



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P.(MD)Nos.10710 and 10711 of 2018

and

W.M.P.(MD)Nos.9807 to 9810 and 18979 of 2018

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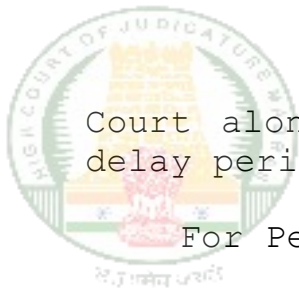
P.Manisekaran, S/o.P.Packiam,
Executive Engineer (under suspension),
Public Works Department. ... Petitioner in both WPs

/vs./

- 1.The State of Tamil Nadu,
Represented by the Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai - 600 009.
- 2.The Engineer-in-Chief (Buildings),
Office of the Engineer-in-Chief (Buildings),
Chief Engineer (Buildings),
Chennai Region & Chief Engineer (General),
Chepauk, Chennai - 600 005.
- 3.The Chief Engineer (Buildings),
Public Works Department,
Madurai Region, Madurai.
- 4.The Superintending Engineer,
Public Works Department,
Buildings (Constructions & Maintenance) Circle,
Tirunelveli. ... Respondents in both Wps

PRAYER in W.P.(MD)No.10710 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned orders passed by the 1st respondent in G.O.(D)No.116, Public Works (E1) Department, dated 30.04.2018 and charge memo in letter No.8562/E1/2018-3, dated 30.04.2018, quash the same.

PRAYER in W.P.(MD)No.10711 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned orders passed by the 1st respondent in G.O.(D)No.121, Public Works (E1) Department, dated 30.04.2018 and G.O.(D)No.122, Public Works (E1) Department, dated 30.04.2018, quash the same and consequently direct the respondents to settle the retirement benefits of the



Court along with interest at the rate of 18% per annum for the delay period.

For Petitioner : Mr.D.Sivaraman (in both WPs)

For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader (in both WPs)

COMMON ORDER

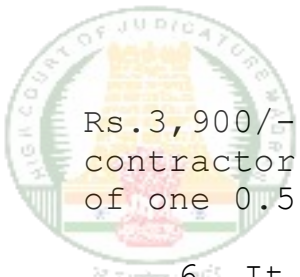
The petitioner while holding the post of Executive Engineer in the respondent department was due to retire on 30.04.2018, on which date, certain charges were levelled against the petitioner. Through the impugned charge memo dated 30.04.2018 and by other Government Orders passed on the same date in G.O.Ms.No.121, 122 and 116, Public Works (E1) Department, all dated 30.04.2018, the petitioner was placed under suspension and was not permitted to retire from the service on attaining the age of superannuation.

2. The learned counsel for the petitioner would rely on a letter dated 07.05.2018 issued by the Principal of Government ITI Institute, Nagercoil to the Assistant Engineer, evidencing that a Half HP Mono Block Motor has been fitted in the Marine Engine Fitter Department and therefore, the charges itself cannot be sustained. He would also place reliance on G.O.(Ms).No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 and submit that the action on the part of the respondents in not allowing the petitioner to retire on the last date of his retirement, on the basis of the alleged charges and the consequential suspension order cannot be sustained.

3. The learned Government Advocate, by placing reliance on the averments in the counter affidavit would submit that this is a case of serious irregularity of financial misappropriation and based on the report of the investigating Agency, charges came to be levelled against the petitioner. He would also submit that since the scope of interference to the charge memo or suspension order is very limited, it is always open to the petitioner to establish his innocence during the course of disciplinary enquiry and therefore, this Court may not entertain this petition by exercising Article 226 of the Constitution of India.

4. I have given careful consideration to the submissions made by respective counsel.

5. The predominant charges against the petitioner are that he had failed to properly check measure the work on 'Construction of Workshop and Class Room for hearing and speech impaired students in the Government ITC Campus' and had made a fraudulent payment of



Rs.3,900/- [Rupees Three Thousand and Nine Hundred only] to a contractor and further had not executed the work of installation of one 0.5 HP Monoblock Motor.

6. It is not in dispute that the petitioner was due to retire on 30.04.2018 and the impugned order of the charges framed, placing him under suspension and not permitting him to retire, were all passed on the same date, (i.e.,) on 30.04.2018. The occurrence for which charges came to be framed took place in connection with a work that had commenced on 10.08.2015 and ended on 10.02.2016.

