



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.02.2020
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.1558 of 2013

WEB COPY

R.Manoharan

.. Petitioner

Vs.

The Commissioner,
Madurai Corporation,
Madurai.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 31.08.2012 in Ma.4.Nee.2/10083/2012 passed by the respondent and to quash the same in so far as the imposing condition in clause 1 and 4 of the impugned order, so far as stipulating recovery in the pension benefits and consequential relief of directing the respondent to allow the petitioner with all retirement benefits and pass such further or other orders.

For Petitioner	: Mr.R.Sureshkumar for M/s.S.Vijayashanthi
For Respondent	: Mr.R.Murali

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 31.08.2012 in Ma.4.Nee.2/10083/2012 passed by the respondent and quash the same insofar as the conditions in clauses 1 and 4, stipulating recovery in the pension benefits and consequently direct the respondent to allow the petitioner to retire with all retirement benefits.

2.The petitioner was appointed as Bill Collector on 06.11.1987 and was promoted as Bill Collector for House Tax Section on 08.02.1988. On 10.02.2005, the petitioner was placed under suspension under rule 8(9)(I) of the Madurai Corporation Service (D&A) Rules 1975, alleging misappropriation of Rs.1,36,694/- and he was issued with the charge memo vide No.M4Nee2/6674/2012 dated 17.08.2012. On 30.08.2012, the suspension order was revoked in proceedings Ma Nee No.2/6674/2012 and on 31.08.2012, the impugned order of recovery from the retirement benefits was passed which is under challenge in the present writ petition.

3.The respondent has filed counter affidavit, wherein, it has been stated that by impugned order, the petitioner was permitted to

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retire subject to four conditions mentioned therein. The petitioner has challenged the impugned order in respect of condition Nos.1 and 4 alone. In respect of condition No.1, it has been stated that without prejudice to the pending charge memo under file No.Ma.4/Ne2/6674/2004, the petitioner is allowed to retire and the 4th condition is that the terminal benefits will be settled after the petitioner paid the loss to the corporation to the tune of Rs.6,37,640/- with interest @16%, excluding the amount of Rs.1,36,000/- already paid by the petitioner agreeing the loss. Since the act of the petitioner caused huge loss by way of misappropriation to the corporation, there is nothing wrong in the impugned order and therefore, would pray that the interference of this Court is not necessary.

4. Heard the learned counsel for the petitioner as well as the respondent.

5. Perusal of record shows that no opportunity has been given to the petitioner and though the suspension order has been issued on 10.02.2005, the charge memo has been issued after a period of 7 years on 17.08.2012. Perusal of record also shows that the petitioner was allowed to retire with a condition to recover the above balance amount of misappropriation which is without any notice to the petitioner and it is not known on what basis, the respondent has come to the said conclusion. It is stated that disciplinary proceedings are pending and charge memo has been issued to the petitioner only at the verge of his retirement. The respondents ought to have followed the mandatory provision rule 56(1)(C) of the Fundamental Rules by retaining the petitioner in service for conclusion of the disciplinary proceedings. If at all the petitioner can be proceeded with the disciplinary proceedings, it can be permitted to be continued only in terms of rule 9(2)(b) of the Pension Rules. In the instant case, the respondent has not followed any of the procedure. Though the charge memo has been issued under rule 8(9)(I) of the Madurai Corporation Service (D&A) Rules 1975 consisting six charges including misappropriation of Rs.7,73,640/-, the petitioner has been allowed to retire from service without prejudice to the above charges.

6. Therefore, I am inclined to interfere with the impugned order. Accordingly, the impugned order in respect of clauses (1) and (4) dated 31.08.2012, passed by the respondent, is set aside and the respondent is at liberty to proceed against the petitioner in terms of Rule 9(2)(b) of Pension Rules and pass appropriate orders, after affording opportunity of hearing to the petitioner, within a period of three weeks from the date of receipt of a copy of this order.



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With the above direction, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala/smn

To

The Commissioner,
Madurai Corporation,
Madurai.

+1 CC to M/s.R.MURALI, Advocate (SR-8711[F] dated 27/02/2020)

+1 CC to M/s.S.VIJAYASHANTHI, Advocate (SR-8564[F] dated 26/02/2020)

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KB (08/06/2020) 3P 4C