



WEB COPY

W.P(MD)No.15129 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2020

(Reserved on 16.12.2019)

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.15129 of 2015

and

M.P(MD)No.2 of 2015

K.Sankaran

... Petitioner

vs.

1)The Additional Director of Survey & Land Records,
Survey & Land Records Department,
Chepauk, Chennai-5.

2)The Regional Deputy Director,
Survey & Land Records Department,
Madurai, Madurai District.

3)The Assistant Director,
Survey & Land Records Department,
Thirunelveli,
Thirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned punishment order of compulsory retirement passed by the 3rd respondent in his proceedings in Se.Mu.A.No.A4/1034/2010 dated 11.03.2013 and consequential confirmation order passed by the 2nd respondent in his proceedings in Se.Mu.A.No.A3/7582/14 dated 09.10.2014 and the consequential rejection order passed by the 1st respondent in his proceedings Na.Ka.L1/12042/15 dated 29.06.2015 and quash the same as illegal.

For Petitioner : Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates

For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

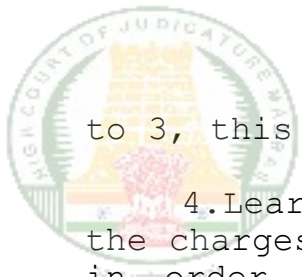
The prayer in the writ petition is for issuance of a Writ of Certiorari, calling for the records relating to the impugned punishment order of compulsory retirement passed by the 3rd respondent in his proceedings in Se.Mu.A.No.A4/1034/2010 dated 11.03.2013 and consequential confirmation order passed by the 2nd respondent in his proceedings in Se.Mu.A.No.A3/7582/14 dated 09.10.2014 and the consequential rejection order passed by the 1st respondent in his proceedings Na.Ka.L1/12042/15 dated 29.06.2015 and quash the same as illegal.

2.Learned counsel for the petitioner would submit that the petitioner was initially appointed as Surveyor on 11.10.1984 on consolidated pay and subsequently after completion of ten years of



service, his service has been regularised and brought into time scale of pay with effect from 11.10.1994. Thereafter, the petitioner was promoted as Firka Surveyor on 01.06.2005 and was working in the said post to the utmost satisfaction of his superiors without giving any room for complaints. His next avenue of promotion is Sub Inspector of Survey/Deputy Surveyor and the petitioner has also passed in the departmental test for the said promotion. Hence, he made a representation to the 3rd respondent requesting to make necessary entries in his service book regarding his pass in the departmental test. However, without doing so, panel for promotion to the post of Sub Inspector of Survey/Deputy Surveyor for the year 2009 was drawn, in which, the petitioner's name was not found place. Hence, again the petitioner made a representation to the respondents 2 and 3 on 21.08.2009 to make necessary entry in his service book regarding the pass in departmental test. While so, a charge memo under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules was issued against the petitioner alleging that he failed to submit monthly diary for February 2009, for which, the petitioner submitted his explanation and ultimately, the 3rd respondent by proceedings dated 11.09.2009 imposed the punishment of stoppage of increment for 12 months without cumulative effect, against which, he filed W.P(MD)No.12335 of 2010 which is pending.

3.He would further submit that subsequently, the petitioner made a representation by way of an appeal to the 2nd respondent requesting to set-right the injustice caused to him and to give him promotion as Sub Inspector of Survey/Deputy Surveyor from the date on which his immediate junior was promoted. As no order was passed, he filed W.P(MD)No.9767 of 2011 which was allowed by order dated 22.08.2012 directing the respondents to include his name in the panel for promotion to the post of Sub Inspector of Survey/Deputy Surveyor. In the meanwhile, the petitioner was transferred from Elathur Village, Senkottai Taluk, Tirunelveli District to Kanyakumari District by order dated 19.11.2010, against which, he filed W.P(MD)No.14641 of 2010 and this Court by order dated 15.12.2010 had granted interim stay. However, the petitioner was permitted to join duty only on 16.08.2011 at Elathur Village, but was not allotted with any work and not paid with any salary. That being so, the petitioner was issued with the impugned order of compulsory retirement by the 3rd respondent in his proceedings dated 11.03.2013 for the charge memo issued on 24.02.2010 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on eight counts. According to the petitioner, the said charge memo was never served on him and only from the impugned order, he came to know about the said charge memo which was said to be affixed in his residence. The appeals filed by the petitioner against the punishment of compulsorily retirement were dismissed by the respondents 2 and 1 by proceedings dated 09.10.2014 and 29.06.2015 respectively. Against the above orders passed by the respondents 1



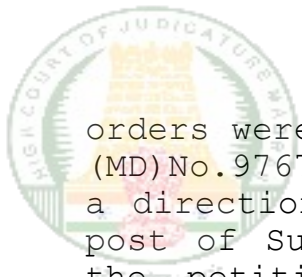
to 3, this writ petition has been filed.

4.Learned counsel for the petitioner would further state that the charges levelled against the petitioner are filmsy in nature and in order to wreck vengeance against the petitioner for giving representation to the higher authorities for redressal of his grievance, the above punishment has been awarded. While the charges are not serious like misappropriation or bribe, punishment of compulsorily retirement to cut short the career of the petitioner as a government servant, without even considering his 30 years of unblemished service, is grossly disproportionate to the charges levelled against the petitioner. Thus, he would pray for setting aside the impugned orders.

