



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.21207 of 2008

AND

M.P.No.1 of 2008

M.Xavier

...Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Principal Secretary to Government,
Highways Department, Secretariat,
Chennai - 600 009.

2.The Chief Engineer (Highways),
Highways Department,
NABARD & Village Roads,
Chennai - 600 032.

...Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the order passed by the first respondent in its Letter No.3847/H.L.1/2006-16, dated 09.07.2008 as communicated by the second respondent in his Memorandum No.7785/2008/A2, dated 30.07.2008 and quash the same.

For Petitioner : Mr.S.Mani

For Respondents : Mr.C.Selvaraj
Government Advocate (Civil)

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the first respondent in its Letter No.3847/H.L.1/2006-16, dated 09.07.2008 as communicated by the second respondent in his Memorandum No.7785/2008/A2, dated 30.07.2008 and quash the same.

2. The petitioner, while working as Superintending Engineer, had attained the age of superannuation and was due to

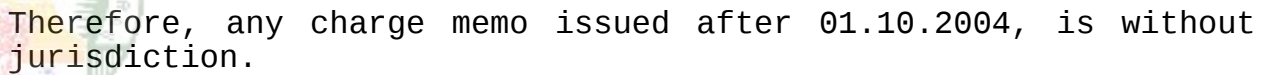


retire on 31.03.2002. On the eve of his retirement, he was placed under suspension vide G.O.(2D) No.12, Highways Department, dated 27.03.2002 and by an order in G.O.(2D).13, Highways Department, dated 28.03.2002, he was not allowed to retire. He challenged both the orders by way of Original Applications in O.A.No.1797, 1862 of 2002 and 196 of 2003 before the Tamil Nadu Administrative Tribunal at Chennai. The Tribunal, after hearing both the sides, has observed that the respondent, who was prompt in taking action and placing the applicant under suspension just three days prior to the date of retirement, had not shown equal interest in taking up the disciplinary proceedings, framing the charge memo, holding an enquiry and passing final orders. In view of the same, a direction was given to the respondents to frame charges and dispose of the disciplinary proceedings by its order dated 14.01.2003.

3. Even thereafter, no action was taken by the respondents. Therefore, he once again approached the Tribunal by way of O.A.No.3106 of 2003 and the Tribunal has disposed of the Original Application with a direction to the Government to dispose of the disciplinary proceedings contemplated against the applicant within a period of six months from the date of passing order, failing which, the applicant shall be deemed to have retired from service with effect from 31.03.2002 and will be entitled for disbursement of terminal benefits. This order was passed on 31.03.2004. In spite of the same, no charge memo was framed and the disciplinary proceedings were not initiated within a period of six months that is to say on or before 30.09.2004. After lapse of four years, a charge memo dated 09.07.2008 came to be served on the petitioner in Memo No.7785/2008/A2, dated 30.07.2008. The petitioner has challenged the charge memo on the ground of delay as well as on malafide.

4. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

5. At the outset, when there is a positive direction given by the Tribunal that the Government shall initiate the disciplinary proceedings within a period of six months from 31.03.2004, it is bounden duty of the respondents to initiate the proceedings within a time limit prescribed by the Judicial forum. It is further observed by the Tribunal that if the disciplinary proceedings are not disposed of within that specified time, the applicant shall be deemed to have retired from service with effect from 31.03.2002 and will be entitled for disbursement of terminal benefits. This order was not appealed against and has become final. In that event, the order automatically takes effect on the lapse of six months and the respondent lost their right to initiate any disciplinary action after period of six month that is to say, on 30.09.2004.



7. As stated above, the imputation of misconduct does not disclose as to what are movable and immovable properties held by him during the period from 1999 to 2001. The charge in this aspect is very vague. Surprisingly, the charge with regard to substandard execution of work is concerned, a super check was conducted on 26.06.2007 for the work executed under the supervision of the petitioner during 1999 to 2001. Naturally, when a work is executed, a test shall be conducted before acceptance or taking over of the completed project, which shall be before putting the road into use.

8. However, it is noted that after placing him under suspension on 27.03.2002 ever after issuance of the order by the Tribunal on 14.01.2003 and after pronouncement of the second order on 31.03.2004 by the Tribunal, the respondents have not woken up from their deep slumber. After lapse of three years after the order of the Tribunal dated 31.03.2004, they have conducted a super check and found that execution of the work was substandard. By this time, the road was put to use for seven years and natural wear and tear had happened. Therefore, the said charge, on the face of it, is baseless, without materials, tainted with malafides and was issued to cover up lacuna on the part of the respondents.

9. In that view of the matter, the charge memo does not stand the scrutiny of the law. Therefore, on the grounds of lack of jurisdiction, delay and malafides, the charge memo is liable to be quashed and accordingly, the same is quashed. The respondents are directed to disburse all the terminal benefits due to the petitioner within a period of three (3) months from the date of receipt of a copy of this order, of course, with interest at the rate of 6% from the date of his retirement till the date of disbursement.



With the above observations and directions, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Highways Department, Secretariat, Chennai - 600 009.
- 2.The Chief Engineer (Highways),
Highways Department, NABARD & Village Roads,
Chennai - 600 032.

+1cc to the Government Pleader SR.No.33943

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and M.P.No.1 of 2008

PCH(CO)
RVM(26/08/2021)