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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.14013 of 2020

and

W.M.P(MD)No.11668 of 2020

V.Kumaresan

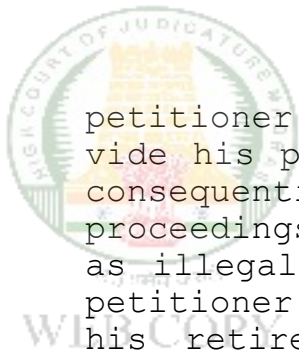
... Petitioner

Vs.

- 1.The State of Tamilnadu,
Rep.by its Secretary to Government,
Revenue Department,
Secretariat,
Chennai-09.
- 2.The Additional Chief Secretary/Commissioner
of Revenue Administration,
Chepauk,
Chennai.
- 3.The District Collector,
Trichy District,
Trichy.
- 4.The Assistant Director of Geology and Mining,
O/o.the Assistant Director of Geology and Mining,
Trichy.
- 5.The Revenue Divisional officer,
O/o.the Revenue Divisional Office,
Trichy,
Trichy District.
- 6.The Inspector of Police,
Vigilance & Anti Corruption,
Trichy.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned suspension order passed by the third respondent vide his proceedings in RC.A-2/35334-2004 dated 11.06.2004 and the consequential impugned charge memo issued by the third respondent vide his proceedings Rc.(A2)35334/2004 dated 25.10.2004 and the consequential impugned order not allowing the



petitioner to retire from service passed by the third respondent vide his proceedings Rc.A2/35334-2004 dated 25.09.2005 and impugned consequential charge memo issued by the third respondent vide his proceedings Rc.(A2)35334/2004, dated 17.11.2009 and quash the same as illegal and consequently to direct the respondents to allow the petitioner to retire from service w.e.f. 30.09.2005 and disburse all his retirement benefits along with an accrued interest thereon within the period that may be stipulated by this Court.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.P.Subbaraj
Government Advocate

ORDER

The petitioner has come out with the present writ petition to quash the impugned suspension order passed by the third respondent vide his proceedings in RC.A-2/35334-2004, dated 11.06.2004, the consequential impugned charge memo issued by the third respondent vide his proceedings in Rc.(A2)35334/2004, dated 25.10.2004, the consequential impugned order not allowing the petitioner to retire from service passed by the third respondent vide his proceedings in Rc.A2/35334-2004, dated 25.09.2005, impugned consequential charge memo issued by the third respondent vide his proceedings in Rc.(A2) 35334/2004, dated 17.11.2009, for a direction to the respondents to allow the petitioner to retire from service w.e.f. 30.09.2005 and disburse all his retirement benefits along with an accrued interest thereon.

2. The petitioner while working as Special Tahsildar in the fourth respondent office kept under suspension with effect from 11.06.2004 on the ground that a criminal case was registered against him for demanding and accepting the bribe and he was arrested. The respondents issued charge memo, dated 25.10.2004. While so, the petitioner attained the age of superannuation on 30.09.2005. The third respondent by the impugned proceedings, dated 25.09.2005 not permitted the petitioner to retire from service on attaining the age of superannuation on 30.09.2005. Again, the third respondent issued another charge memo, dated 17.11.2009 in continuation of earlier charges issued in the year 2004. The petitioner and the co-accused were acquitted in the criminal case by the judgment, dated 13.12.2018. While so, the petitioner received notice, dated 07.05.2019 from the fifth respondent to appear before him for domestic enquiry. The petitioner appeared on three dates for the enquiry and the enquiry was adjourned and no progress was made.

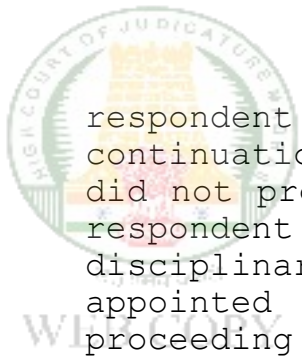


3. The learned Senior Counsel appearing for the petitioner contended that after acquittal in the criminal case, a co-accused, by name Kalaivanan, who was the Joint Director of Geology and Mining, was permitted to retire from service with effect from 30.06.2019 by Government Order in G.O(Rt) No.185, Industries (E.1) Department, dated 30.06.2019. The petitioner alone is singled out. The learned Senior Counsel appearing for the petitioner further submitted that the alleged occurrence is of the year 2004. The third respondent appointed the Enquiry Officer only in the year 2018 and the Enquiry Officer commenced enquiry only in the year 2019, even though the charge-memos were issued on 25.10.2004 and 17.11.2009 itself. The petitioner is aged about 73 years and he is put to great hardship due to the disciplinary proceedings. There is no bar for conducting criminal proceeding and the departmental proceedings simultaneously. Even after 15 years from the date of attaining the age of superannuation, he was not permitted to retire from service and prayed for allowing the writ petition.