5.Learned Government Advocate appearing for the respondents would state that though the petitioner had actually passed the departmental test, he did not submit the hall ticket and details of results for making necessary entries regarding his pass in the departmental test and only on 11.02.2010, he provided the said details and thereafter, it was entered in his service register. Therefore, his name was not included in the promotional panel for the year 2009. He would further state that disobedience to the orders of the higher officials, non submission of diaries through proper channel in time, non reporting to the review meetings conducted by the higher officials, reluctance in attending election work, frequently absconding from duty without submission of leave in time, not discharging his duty to the satisfaction of his superiors, committing malpractices in affixing his signature in the attendance register etc., are the frequent attitude of the petitioner during his service and finding that all the charges levelled against him were proved, the 3rd respondent ordered for compulsory retirement which was rightly confirmed by the respondents 2 and 1. Thus, he would pray the interference of this Court is not necessary.

6.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

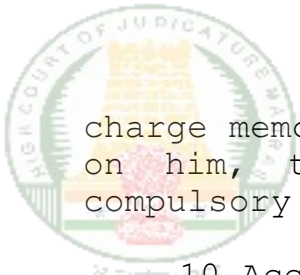
7.Perusal of record shows that while the petitioner gave representations to the 2nd respondent on 19.02.2009, requesting to make necessary entries in his service register regarding his pass in the departmental test, he was issued with the charge memo under rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules stating that he failed to submit monthly diary for February 2009, for which he submitted his explanation, but on 11.09.2009, the petitioner was imposed with the punishment of stoppage of increment for 12 months without cumulative effect. Aggrieved over the same, the petitioner filed W.P(MD)No.12335 of 2010 which is pending. The petitioner also gave a representation to the authorities to set right the injustice caused to him and to give him promotion from the date on which his immediate juniors were given promotion, where



orders were not passed and therefore, he was constrained to file W.P (MD)No.9767 of 2011 which was allowed by order dated 22.08.2012 with a direction to include his name in the panel for promotion to the post of Sub Inspector of Survey/Deputy Surveyor. While being so, the petitioner was transferred from Tirunelveli to Kanyakumari District by order dated 19.11.2010, against which, the petitioner filed W.P(MD)No.14641 of 2010 and this Court was pleased to grant interim stay on 15.12.2010. However, the petitioner was permitted to join duty only on 16.08.2011, but was not allotted with any work and also not paid with any salary. This being the situation, the petitioner was issued with the impugned punishment order of compulsorily retirement for the charge memo dated 24.02.2010 on eight counts. According to the petitioner, he came to know about the said charge memo only from the impugned order which was said to be affixed in his residence.

8.Perusal of the charges indicates that the petitioner was charged for filing cases against the respondents before this Court. The cases had been contested by the respondents and orders have also been issued by this Court in favour of the petitioner and on the allegation that the petitioner had given complaint against the respondents to the District Collector and also filed writ petitions before this Court, the respondents passed the order of compulsory retirement. In my considered opinion, it is a major punishment imposed on the petitioner without even following the due process of law. There is no explanation by the respondents as to the averments of the petitioner, but only allegation has been made against him. Even as per the counter affidavit, no opportunity was given to the petitioner and for the filmsy charges that the petitioner had filed cases against the department and he had sent representation to the higher authorities for redressing his grievance, punishment of compulsory retirement has been passed which is unheard of and in my opinion, it is only an act of victimising the petitioner. It is pertinent to note that the respondents have contested the matter before the court and the cases ended in favour of the petitioner. The petitioner has been put to serious mental harassment by the respondents for approaching the court and for redressal of his grievance to the higher authorities. Even the charge memo was not served on him and when the respondents very well know where the petitioner is working, are said to have affixed the charge memo in his residence. It is very unfortunate that the appeal filed by the petitioner is also dismissed which is total non application of mind.

9.Perusal of record also shows that the petitioner has passed the departmental test to qualify himself in the promotional panel which was not entered in the Service Register, for which, he was overlooked for promotion and naturally, he had given representation to enter his qualification in his Service Register and grant him promotion. As it was not done, he had given representation to the higher authorities which a prudent man will do for which, based on a



charge memo affixed on the door of his residence, without serving it on him, the respondents have imposed the major punishment of compulsory retirement by cutting short his career.

10. Accordingly, the impugned punishment order of compulsory retirement passed by the 3rd respondent in his proceedings in Se.Mu.A.No.A4/1034/2010 dated 11.03.2013 and consequential confirmation order passed by the 2nd respondent in his proceedings in Se.Mu.A.No.A3/7582/14 dated 09.10.2014 and the consequential rejection order passed by the 1st respondent in his proceedings Na.Ka.1/12042/15 dated 29.06.2015 are quashed and the respondents are directed to reinstate the petitioner as if he had continued in service with all consequential service and monetary benefits including promotion from the date his immediate junior was promoted.

With the above direction, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

bala

To

1) The Additional Director of Survey & Land Records,
Survey & Land Records Department,
Chepauk, Chennai-5.

2) The Regional Deputy Director,
Survey & Land Records Department,
Madurai, Madurai District.

3) The Assistant Director,
Survey & Land Records Department,
Thirunelveli, Thirunelveli District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-2911[F]

PRE-DELIVERY ORDER MADE IN

W.P(MD)No.15129 of 2015

DATED : 24.01.2020

SMA/06/02/2020/5P/5C