



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.09.2022**

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

and

W.M.P(MD)No.17354 of 2016

P. Paulraj

... Petitioner in both the
Writ Petitions

vs.

1. The Regional Deputy Director of
Survey and Land Records,
Madurai – 20.

2. The Assistant Director of
Survey and Land Records,
District Survey Office,
Thoothukudi.

... Respondents in
W.P.(MD)No. 14015 of 2012

1. The Regional Deputy Director of
Survey and Land Records,
Madurai – 20.

2. The Assistant Director of
Survey and Land Records,
District Survey Office,
Thoothukudi.



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W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

3. The Inspector (Maintenance),
Survey and Land Records,
Seranmahadevi Division,
Tirunelveli.

... Respondents in
W.P.(MD)No.24053 of 2016

PRAYER in W.P.(MD)No. 14015 of 2012: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus*, to quash the proceedings of the 2nd respondent in RC.A6/9634/2002 dated 09.06.2008 and further directing the 2nd respondent to sanction all the benefits in the promotional level for fixation of pay, arrears of salary and further directing the 2nd respondent to send pension proposals for the petitioner.

PRAYER in W.P.(MD)No. 24053 of 2016: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records relating to the proceedings of the 3rd respondent in Na.Ka.A6/7170/2014 dated 10.11.2016 and quash the same.

In both Writ Petitions

For Petitioner	: Mr.R. Balakrishnan
For Respondents	: Mr.C.Baskaran, Government Advocate (Civil side)

COMMON ORDER

W.P.(MD)No. 14015 of 2012 is filed for issuance of Writ of Certiorarified Mandamus, to quash the proceedings, dated 09.06.2008 in



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

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RC.A6/9634/2002 passed by the 2nd respondent and seeking further direction to the 2nd respondent to sanction all the benefits in the promotional level for fixation of pay arrears of salary and also seeking further direction to the 2nd respondent to send pension proposals for the petitioner. W.P.(MD)No. 24053 of 2016 is filed for issuance of Writ of Certiorari, to quash the proceedings of the 3rd respondent in Na.Ka.A6/7170/2014 dated 10.11.2016.

2. The brief facts as stated in the affidavit is that the petitioner has joined duty as Land Record Draw Man cum Surveyor in the second respondent's Department, on 24.06.1984. Thereafter, he was promoted as Firka Surveyor on 25.07.1987.

3. The contention of the petitioner is that, he has never received even a singly pie, while he was in service but a false case has been foisted against the petitioner by the Vigilance and Anti-Corruption Department in the year 2002, as if the petitioner has received bribe from one Vijayaraj. On the basis of the charges, the petitioner was suspended from service on 03.10.2002, challenging it the petitioner had filed O.A.No.1885 of 2003 before the Tamil Nadu Administrative



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

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Tribunal, Chennai and the Tribunal vide, order, dated 29.03.2003, directed the respondents to review the suspension order of the petitioner and accordingly, the suspension order was cancelled and he was reinstated back into service as Firka Surveyor at Sathankulam Taluk Office.

4. On 12.05.2008, the petitioner was convicted in Spl. Case No.1 of 2004, for the alleged offences under Sections 7 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/-in default to undergo Rigorous imprisonment for 6 months. Aggrieved over the said conviction, the petitioner has preferred an appeal before High Court in CrI.A.No.246 of 2008. During the pendency of the appeal, the 2nd respondent has issued show cause notice, dated 21.05.2008, seeking explanation from the petitioner, as to why the proposed punishment of dismissal from service be imposed on the petitioner. The petitioner has submitted reply on 05.06.2008 stating that in the said Criminal Appeal the High Court has suspended the conviction and sentence and hence prayed to drop the proceedings. In spite of the same, the 2nd respondent has passed an order, dated 09.06.2008 and dismissed the petitioner from service, on the



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

WEB COPY

ground that the petitioner was convicted by the Sessions Court in the criminal case. On 25.09.2011, the petitioner has attained superannuation. On 19.06.2022, the High Court in CrI.A.No.246 of 2008, set aside the conviction and acquitted the petitioner. Thereafter, on 10.09.2012, the petitioner has submitted a representation requesting the respondents to cancel the dismissal order and fix promotion on the appropriate level and sanctioned the pension and to send the pension proposals. However, the respondents have issued notice, dated 09.06.2008, for further enquiry. Aggrieved over the same, these Writ Petitions are filed.

