



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.12076 of 2020

and W.M.P. (MD) No.10391 of 2020

(Through Video Conferencing)

WEB COPY

S.Baskaran

... Petitioner

Vs.

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Revenue Divisional Officer,
Devakottai Division,
Devakottai

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the second respondent ie., the Revenue Divisional Officer, Devakottai relating to his proceedings in Roc.A2/5257/2019 dated 29.07.2019 and quash the same and consequently direct the respondents to allow the petitioner to retire peacefully and make payment of retirement benefits within a specified time frame that may be stipulated by this Court.

For Petitioner

:Mr.S.Visvalingam

For Respondents

:Mr.M.Karuppasamy

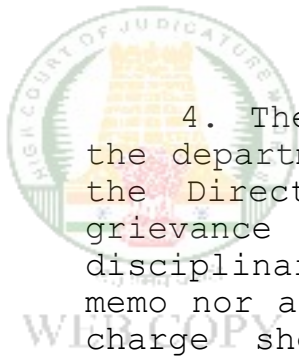
Government Advocate

ORDER

Challenging the proceedings of the second respondent ie., the Revenue Divisional Officer, Devakottai in Roc.A2/5257/2019 dated 29.07.2019 and for a consequential direction to the respondents to allow the petitioner to retire peacefully and make payment of retirement benefits, the petitioner is before this Court with this writ petition.

2. The petitioner was working as Village Administrative Officer in Puthoorani Village, Devakottai Taluk, Sivagangai District, while he was last serving and his superannuation date was 31.07.2019, however, two days prior to the superannuation day, ie., on 29.07.2019, the petitioner has been placed under suspension pending contemplation of disciplinary proceedings initiated against him.

3. Accordingly on 31.07.2019, the second respondent has passed an order not permitting the petitioner to retire from service and his service was retained under Rule 56(1)(c) of the Fundamental Rules.



4. Thereafter, no progress seems to have been made either in the departmental proceedings or in the alleged enquiry conducted by the Directorate of Vigilance and Anti Corruption. It is the grievance of the petitioner, in this regard, that, neither the disciplinary proceedings has been initiated by issuance of charge memo nor any criminal case has been filed against the petitioner or charge sheet has been filed against the petitioner and the petitioner, since has been placed under suspension and has not been permitted to retire from service, he is not able to get any retiral benefits and the subsistence allowance also has not been paid so far to the petitioner. Therefore, he is struggling to meet both ends, of course, after superannuation from service.

5. I have heard the learned counsel for the petitioner, who would submit that, such a prolonged suspension or order placing the employee not to retire peacefully on the date of superannuation because of the pendency or on contemplation of the disciplinary proceedings for a longer period without initiating a disciplinary proceedings or in a criminal case, without filing a charge sheet such a prolonged suspension or order keeping for a longer period under tenter-hook by not permitting him to retire from service peacefully may not be justifiable and therefore, as per the dictum of the Hon'ble Supreme Court in **Ajaykumar Choudary in CA No.1912/2015 dated 16.02.2015** reported in **2015 (2) SCALE 432**, interference is called for to the impugned order of suspension dated 29.07.2019. Therefore, the learned counsel for the petitioner would seek such indulgence from this Court.

6. However, the learned Special Government Pleader for the respondents would submit that, as against the petitioner grave charges were there and in this regard, enquiry was conducted by the Directorate of Vigilance and Anti Corruption, which was in progress and it is yet to be over and therefore, only after the enquiry, progress to be made by the Vigilance and Anti Corruption against the petitioner, the disciplinary proceedings could be initiated and therefore, expecting the employer respondent to conduct the disciplinary proceedings, the petitioner has been placed under suspension and he was not permitted to retire on superannuation, as the service and lien of the petitioner with the department has to be kept intact in order to complete the disciplinary proceedings. Therefore, the said orders dated 29.07.2019, placing the petitioner under suspension, which is impugned as well as the order dated 31.07.2019 not permitting the petitioner to retire on superannuation need not be interfered with at this juncture, he contended.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

8. No doubt, that some charges have been made against the



petitioner pursuant to the complaint and based on that complaint, the petitioner, at the verge of retirement, was placed under suspension through the impugned order dated 29.07.2019 consequently, by order dated 31.07.2019, he was not permitted to retire and his service is retained under Rule 56(1) (c) of the Fundamental Rules.

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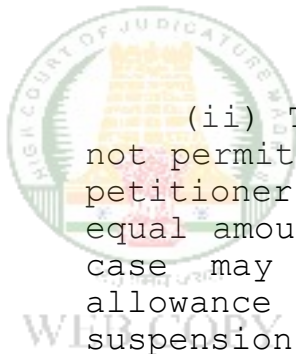
9. However, after more than a year, it seems that, no disciplinary proceedings has been initiated against the petitioner by issuance of charge memo for definite charges. Like that, it seems no considerable progress has been made in the enquiry conducted by the Directorate of Vigilance and Anti Corruption and as of now, no charge sheet has been filed by the Vigilance and Anti Corruption against the petitioner before any competent Court.

10. In such kind of situation, how the issue has to be handled has been indicated the Hon'ble Supreme Court in the aforesaid judgment in Ajay Kumar Choudhary's case dated 16.02.2015 cited supra.

11. In a case of this kind of nature, if the employee is kept under prolonged suspension or he has not been permitted to retire peacefully on superannuation pending contemplation of disciplinary proceedings and after a year or for a longer period, if no disciplinary proceedings even initiated by the employer or disciplinary authority and no considerable progress is also made in the investigation made by the Vigilance and Anti Corruption, certainly, Courts can interfere by issuing some directions fixing time frame, within which, the disciplinary proceedings could be initiated and completed against the erring employee and depending upon the status of the enquiry, further action to be taken as to whether an employee, like, the petitioner could be permitted to retire from service peacefully or punishment could be imposed against him.

12. In that view of the matter, this Court is of the considered view that, some reasonable direction may be given in this case to give a quietus to this issue:

(i) That the respondent, especially, the second respondent, being the disciplinary authority, can initiate disciplinary action by issuance of a charge memo on the definite charges against the petitioner within a period of one month from the date of receipt of a copy of this order and thereafter, after following the procedure under law, give an opportunity to the petitioner to respond to the charges and thereafter, if not satisfied, the second respondent can appoint an Enquiry Officer, conduct an enquiry and thereupon after giving second show cause notice/second opportunity to the petitioner, final order with regard to the conclusion of the disciplinary proceedings can also be passed by the second respondent and in this regard, the disciplinary proceedings, accordingly, could be completed within a period of four months thereafter;



(ii) Till such time, the petitioner's suspension and the order not permitting him to retire can sustain or shall continue. If the petitioner shall be entitled to get either subsistence allowance or equal amount to the pension by way of subsistence allowance, as the case may be, depending upon his entitlement, the subsistence allowance shall be paid immediately and continue to pay till the suspension is revoked. Since the petitioner has made a complaint that he has not received any amount, ie., the arrears from the date of suspension order till date, shall also be calculated and to be paid to the petitioner. In view of the time frame made by this Court to complete the disciplinary proceedings, the petitioner shall give fullest cooperation to the respondents to complete the enquiry in time.

(iii) Insofar as the criminal case is concerned, if the charge sheet is filed in the meanwhile, the same shall also be taken into account by the respondents, while conducting the disciplinary proceedings.

13. With these directions, the writ petition is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector,
Sivagangai District, Sivagangai.

2.The Revenue Divisional Officer,
Devakottai Division, Devakottai.

+1 cc to The Special Government Pleader Sr.No.17853

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