the records from the 3rd Respondent herein and to quash the proceedings in R.C.NO.24162/2015/A.4/ dated 21/05/2018 u/S 17(b) Tamil Nadu Civil Services (Discipline and Appeal) Rules and direct the 2nd respondent to reinstate the petitioner as per the proceedings in Ser7(2)/22932/2017/dated 23.03.2018 immediately as per Tamil Nadu Fundamental Rule 54(4) and further direct the 1st respondent to grant posting above the juniors to the petitioner.

For Petitioner : Ms.Malarvizhi

For Respondents: Mr. A.N.Thambidurai, Spl.G.P. For R1

ORDER

This Writ petition has been filed by the writ petitioner, to call for the records from the 3rd Respondent herein and to quash the proceedings in R.C.NO.24162/2015/A.4/ dated 21/05/2018 u/S 17(b) Tamil Nadu Civil Services (Discipline and Appeal) Rules and direct the 2nd respondent to reinstate the petitioner as per the proceedings in Ser7(2)/22932/2017/dated 23.03.2018 immediately as per Tamil Nadu Fundamental Rule 54(4) and further direct the 1st respondent to grant posting above the juniors to the petitioner.

2.On instructions from the client, who was personally available with the learned counsel throughout the Virtual Court proceedings, learned counsel appearing for the petitioner placed her submissions before the Court.

3.It is submitted by the learned counsel for the petitioner that though the writ petition was filed for challenging the charge memo, pending the writ petition, the petitioner was allowed to retire on 31.03.2020, without prejudice to the charges pending against the petitioner. It is the submission of the learned counsel for the petitioner that the petitioner having been allowed to retire without invoking the provisions of Rule 56 (1) (c) of the Fundamental Rules, renders the charge memo invalid and is liable to be quashed. In this regard, learned counsel placed reliance upon the decision of this Court in 2005 (3) CTC 4 [The State of Tamil Nadu Vs. R.Karuppiah], wherein the issue stood already settled by the Division Bench.

5. Learned Special Government Pleader appearing for the respondents did not dispute the facts submitted by the learned counsel for the petitioner.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side as also the decision relied on by the learned counsel for the petitioner and perused the materials available on record.

7. The facts in issue are not in dispute. The facts further disclose that the petitioner was permitted to retire from service on 31.3.2020. Though the order reveals that the petitioner was permitted to retire without prejudice to the departmental proceedings pending against him, however, it is seen that the provisions of Rule 56 (1) (c) of the Fundamental Rules have not been invoked.

8.Similar issue fell for consideration before the Division Bench of this Court in Karuppiah's case (supra), wherein, the Division Bench of this Court, adverting to the provisions of

Rule 56 (1) (c) held that unless the Rule 56 (1) (c) is invoked at the time of permitting an employee to retire from service, who is under suspension on a charge of misconduct, without fulfilling the requirements of Rule 56(1)(c) of the Fundamental Rules proceeding against the employee after retirement is impermissible as the requirements imposed u/r 56 (1) (c) is mandatory in nature. Once an employee is permitted to retire from service by the competent authority without invoking the provisions of Rule 56 (1) (c), the competent authority does not have any jurisdiction over the retired Government servant and no proceedings can be proceeded with further. In the case on hand, it is evident from the materials available on record that the mandatory provision of Rule 56 (1) (c) has not been invoked and without invoking the said provision, the petitioner having been allowed to retire from service, the proceedings pending against the said employee cannot stand the test of judicial scrutiny and are liable to be set aside.

9. In the light of the above decision of the Division Bench of this Court, this writ petition is allowed setting aside the proceedings of the 3rd respondent in R.C.NO.24162/2015/A.4/ dated 21/05/2018. However, liberty is granted to respondents to proceed against the petitioner post retirement in a manner known to law, if so advised. Consequently connected miscellaneous petitions are closed. However there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs

To
1.The Principal Secretary,
Revenue Department,
Fort. St.George, Secretariat,
Chennai 600 009.

2.The Principal Secretary,
Commissioner of Revenue Administration,
Ezhilagam, Chepauk,
Chennai 600 005.

3.The District Collector,
Nagapattinam District,
Nagapattinam 611 003.

4.The District Revenue Officer,
Nagapattinam District,
Nagapattinam 611 003.

+1 cc to The Government Pleader, Sr.No. 30505