5. The respondents have filed a counter affidavit, wherein it is stated that, based on the Tamil Nadu Administrative Tribunal, the petitioner was reinstated into service on 03.11.2003. Thereafter, under *Rule 17(b) of TNCS (D & A)*, charges were framed. Based on the conviction order, the petitioner was dismissed from the service, vide proceedings of the 2nd respondent, dated 09.06.2008. As the petitioner was dismissed from service, the charges framed against the petitioner was also dropped by the 2nd respondent, vide proceedings, dated 03.01.2009. It is further stated that aggrieved against the said conviction,



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

WEB COPY

the petitioner has preferred an appeal in CrI.A.No.246 of 2008, before this Court and the said appeal was allowed and acquitted the petitioner from the charges framed against him. If the petitioner was in Government service, the actual date of retirement on superannuation would be on 30.09.2011, but on the date of deemed superannuation the petitioner was not in Government service. As the petitioner was acquitted from the criminal charges by the High Court, the petitioner has sought for the terminal benefits and other benefits. Since the petitioner has already been dismissed from the service and the date of retirement was also over and hence necessary permission was sought for from the Government through the Principal Secretary/Government of Survey and Settlement, Chennai, and vide order, dated 12.11.2012, wherein the Principal Secretary has also sought for instructions from the Government for taking Departmental action against the petitioner by narrating the circumstances of the case, vide Na.Ka.La.A4/31213/ 2012 (NiAa, dated 19.12.2012) and the orders of the Government are still awaited.

6. Regarding the averments of the petitioner, it is further stated that the petitioner was already been dismissed from service for involvement in the



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

WEB COPY

alleged demand and acceptance of bribe for a sum of Rs.10,000/-. The criminal case was ended in conviction and on appeal, the petitioner was acquitted from the criminal charges by this Court. In the meanwhile, the petitioner has crossed the date of retirement. Therefore, the appointing authority has sought for instructions to initiate disciplinary proceedings against the petitioner for the same charges. As there are good grounds and sufficient evidence to proceed with the disciplinary proceedings in accordance with the instructions in G.O.Ms.No.251 P & AR (Pen N), dated 21.04.1988, the respondents have sought for instructions from the Government for taking departmental action for the alleged latches committed by the petitioner. In such circumstances, the petitioner's claim for terminal benefits cannot be considered. Hence, prays to dismiss these Writ Petitions.

7. The petitioner has subsequently filed another Writ Petition in W.P(MD)No.24053 of 2016, to quash the proceedings, dated 10.11.2016 passed by the 3rd respondent, wherein the respondents have directed the petitioner to appear before the Enquiry Officer. Challenging the same, the Writ Petition was filed.



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

WEB COPY

8. The respondents have also filed counter affidavit in the said writ petition and has stated the 2nd respondent has issued a memo, dated 27.04.2015 to the petitioner to submit a certificate that he was given an opportunity for departmental enquiry. The petitioner has appeared before the enquiry officer on 19.02.2007 and the petitioner has received the enquiry report on 05.09.2007. Therefore, as per instructions of the Commissioner of Survey and Settlement, Chennai, an enquiry was proposed to conduct against the petitioner for which the 2nd respondent, the then Inspector of Survey, Thoothukudi Division, was appointed as Enquiry Officer. Therefore, the respondents sought permission to proceed further in the enquiry proceedings and the same is pending.

9. Heard Mr.R. Balakrishnan, learned counsel appearing for the petitioner and Mr.C.Baskaran, learned Government Advocate (Civil side), appearing for the respondents in both the Writ Petitions. Perused the material documents available on record.



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

WEB COPY

10. It is seen from the records that the petitioner has attained superannuation on 12.05.2009 and thereafter the petitioner has filed these two Writ Petitions. When the petitioner was convicted by the trial court, the respondents based on the conviction had dismissed from service and the disciplinary proceedings were dropped. Thereafter in the criminal appeal the petitioner was acquitted. The respondents ought to have independently proceeded with the disciplinary proceedings and dismissed the petitioner, but based on conviction in criminal court the petitioner was dismissed. Moreover, if the employee has attained superannuation, the respondents have power to conduct enquiry under Pension Rules.

11. As on date, the petitioner is aged about 70 years. Therefore, this Court is of the considered opinion that the petitioner ought to be discharged from the charges framed against him and a fresh enquiry is not necessary.

12. Accordingly, these Writ Petitions are allowed. The impugned proceedings, dated 09.06.2008 in RC.A6/9634/2002 passed by the 2nd respondent and the impugned proceedings, dated 10.11.2016, passed by the 3rd respondent in



W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

WEB COPY

Na.Ka.A6/7170/2014, are hereby quashed. The respondents are directed to allow the petitioner to retire from service and disburse all terminal benefits, within a period of 8 weeks from the date of receipt of a copy of the order. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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W.P.(MD)Nos.14015 of 2012 & 24053 of 2016

S.SRIMATHY, J

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Common Order in
W.P.(MD)Nos.14015 of 2012
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