



WP(MD)No.10967 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.10967 of 2022
and
W.M.P.(MD)No.7899 of 2022

J.Sampanthamoorthi

... Petitioner

/vs./

1.The Government of Tamil Nadu,
Represented by its Principal Secretary,
Department of Health and Family Welfare,
Fort St.George, Secretariat,
Chennai – 600 009.

2.The Director,
Directorate of Public Health and Preventive Medicine,
No.64, 75, Main Road,
Chokkalingam Nagar,
Teynampet,
Chennai – 600 006.

3.The Deputy Director,
Office of Health Service,
Gandhi Road, Thanjavur – 613 001.

4.The Inspector of Police,
Perambalur Police Station,
Perambalur – 621 212.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records and quash the order passed by the 3rd Respondent dated 24.01.2003 vide proceeding R.No. 1921/02/A1 and consequential order dated 27.10.2005 vide proceeding R.No. 1921/02/A1 and direct the 3rd respondent to re-instate petitioner in service and grant promotion, permit petitioner to retire from the service based on his superannuation provide pending salary and other service benefits to him.

(Prayer amended vide Court Order dated 24.06.2022 in WMP(MD).9103/2022 in WP(MD)No.10967/2022 by MSRJ)

For Petitioner : Mr.S.Sankar

For Respondents : Mrs.D.Farjana Ghoushia

Special Government Pleader

ORDER

Alleging that the petitioner herein had committed an offence under Section 489C of IPC, a criminal case in Crime No.145 of 2002 came to be registered against the petitioner herein and in connection with the same, he was arrested and kept in custody for more than 48 hours. The petitioner was employed as a Junior

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Engineer in the Public Health Service Office, Tanjavur at that relevant point of time. By invoking Section 17(e)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, he was placed under suspension by the third respondent herein, through the impugned order, dated 24.01.2003. Consequently, when the petitioner was due to retire on 31.10.2005, he was not permitted to retire through an order dated 28.12.2005, until criminal offence under investigation is concluded and final orders are passed by the competent authority.

2.The learned counsel appearing for the petitioner submitted that after investigation of the criminal complaint, the concerned police had found that there was no truth in the allegations of the complaint and accordingly, the FIR was closed on 24.12.2010. In view of the closure of the criminal case, he now seeks for revocation of the suspension order and for retirement benefits.

3.The learned Special Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that the complaint of possession of fake currency is a serious offence and therefore, no interference is required to be made to the impugned orders. She also submitted



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that records pertaining to the petitioner's case are not traceable and they have sought for clarifications in this regard with the first respondent, for the purpose of deciding the mode of retirement of the petitioner.

4.The only ground, on which the petitioner was placed under suspension and not permitted to retire was pendency of the criminal case in Crime No.145 of 2002 against him. Admittedly, the FIR in Crime No.145 of 2002 came to be closed on 24.12.2010 and the fact of closure was recorded by the Judicial Magistrate No.I, Perambalur on 09.04.2021. When the criminal case itself has been closed, the arrest, which was made in connection with the criminal case as well as the consequential order of the respondents not permitting him to retire, becomes baseless and therefore, both the orders cannot be sustained.

5.In similar circumstance, I had an opportunity to consider this aspect in the case of **D.Vijay Ananth vs. The Inspector General of Registration, Chennai and Others** in **WP(MD)No.14192 of 2022** dated **18.07.2022** in the following manner:

“3.The impugned order is an order of suspension



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simpliciter, whereby the respondents have invoked Rule 17(e)(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. As per the aforesaid Rule, a Government Servant, who is detained in custody on a criminal charge or otherwise, for a period exceeding 48 hours, shall be deemed to have been suspended under the aforesaid Rules. The deemed suspension under Rule 17(e)(2) of the aforesaid Rules has been reduced in the form of an order in the present impugned proceedings. Rule 17(e)(6) of the aforesaid Rules provides that an order of suspension made or deemed to have been made under this Rule may be revoked by the concerned authority.

4.The explanation, to the Fundamental Rules of the Tamil Nadu Government, in FR 54-B-3 Sub-Rule (1)(a) provides that when a Government Servant, who is detained in connection with the criminal charge for a period exceeding 48 hours, is deemed to be under suspension from the date of detention, until further orders, as contemplated in the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

5.The object of Rule 17(e)(1)(ii) of the aforesaid Rules indicates that the authority would be entitled to place a Government Servant under suspension in connection with his detention exceeding 48 hours for his involvement in a criminal offence, which is under investigation, inquiry or trial. The deemed suspension, therefore would come into force the moment, when such Government Servant is detained for more than 48 hours in connection with the criminal offence. The consequence



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of the criminal proceedings ending in an acquittal or closure of the investigation against the Government Servant has not been spelt out, either in the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 or under the Fundamental Rules of the Tamil Nadu Government.

6.As already pointed out, the present order of suspension is only on account of the judicial custody of the petitioner for more than 48 hours in connection with the criminal case. While that being so, when the criminal proceedings itself have been quashed by this Court in its order in Crl.O.P.(MD)No.13267 of 2020 dated 21.12.2020, the very foundation, for which the petitioner was placed under judicial custody, has become redundant and therefore, the continuation of the suspension order even after quashing of the criminal proceedings, may not be warranted.

7.It is not the case of the respondents that the charge against the petitioner is one involving moral turpitude or that the petitioner may indulge in tampering with the evidences in a disciplinary proceedings. As a matter of fact, the disciplinary proceedings initiated against the petitioner in connection with the involvement in Crime No.35 of 2020 was already enquired into by the enquiry officer and pursuant to the enquiry report dated 09.04.2021, whereby, the charges were held as not proved, the disciplinary authority had chosen to defer with the findings of the enquiry officer and had called for the petitioner's explanation. The petitioner has also tendered his further explanation to the notice proposing to defer with the enquiry officer's findings and



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final orders are yet to be passed. At this stage, I am unable to comprehend as to why the petitioner's suspension should continue, when the charges do not involve moral turpitude, nor is there any chances of the petitioner tampering with the evidences in the enquiry. When the very basis, for which the petitioner was kept under judicial custody has been quashed by this Court in an order passed on merits, the present impugned order refusing to revoke the petitioner's suspension order, is unjustifiable and unwarranted. Accordingly, both the suspension order as well as the subsequent order refusing to revoke the suspension order cannot be sustained.”

6.The aforesaid extract is self explanatory. As such, the objection raised by the learned Special Government Pleader appearing for the respondents that the offences are serious in nature cannot be sustained. Thus, in view of the closure of the FIR, consequential order of suspension dated 24.01.2003 as well as the order not permitting the petitioner to retire dated 28.12.2005 cannot be sustained.

7.Accordingly, impugned orders, dated 24.01.2003 and 28.12.2005 are quashed. Consequently, there shall be a direction to the second respondent herein to pass appropriate orders, by revoking the petitioner's order of suspension dated



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24.01.2003 as well as by permitting him to retire with effect from 31.10.2005 and thereby, disburse all the retirement benefits, including the pensionary benefits, within a period of eight (8) weeks from the date of receipt of a copy of this order. This Writ Petition is allowed accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
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TO:

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Department of Health and Family Welfare,
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M.S.RAMESH, J.

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Order made in
W.P.(MD)No.10967 of 2022

Dated:
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