



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition (MD)No.4584 of 2016

and

W.M.P. (MD) .No.4166 of 2016

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P.Murugesan

... Petitioner

Vs.

The Commissioner,
Madurai City Municipal Corporation,
Madurai 625 002.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the impugned charge memo issued by the respondent vide VO2/27374/2015, dated 19.12.2015 and quash the same as illegal.

For Petitioner: Mr.C.Arul Vadivel Alias Sekar

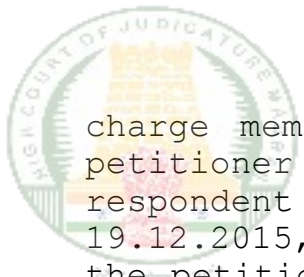
For Respondent: Mr.T.S.Mohammed Mohideen

Standing counsel

O R D E R

This writ petition has been filed challenging the impugned charge memo issued by the respondent, dated 19.12.2015 and to quash the same.

2. The case of the petitioner is that he joined as Town Planning Building Inspector in Madurai Municipal Corporation, on 23.12.1978. Subsequently, the petitioner was promoted to various posts and he was also in-charge of the post of Executive Engineer (Planning) from 07.12.2005 to 03.08.2011. Thereafter, various charge memos and suspension orders were issued against the petitioner and challenging the suspension order, dated 31.05.2013, the petitioner has filed a writ petition before this Court in W.P.(MD).No.9257 of 2013. After that, the respondent has issued a charge memo and the same was received by the petitioner on 20.06.2013. Challenging the same, the petitioner has filed a petition in W.P.(MD).No.11791 of 2013. This Court, vide common order dated 29.10.2015, allowed the writ petitions and quashed the charge memo and suspension order. Challenging the said order, dated 29.10.2015, the respondent has preferred an appeal before this Court in W.A.(MD).No.173 of 2016 and the same was dismissed on 10.04.2017. Pending writ appeal, various



charge memos were issued against the petitioner and finally, the petitioner was superannuated on 31.05.2013. Thereafter, the respondent has issued a charge memo against the petitioner, on 19.12.2015, after lapse of two years from the date of retirement of the petitioner. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the petitioner has filed the writ petitions, challenging the order of suspension and the charge memo issued against him and this Court, vide common order dated 29.10.2015, allowed the writ petitions in W.P.(MD).Nos.9257, 11791 and 6796 of 2013 and quashed the charge memo and the suspension order. Thereafter, the respondent has preferred an appeal in W.A.(MD).No.173 of 2016 and the same was dismissed on 10.04.2017 and no appeal was filed before the Supreme Court or review application before this Court. Hence, this order has become a final one and there is no master servant relationship between the petitioner and the respondent and continued the disciplinary proceedings, after the superannuation, is unsustainable one and hence, he prayed for allowing of this writ petition.

4. The learned Standing counsel appearing for the respondent did not dispute the fact submitted by the learned counsel for the petitioner.

5. The facts in the present case are not in dispute. On the earlier occasions, the petitioner was issued with a charge memo and the order of suspension. The said charge memo and the order of suspension were challenged before this Court in W.P.(MD).Nos.9257, 11791 and 6796 of 2013 and this Court, by way of common order, dated 29.10.2015, allowed all these writ petitions in favour of the petitioner. Further, the respondents therein have preferred a writ appeal in W.A.(MD).No.173 of 2016 and the same was dismissed by the Division Bench of this Court. While so, the petitioner was superannuated on 31.05.2013. Thereafter, the respondent has issued the present charge memo, on 19.12.2015, after lapse of two years from the date of retirement of the petitioner. The core issue arises for consideration in the present writ petition is whether the present charge memo is maintainable as against the retired employee. It is relevant to note that once the employee retired from service, there is no master and servant relationship in between the petitioner and the respondent. Such being the position, the respondent not invoked the Rule 56(1)(c) of the Fundamental Rules, for retaining the service of the petitioner for the purpose of continuing the disciplinary proceedings. Rule 56(1)(c) of the Fundamental Rules conferred the power to the employer to proceed with the disciplinary proceedings as against the erred employee. In the absence of invoking such a power, issuing the charge memo against the petitioner is not sustainable one. Hence, on the sole



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ground, this Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Akv

To

The Commissioner,
Madurai City Municipal Corporation,
Madurai 625 002.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-5845[F] dated 18/02/2021)

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-5857[F] dated 18/02/2021)

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