

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.12.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.19574 of 2014, 12196 of 2015 & 3631 of 2016
and M.P.Nos. 2 & 3 of 2014 & 1 of 2015,
WM.P.No.2992 of 2016

J.Bheeman

.. Petitioner in all WPs.

Vs.

1.The Managing Director,
Tantea, Coonoor.

2.Divisional Manager,
Cherambady Tea Division,
Cherambady.

.. Respondents in all WPs.

Prayer in WP.No.19574 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his reference No.869/2014/E and quash the impugned suspension order dated 01.07.2014 issued by him for want of jurisdiction and direct the 2nd respondent to reinstate the petitioner with all attendant benefits.

Prayer in WP.No.12196/2015: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in his reference No.869/2014/E and quash the impugned charge sheet dated 10.12.2014 issued by him and proper in the circumstances of the case.

Prayer in WP.NO.3631/2016: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 1st respondent in his letter /Memo E1/8099/2014 dated 15.12.2015 and quash the same.

In all WPs.

For Petitioner : Mr.T.Chellapandian for M/S.J.Franklin

For Respondents : Mr.S.Prabhu,
Additional Government Pleader

COMMON ORDER

As all the petitions are inter-connected and relating to the charges against the petitioner, they were heard together and are disposed of by this common order.

2.It is the case of the petitioner that he initially joined duty as factory supervisor in the office of the 2nd respondent herein on 07.03.1985 at Tiger Hill Tea Factory, Coonoor and

served there upto November 1989 and thereafter, on 02.12.1989 he was transferred to Cherambady Tea Factory at Gudalor and he worked there till February 1990. From 03.03.1990 to 15.04.1990, he worked as Factory Supervisor at Tiger Hill Tea Factory and thereafter from 16.04.1990 to 23.06.1990 he was worked as Factory Supervisor at Lawson Tea Factory. Subsequently he was promoted as Assistant Tea Maker and joined at Pandiar Tea Factory on 24.06.2006 and he worked there till 16.04.2013. Subsequently he was promoted as Tea maker Grade-II and joined at Cherambady tea factory on 17.04.2013 and working there as on date.

2.1. While he was working as Assistant Tea Maker at Pandiar Tea Factory, in the year 2013, he was placed under suspension by the 2nd respondent alleging carelessness in duty vide the order of the 2nd respondent dated 01.07.2014 under Rule 43 of TANTEA Staff Service Rules. Two charges, which are grave in nature, were framed against the petitioner, one relating to his carelessness in duty and the second relating to negligence and disobedience to the instructions of the superiors. As against the order of suspension, the petitioner filed W.P.No.19574 of 2014, and this Court granted an order of stay of the suspension vide order dated 25.07.2014 in M.P.No.2 of 2014. Based on the suspension, a charge sheet dated 10.12.2014 was served on the petitioner on 12.12.2014 alleging various charges and aggrieved against the said charge sheet, the petitioner has filed the second writ petition in WP.No.12196 of 2015 on the ground that the 2nd respondent has no authority to conduct the enquiry against the petitioner, since he is not the competent person to do so and this Court, vide its order dated 24.4.15, stayed the impugned charge memo as well.

2.2.It is the further case of the petitioner pursuant to the order of stay granted by this Court relating to the charge sheet dated 10.12.2014, the respondents withdrew the earlier charge sheet. However, after withdrawing the earlier charge sheet, again, they have issued the present charge sheet on the same set of allegations. In the mean while, the 1st respondent issued revised charge memo under Letter /Memo E1/8099/2014 dated 15.12.2015, which is wholly unsustainable and, therefore, left with no other alternative the petitioner filed the writ petition in WP.No.3631 of 2016.