4. The third respondent filed counter affidavit. Mr.P.Subbaraj, learned Government Advocate appearing for the respondents reiterated the averments made in the counter affidavit and submitted that even after acquittal in the criminal proceedings, employee, like the petitioner, can be proceeded with departmental proceedings. The Inspector of Police, Vigilance & Anti Corruption, Trichy, after acquittal, returned the file only on 20.03.2019 and informed the third respondent to initiate departmental proceedings as per the Government Order. The Enquiry Officer was appointed and while enquiry is in progress, the petitioner filed a writ petition. The enquiry notice was issued on 21.04.2021 and the petitioner was appeared before the Enquiry Officer only on 07.05.2021, pending writ petition and there is no merit in the writ petition and prayed for dismissal of the same.

5. Heard the learned Senior counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

6. From the materials on record, it is seen that the petitioner is proceeded with for allegedly demanding and accepting bribe in the year 2004. The third respondent placed the petitioner under suspension by the order, dated 11.06.2004 and also issued charge memo, dated 25.10.2004 based on the criminal case. After issuing charge memo, the third respondent did not proceed with the departmental proceedings. The petitioner attained the age of superannuation on 30.09.2005. The third respondent by the impugned proceeding, dated 25.09.2005, passed an order retaining him in service. The action of the third respondent not pursuing the disciplinary proceedings and concluding the same before the date of retirement, is contrary to the Government Order in G.O.Ms. No. 144, Personnel and Administrative Reforms (N) Department, dated 8.6.2007. <https://hse.courts.gov.in/hcservices/> with chargememo, dated 25.10.2004, the third

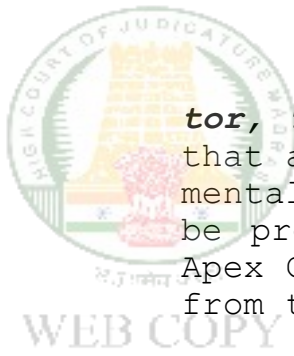


respondent again issued another charge memo, dated 17.11.2009 in continuation of earlier charge memo. Again, the third respondent did not proceed with disciplinary proceedings till 2018. The third respondent has not given any reason for not pursuing with disciplinary proceedings from 2004 to 2018. The third respondent appointed an Enquiry Officer in the year 2018 when the criminal proceeding was pending. In the criminal case, the petitioner was acquitted by the judgment, dated 13.12.2018. The delay of 14 years in pursuing with disciplinary proceedings is contrary to the judgment of Hon'ble Apex Court and this Court.

7.The Hon'ble Apex Court as well as this Court have deprecated the practice of suspending an employee on the date of retirement and also initiating disciplinary proceedings after a lapse of considerable time.

8.At this juncture, it is relevant to mention here that this Court in the case of ***M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board*** reported in ***2014(2) CWC 261***, has considered the issue of suspension of an employee at the verge of his retirement and retaining him in service and by the order dated 09.06.2014, has held that disciplinary proceedings must be initiated at least three months before the date of retirement and disciplinary proceedings must be completed on war footing and concluded before the date of retirement. The relevant portion of the said judgment reads as follows:-

"10. Therefore, when the Hon'ble Apex Court, in a similar and identical issue, has held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be also non est in the eye of law, hence, the same has to be necessarily set aside, this Court, being bound by the same, has no other option except to interfere with the impugned orders in view of the dictum laid down by the Hon'ble Apex Court in the aforesaid judgments, inasmuch as, in the present case, the impugned order of suspension is dated 25.10.2011, which was served on the petitioner on 27.10.2011, followed by the order of retention passed in G.O.(3D) No. 33, Housing and Urban Development (UD2-3) Department dated 31.10.2011 and the subsequent charge memo dated 2.1.2012, which has been issued with an unexplained and inordinate delay of 14 years for the alleged commissions and omissions said to have been done during the month of August, 1997, after the petitioner reached the age of superannuation on 31.10.2011, are necessarily to be held as non est in the eye of law. As a matter of fact, under similar circumstances, when a challenge was made by an employee of the Tamil Nadu Housing Board against the charge memo issued with an inordinate delay of 10 years in initiating the departmental proceedings against him, without there being any explanation from the employer for such delay, the Apex Court in ***P.V. Mahadevan v. Managing Direc-***



tor, Tamil Nadu Housing Board, 2005 (4) CTC 403, has held that allowing the Housing Board to proceed with the departmental proceedings at the distance of ten years delay would be prejudicial to the employee. The reasons cited by the Apex Court for quashing the belated charge memo can be seen from the following passage:-

"11. Under the circumstances, 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 disputed 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 disciplined 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."

