

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.4129 of 2019

and C.M.P.No.25791 of 2019

A.Wilfred Kitchingh ... Appellant

-vs-

The District Collector,  
Kancheepuram,  
Kancheepuram District. ... Respondent

Appeal filed under Clause 15 of the Letters Patent Act against the order passed in W.P.No.18420 of 2019 dated 01.07.2019.

WP.No.18420 of 2019: Writ Petition filed under Article 226 of the constitution of India praying for issuance of a writ of certiorarified Mandamus to call for the records on the file of the respondent made in RC.No.10972/2019/A3 (order of suspension and not permitted to retire) dated 30-04-2019 and quash the same and consequently direct the respondent to permit the petitioner to retire from service with effect from 30-04-2019 and disburse all of the petitioner retirement and service benefits.

For Appellant : Mr.G.Selvi George

For Respondent : Mr.R.Udayakumar  
Additional Government  
Pleader

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

We have heard learned counsel for the appellant, who contends that the appellant has been kept under suspension and has not been allowed to retire without either the criminal proceedings having been taken to its logic conclusion and

without there being any charge memo having been served in the disciplinary matter. The contention, therefore, is that for an incident which took place just before the retirement of the appellant on 30.04.2019, instead of taking action against the complainant, action has been taken against the appellant, which is not justified.

2. Learned Single Judge has dismissed the writ petition, refusing to interfere with the order which was under challenge, namely that of not permitting the appellant to retire from service.

3. The only question that has been raised is on the ground of equity that the appellant has been put to an inequitable situation, where neither the proceedings are progressing nor any action is being taken and to the contrary, instead of taking action against the complainant, he has been promoted and the appellant is not being allowed to reap the benefits of his retirement.

4. Having considered the submissions raised, we find Fundamental Rules 56(1)(c)(iv) provides that a person under suspension cannot be allowed to retire after attaining superannuation in the event any criminal investigation is pending. We are extracting the Rule for ready reference :-

"56. (1) Retirement on Superannuation.- ....  
(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,  
(i)...  
(ii)...  
(iii)...  
(iv) against whom a complaint of criminal offence is under investigation or trial shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority."

5. In the face of the Rule, the challenge raised to the order not allowing the appellant to retire, cannot be accepted inasmuch as the Rule itself provides for withholding the retirement of an employee.

6. So far as the issue relating to there being no progress made in the inquiry itself and the charge memo having not been issued, as alleged by the appellant, we provide that the concerned Disciplinary Authority shall ensure that the charge memo, if not already served, shall be served within a period of one month from today and the inquiry proceedings, if any, shall be concluded expeditiously, preferably within three months thereafter.

7. The Writ Appeal stands disposed of accordingly. No costs. Connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

The District Collector,  
Kancheepuram,  
Kancheepuram District.

+1cc to the Government Pleader SR.12444

W.A.No.4129 of 2019

PA (CO)  
CB(06/03/2020)

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