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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2021

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THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.No.22470 of 2008

&

M.P.No.1 of 2008 and W.M.P.No.13338 of 2016

Prof N.Gunachandran

... Petitioner

Vs.

1.The Secretary to the
Government of Tamil Nadu
Home Department
Fort St.George
Chennai-600 009

2.The Director
Forensic Sciences Department
Chennai-600 004

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents pertaining to the impugned order in G.O.Ms.No.1122 Home (Pol.18) Department, dated 29.08.2008 of the first respondent and quash the same and its cascade effects and to direct the respondents to relieve the petitioner on retirement with all benefits and necessary consequential orders.

For Petitioner : Mr.V.Raghupathi

For Respondents : Mr.C.Selvaraj
Govt.Advocate

O R D E R

This petition is filed seeking a direction to the respondents to quash the impugned order in G.O.Ms.No.1122 Home (Pol.18) Department, dated 29.08.2008.



2. The petitioner while working as a Assistant Director under the 2nd respondent was placed under suspension in G.O.Ms.No.1122 Home (Pol.18) Department dated 29.08.2008 in view of the pendency of the criminal case in C.C.No.7110 of 2005 on the file of XI MM Court, Saidapet, Chennai, wherein he was arrayed as A2. He challenged the order of suspension. During the pendency of the writ petition, A1 filed a discharge petition before the Magistrate Court and it was dismissed. Against the dismissal, he preferred a revision before this Court in CrI.R.C.No.148 of 2007. This Court by its order dated 03.09.2010 has discharged A1, the operative portion of the order reads as under:

"10. In view of setting aside the impugned order passed by the learned Magistrate on the legal grounds as stated above, it is made clear that the benefit of this order is also to be given to the other co-accused in Arokia Thomas vs. State of T.N reported in (2006) 10 SCC 542. Accordingly, A2& A3 are also discharged from the case pending in C.C.No.7110 of 2005, pending on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai. "

As per the above paragraph A2 and A3 were also discharged from the case. Because of that the criminal case could not be proceeded with and criminal proceedings had become non-est as against the petitioner.

3. Learned Government Advocate (Civil) side would submit that after the order passed by this Court in CrI.R.C.No.148 of 2007 dated 03.09.2010, the Director General of Police has ordered for further investigation in view of the liberty granted in the above order for conducting further investigation. Thereafter, the case was transferred to CBCID and a criminal case in C.C.No.32 of 2013 was filed on the file of Chief Judicial Magistrate Tiruppur. It is submitted by the petitioner that the respondents have wrongly interpreted the liberty given in the concluding part of the order passed in CrI.R.C.No.148 of 2007 and he has challenged the said action by filing another petition for quashing the repeated criminal proceedings before this Court. Hence, the petitioner can agitate the same before the appropriate forum and seek his remedy.

4. From the materials placed before this Court, it is noted that the order of suspension on the eve of the retirement of the petitioner dated 29.08.2008 was issued in view of the pendency of trial in C.C.No.7110 of 2005 on the file of the XI Metropolitan Magistrate, Saidapet, Chennai. In view of the order passed by this Court in CrI.R.C.No.148 of 2007 dated 03.09.2010 all the three accused were discharged from the case. In that



event, the basis for issuing suspension order ceases to have effect. Resultantly, the petitioner cannot be kept under service and he should have been permitted to retire as no criminal case was pending against him.

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5. Relevant portions of F.R.56 are extracted for reference.

56.(1) Retirement on Superannuation:- (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing.

56(c) Notwithstanding anything contained in clause(a), a Government servant who is under suspension..

(i)...

(ii)...

(iii)...

(iv) against whom a complaint of criminal offence is under investigation or trial.

Shall not be permitted by the "appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct of criminal misconduct or the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamilnadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamilnadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded.

56(1)(c)- Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.

6. As per F.R.56 (1)(a) no Government servant shall not be retained in service after the age of retirement except with the sanction of the Government on public grounds recorded in writing. In the instant case, the petitioner was retained in service due to the pendency of the criminal trial in C.C.No.7110 of 2005. When it is over, it is deemed that the petitioner had retired from service and master and servant relationship between



him and the respondent severed. He was not retained by any other order of second suspension.

7. F.R.56(1)(c) also contemplates a situation that the order under 56(1)(a) would be valid only till the conclusion of disciplinary or Court proceedings. Instructions to F.R.56(1)(c) specify that the Government servant whether fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. In this case the criminal proceeding (ie) trial in C.C.No.7110 of 2005 terminated by order dated 03.09.2010 in Crl.R.C.No.148 of 2007. It is also important to state that a fresh case in C.C.No.32 of 2013 was taken cognizance of after a period of 3 years. The respondents have not passed any order against the petitioner.

8. After termination of the criminal proceeding if at all the petitioner had to be retained in service a second order of suspension with the sanction of Government should have been passed. In the present case no such order was passed by the disciplinary authority. Whereas the DGP had taken a decision to proceed with further investigation and no materials were produced before this Court to establish the involvement of the petitioner, much less any order to retain the petitioner in service on public grounds. In the absence of adherence to the above mandatory procedures, it is clear that, the petitioner was not retained in service and he cannot be kept under the sword of Damocle's for ever. As such on attaining the age of superannuation, the petitioner should be deemed to have retired from service and the impugned order had lost its force and became futile.

9. It is required to be noted that apart from the criminal case no other disciplinary proceedings were initiated or pending against the petitioner. It is also relevant to note that the said incident alleged to have taken place in the year 2002.

Rule 9 of Tamil Nadu Pension Rules reads as under:

9.Right of competent authority withhold or withdraw pension

2 (a)....

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,

(i)...

(ii) Shall not be instituted in respect of any event which took place more than four years before such institution

(6) For the purpose of this rule,-

(a)...

(b)...



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(c) judicial proceedings shall be deemed to be instituted

(i) in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made.

10. As per clause (b)(ii) of Sub Rule (2) of Rule 9 of Tamil nadu Pension Rules, departmental proceedings shall not be in respect of any event which took place for more than four years before such institution. As per Rule 9(6)(c)(i) in case of criminal proceedings, it is deemed to have initiated on the date of complaint or report of a Police officer of which the Magistrate take cognizance. In this case, the Magistrate took cognizance only in the year 2013. Admittedly, the alleged incident in which the petitioner said to have involved is said to have taken place in 2002 and therefore it has become a stale issue and there is no scope for taking any departmental action against the petitioner after so many years of his retirement. Therefore, the order of suspension issued to the petitioner in G.O.Ms.No.1122 Home (Pol.18) Department dated 29.08.2008 does not survive any more and it is liable to be set aside and accordingly, the same is set aside.

11. Consequent to the above orders, a direction is given to the respondents to pass appropriate orders and to pay all the terminal benefits within a period of three months from the date of receipt of a copy of this order. It is also noted that the petitioner was discharged from the criminal case on 03.09.2010 and the respondents have not settled the dues within a reasonable time and therefore the petitioner is entitled to payment of interest at the rate of 9% on the delayed payment from 03.09.2010 till the date of settlement.

Writ petition is ordered in the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed. Post the matter for reporting compliance on 01.11.2021.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



To

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1.The Secretary to the
Government of Tamil Nadu
Home Department,
Fort St.George,
Chennai-600 009.

2.The Director,
Forensic Sciences Department,
Chennai-600 004.

Copy to

The Section Officer/Posting,
Writ Section,
High Court, Madras.

+1cc to M/s.G.Devi, Advocate Sr.33249
+1cc to the Government Pleader Sr.33937

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