3.Learned counsel for the petitioner submitted that pursuant to the order of stay granted by this Court, the petitioner has been transferred from Cherambaby Tea factory to Cherangode Tea Factory by the respondents, and is presently working in Cherangode Tea Factory. He further submitted though the charges were issued on the petitioner in the year 2015 and he was placed under suspension and all the charge memos have

been challenged before this Court, however at the time of superannuation, the petitioner was allowed to retire without retaining his services. Learned counsel appearing for the petitioner further submitted that pending disciplinary proceedings, if a person is allowed to retire from service, without retention of his service under FR 56 (1) (c), the proceeding cannot be continued. Therefore, continuance of 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 & Ors.* (1997 WLR 120). Learned counsel for the petitioner therefore prayed that the petitioner should be granted continuity of service along with all monetary benefits.

4. On the above contention this Court heard the learned Additional Government Pleader appearing for the respondents, who fairly conceded that the petitioner was permitted to retire without retention of 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 1st respondent deserves to be set aside.

6. Accordingly, for the reasons aforesaid, the order passed by the 1st respondent, impugned in WP.No.3631 of 2016, is quashed. Consequent upon quashment of the impugned order in WP No.3631/16, the impugned orders passed by the 2nd respondent in WP.Nos.19574 of 2014 & 12196/2015 are also quashed. Accordingly, these writ petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

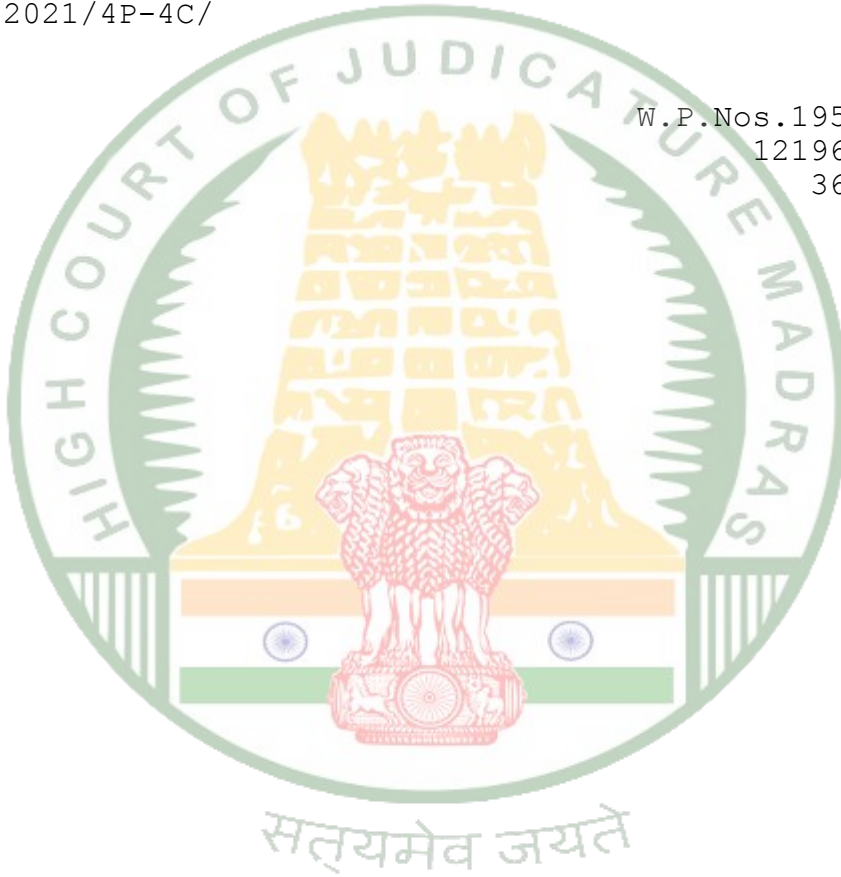
To

- 1.The Managing Director,
Tantea, Coonoor.
2. The Divisional Manager,
Cherambady Tea Division,
Cherambady.

+1 cc to The Special Government Pleader(Forest), SR.No.38572

AKM/11.02.2021/4P-4C/

W.P.Nos.19574 of 2014,
12196 of 2015 &
3631 of 2016
01.12.2020



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