11. The above observation of the Apex Court deprecating the practice of initiating departmental proceedings with a huge delay of ten years, in my view, can be applied to the present case as well because, in the case on hand, the impugned charge memo was issued with a huge and unexplained delay of 14 years for the alleged commissions and omissions said to have taken place during the month of August, 1997 when the petitioner was serving as Executive Engineer, totally contrary to the G.O.Ms. No. 144, Personnel and Administrative Reforms (N) Department dated 8.6.2007 directing the disciplinary authority not to resort to last minute suspension of the Government employee, namely, on the date of retirement. In this context, the following directions issued by the Government to avoid last minute suspension order on the date of retirement of the Government servant may also be usefully referred to in the present case:-

"5. The Government direct that the following guidelines be followed to avoid suspension or-



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ders on the date of retirement of the Government servants in supersession of orders issued in the reference second read above:

(i) The disciplinary authority should not resort to last minute suspension of the Government servants (i.e.) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e.) three months prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

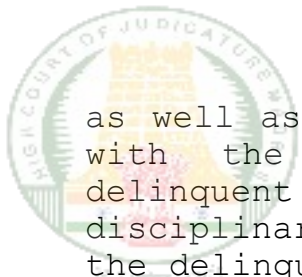
(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

(iii)...

(iv) 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 retirement of Government servant concerned.

(v) Where the delinquency committed by a Government servant is very grave which warrants imposition of major penalty such as dismissal or removal from service and if it is not possible to pass final orders in such departmental proceedings, then it is necessary to suspend the Government servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also, the disciplinary authorities have to ensure that the suspension orders are

<https://hcservices.ecourts.gov.in/hcservices> issued on the date of retirement of the Gov-



as well as this Court held that delay in initiating and proceeding with the departmental proceedings prejudicially affects the delinquent employee. The reason for deprecating initiation of disciplinary proceedings after lapse of considerable time is that the delinquent employee will not be in a position to collect all the documents relied on and produce witnesses in support of his defence. The Hon'ble Apex Court in the case of **P.V. Mahadevan vs. Managing Director, Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, in Paragraph No.11, which is extracted in Paragraph No.10 of the order of this Court in **M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board** reported in **2014 (2) CWC 261 [supra]**, has held that domestic enquiry at a distant point of time would cause unbearable mental agony and distress to the employee concerned and not only in the interest of employee and also in public interest. In Paragraph No.5 of the Government Order in G.O.Ms. No.144, Personnel and Administrative Reforms (N) Department, dated 8.6.2007, which is extracted in **M.Janarthanan's** case [supra], the Government has ordered initiation of domestic enquiry at least three months prior to the date of retirement and conduct domestic enquiry on war footing and conclude the same before the date of retirement of the employee.

11. The co-accused in criminal case viz., Kalaivanan was permitted to retire and the petitioner alone was proceeded with disciplinary proceedings. In the present case, the third respondent has not explained for not proceeding with departmental enquiry at the earliest. Further, as rightly pointed out by the learned Senior Counsel appearing for the petitioner that the petitioner alone is singled out and proceeded with domestic enquiry, even though another person, who was also prosecuted levelling the same misconduct, was permitted to retire from service. Keeping the earlier proceedings pending from the year 2004 till date, initiating disciplinary proceedings in piecemeal only against the petitioner, vitiates the entire disciplinary proceedings now initiated and it is malice in law.

12. For the above reasons, this Court is of the view that it is a fit case to interfere with the charge memo and in view of the order of this Court in **M.Janarthanan v. Chairman, Tamil Nadu Slum Clearance Board** reported in **2014 (2) CWC 261**, and the judgment and the orders relied on by the learned Senior counsel appearing for the petitioner, the impugned suspension order passed by the third respondent vide his proceedings in RC.A-2/35334-2004 dated 11.06.2004 and the consequential impugned charge memo issued by the third respondent vide his proceedings Rc.(A2)35334/2004 dated 25.10.2004 and the consequential impugned order not allowing the petitioner to retire from service passed by the third respondent vide his proceedings Rc.A2/35334-2004 dated 25.09.2005 and impugned consequential charge memo issued by the third respondent vide his proceedings Rc.(A2)35334/2004, dated 17.11.2009, are set aside. The respondents are directed to allow the petitioner to retire from



service and disburse his retirement benefits, within a period of eight weeks from the date of receipt of a copy of this order.

13. In the result, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

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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 Secretary to Government,
Revenue Department,
Secretariat,
Chennai-09.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Chepauk, Chennai.

3. The District Collector,
Trichy District,
Trichy.

4. The Assistant Director of Geology and Mining,
Trichy.

5. The Revenue Divisional officer,
Trichy, Trichy District.

6. The Inspector of Police,
Vigilance & Anti Corruption,
Trichy.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-19626[F] dated 18/06/2021)

+1 CC to M/s.SPL GP (SR-19658[F] dated 18/06/2021)

W.P. (MD)No.14013 of 2020

17.06.2021

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