7. This is not an isolated case where a Government employee has not been permitted to retire on the last date of his superannuation and charges being levelled against such an employee. In view of such recurrent identical cases being brought to the notice of the Government, G.O.(Ms).No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, was passed, regulating such actions and issuing certain guidelines. As per the aforesaid G.O., the disciplinary authority was advised not to resort to last minute suspension on the Government servant on the date of his retirement and if any irregularity or offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service, without prejudice to the disciplinary case pending against him or place him under suspension, based on the gravity of the irregularities. It was also stated in the aforesaid G.O., that any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of the retirement of the Government servant.

8. In the instant case, the work had commenced on 10.08.2015 and completed on 10.02.2016, which is reflected in the charge memo itself. As per the documents annexed to the charges, it is seen that the discrete enquiry referred to in the impugned order has been made by the Special Chief Engineer (PWD) and reported on 26.04.2018, based on which, impugned charges came to be framed. There is absolutely no reference or justification as to what prompted the respondents to wait for almost three years therefrom, to initiate action for the alleged failure to check measure the construction work.



9. Such circumstances of this nature has prompted the Government to issue guidelines, as one evidenced in G.O.(Ms). No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007. The issue as to whether the respondents herein can be permitted to continue with the action, after such laches on their part came up for consideration before the Hon'ble Supreme Court in the case of **P.V.Mahadevan vs. Managing Director, Tamil Nadu Housing Board**, reported in **2005 (4) CTC 403** and the Hon'ble Apex Court was of the view that the laches committed by the Department should not be put against the employee. The relevant portion of the order reads as follows:

14. Under the circumstance, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.'

10. Likewise, a learned Single Judge of this Court in a decision in the case of **M.Nainar Mohammed vs. The State of Tamil Nadu** reported in **2017 (5) CTC 536**, had also placed reliance on G.O.(Ms).No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007 and had quashed departmental proceedings and while doing so, the laches on the part of the department were also taken into account.



11. The learned counsel for the petitioner places reliance on a letter dated 07.05.2018 issued by the Principal of Government ITI Vocational Institute, Nagercoil to the Assistant Engineer stating that the work of installation of Half HP Mono Block Motor in the Marine Engine Fitter Department has been completed.

12. The learned Government Advocate submitted that two Motors were required to be installed, out of which, one Motor had been installed by the contractor and the petitioner had failed to check measure the same.

13. Though such an objection raised by the learned Government Advocate is reflected in the counter affidavit, there is no mention about the installation of two HP Mono Block Motors in the charge memo. What is not stated in the charge memo cannot be improved by way of a statement made in the counter affidavit. As such, the very fact that the reason for which the petitioner was not permitted to retire on the last date of his retirement, not being reflected in the charge memo itself, would vitiate the charge memo. On this ground also, the petitioner would be entitled to succeed.

14. For the foregoing reasons, impugned orders passed by the 1st respondent in G.O.(D)No.121, Public Works (E1) Department, dated 30.04.2018, G.O.(D)No.122, Public Works (E1) Department, dated 30.04.2018, G.O.(D)No.116, Public Works (E1) Department, dated 30.04.2018 and charge memo in letter No.8562/E1/2018-3, dated 30.04.2018 stand quashed. Both Writ Petitions are allowed. Consequently, the petitioner would be entitled for receiving all his monetary and service benefits including his pensionary benefits. The respondents shall endeavour to disburse the retirement benefits as expeditiously as possible, in any event, within a period of two (2) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1.The Principal Secretary to Government,
Public Works Department,
Secretariat, Chennai - 600 009.

2.The Engineer-in-Chief (Buildings),
Office of the Engineer-in-Chief (Buildings),
Chief Engineer (Buildings), Chennai Region & Chief Engineer
(General),
Chepauk, Chennai - 600 005.

3.The Chief Engineer (Buildings),
Public Works Department, Madurai Region, Madurai.

4.The Superintending Engineer,
Public Works Department,
Buildings (Constructions & Maintenance) Circle, Tirunelveli.

+2 CC to M/s.D.SIVARAMAN, Advocate (SR-2228 & 2229)

+1 CC to M/s.SPL.GP (SR-2320 & 2323)

Common Order made in
W.P. (MD) Nos.10710 and 10711 of 2018

Dated:
20.01.2020

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TR(30.01.2020) 6P 8C