

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.10472 of 2014

and

M.P.No.1 of 2014

K.Arunachalam

.. Petitioner

vs.

1.The Director of Elementary Education,
College Road, Chennai 600 006.

2.The District Elementary Educational Officer,
Erode District, Erode.

3.The Assistant Elementary Educational Officer,
Uthukuli Panchayat, Uthukuli,
Tiruppur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings issued by the 2nd respondent in PUM NO.780/A2/2005 dated 30.06.2010 and quash the same and issue a consequential direction to the respondents and to treat the period of suspension from 05.02.2005 to 12.02.2008 as a period spent on duty with all service and terminal benefits.

For Petitioner : Mr.R.Saseetharan

For Respondents : Mr.S.Suresh Kumar, G.A.,

O R D E R

This writ petition is filed to call for the records of the proceedings issued by the 2nd respondent in PUM NO.780/A2/2005 dated 30.06.2010 and quash the same and issue a consequential direction to the respondents and to treat the period of suspension from 05.02.2005 to 12.02.2008 as a period spent on duty with all service and terminal benefits.

2.The case of the petitioners is that he was initially appointed as Secondary Grade Teacher at Panchayat Union Elementary School, Venkalapalayam, Uthukuli Panchayat Union and then at Erode District and thereafter he was promoted as Headmaster at Primary School, Kunnampalayam in the same panchayat union on 31.05.2000 and he was allowed to retire from service on 31.12.2009 on attaining at the age of superannuation. It is the further case of the petitioner that while he was in service, he was placed under suspension on 05.02.2005 by the 2nd respondent on the ground that an inquiry into grave charges have been framed in proceedings dated 05.02.2005 and the same is pending under Rule 17(b) of the CCA Rules. The sum and substance of the charges are that the petitioner has misbehaved with female children who were studying in 4th and 5th standards; that he collected amounts from the students in contravention of the rules. On the same set of facts, criminal prosecution has also been initiated against the petitioner in CC.No.145/2004 under Sections 354, 323, 506 (I) & (II) IPC It is further averred by the petitioner that he has been acquitted by the learned District Munsif-cum-Judicial Magistrate, Perundurai, Erode District by the judgment dated 28.12.2007 on the ground that the prosecution has not proved the offence beyond reasonable doubt and he was entitled for the benefit of doubt. However aggrieved against the order of acquittal, the affected party has preferred a Criminal R.C.No.138/2008 before this Court and this court by its order dated 11.02.2013 dismissed the said criminal revision as withdrawn. The grievance of the petitioner is that during the pendency of the criminal proceedings, he was reinstated on 13.02.2008 and on 31.12.2009 he was allowed and after his retirement, the departmental proceedings were concluded by the 2nd respondent vide proceedings dated 30.06.2010 by imposing a punishment of stoppage of increment for a period of one year with cumulative effect without conducting any inquiry and in the same order the second respondent has regularized the period of suspension between 05.2.2005 and 12.02.2008 as the period spent on leave and thereafter on 29.08.2011 the pension payment order has been issued which is contrary to the earlier order dated 30.06.2010. Hence the present petition.

3.Learned counsel appearing for the petitioner submitted that pending disciplinary proceedings, if a person is allowed to retire from service, his services needs to be retained under FR 56 (1) (c). However, in the case on hand, vide proceedings dated 31.12.2009, the petitioner was allowed to retire from service on attaining the age of superannuation without invoking the provisions under FR 56 (1) (c) and in the same proceedings, he was reemployed from 01.01.2010 to 31.05.2010, till the end of the academic year. The respondents having failed to invoke FR 56 (1)(C), post the retirement of the petitioner, continuing the disciplinary proceedings and imposing punishment on the

petitioner is impermissible and unsustainable. In this regard, he placed reliance on the decision in N.M.Somasundaram Vs. The Director General of Police, O/o the Director General of Police, Government Estate, Madras and 3 others, (1997 WLR 120).

4.Learned Government Advocate appearing for the respondents referred to the counter affidavit filed on behalf of the respondent and submitted that though the petitioner was permitted to retire on 31.12.2009, however, no specific order was passed retaining his services under FR 56 (1) (C).

5. In view of the admitted fact that pending the disciplinary proceedings, the petitioner was permitted to retire from service without invoking the provisions under FR 56 (1) (C), the relationship of master and servant stood severed and, therefore, proceeding with the disciplinary proceeding post the superannuation of the petitioner and imposing punishment on the petitioner is not only alien to service jurisprudence, but also unsustainable. The respondents having not reserved their right to proceed against the petitioner post his retirement, the punishment imposed on the petitioner is non est in law and cannot be countenanced. The decision relied on by the learned counsel for the petitioner definitely comes to the aid of the petitioner and, therefore, this Court has no hesitation to hold that the impugned order passed by the 2nd respondent deserves to be set aside.

6.Accordingly, for the reasons aforesaid, the order passed by the 2nd respondent, impugned herein, is quashed and this writ petition stands allowed directing the respondents to calculate and pay the petitioner all the consequential service and retirement benefits by computing the period of suspension between 05.2.2005 and 12.02.2008 as duty period, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

jrs
To

1.The Director of Elementary Education,
College Road, Chennai 600 006.

2.The District Elementary Educational Officer,
Erode District, Erode.

3.The Assistant Elementary Educational Officer,
Uthukuli Panchayat, Uthukuli,
Tiruppur District.

+1cc to the Government Pleader SR.NO.36493

+1cc to Mr.R.Saseetharan Advocate SR.NO.36249

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SDR 18/12/2020



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