



W.P.(MD)No.16789 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 29.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)Nos.16789, 16790 and 16791 of 2019
and
W.M.P(MD).Nos.13391, 13392 and 13393 of 2019

K.S.Rajmohan	... Petitioner in
	W.P(MD).No.16789 of 2019
R.Chellakkannu	... Petitioner in
	W.P(MD).No.16790 of 2019
K.Paneerselvam	... Petitioner in
	W.P(MD).No.16791 of 2019

-Vs-

1.The State of Tamil Nadu,
Rep., by its Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-9.

2.The Director of Rural Development and Panchayt Raj,
Directorate of Rural Development and Panchyat Raj,
Panagal Building, Saidapet, Chennai 600 015.

... Respondents
in all petitions

COMMON PRAYER: Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent vide his G.O.(2D).Nos.65, 28 and 69 respectively, Rural Development and Panchayat Raj (E2) Department dated 31.05.2019, 28.02.2019 and 31.05.2019 respectively and consequential impugned



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order passed by the first respondent vide his G.O(2D).No.66, 29 and 70 respectively, Rural Development and Panchayat Raj (E2) Department, dated 31.05.2019, 28.02.2019 and 31.05.2019 respectively and quash the same as illegal and consequently to direct the respondents to allow the petitioner to retire from service with all retirement benefits along with accrued interest thereon within the period that may be stipulated by this Court.

In all petitions

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for C.Venkateshkumar
for M/s.Ajmal Associates
For Respondents : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.R.Sureshkumar
Additional Government Pleader

COMMON ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by Mr.R.Sureshkumar, learned Additional Government Pleader for the respondents.

2.The issue raised in all these writ petitions is one and the same.

However, the service particulars are different. They are as follows:



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SL. No.	Case No.	Name of the petitioner	Rank of the petitioner	Date of superannuation
1.	W.P(MD).No. 16789 of 2019	K.S.Rajmohan	Personal Assistant (Noon Meal) to District Collector, Pudukkottai District.	31.05.2019
2.	W.P(MD).No. 16790 of 2019	Chellakkannu.R	Personal Assistant (Noon Meal) to District Collector, Sivagangai District.	28.02.2019
3.	W.P(MD).No. 16791 of 2019	K.PanneerSelvam	Assistant Project Officer (Wage Employment) District Rural Development Agency, Pudukkottai.	31.05.2019

3.By the impugned Government Orders, the writ petitioners were placed under suspension on the verge of their attaining the age of superannuation and they were also retained in service and not allowed to retire. These orders are questioned by them for the reasons set out in the affidavits filed in support of the respective writ petitions.

4.The learned Senior Counsel appearing for the writ petitioners submitted that on the date when the writ petitioners reached the



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superannuation, no charge memo had been issued against them and the suspension order does not read that any enquiry into grave charges of criminal misconduct was pending or contemplated and no criminal case was either under investigation or trial. Thus, none of the four circumstances set out in FR 56(1)(c) stand fulfilled in this case. He therefore submitted that the impugned orders are without jurisdiction and are liable to be set aside.

5.The respondents have filed a counter affidavit. The learned Additional Advocate General took me through its contents. He submitted that the writ petitioners had committed serious acts of criminal misconduct in the matter of appointment of Noon Mill Organiser-cum-Cooks. Therefore, the competent authority have granted approval for registering the criminal case against them. The writ petitioners are figuring as accused No.A3, A21 and A6 in Crime No.2 of 2020 registered on the file of the Inspector of Police, Vigilance and Anti Corruption, Pudukottai for various offences under the Prevention of Corruption Act, 1988. He submitted that therefore the case on hand would fall under FR 56(1)(c). He pressed for dismissal of the writ petition.



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6.I carefully considered the rival contentions and went through the materials on records.

7. There is no dispute that on the date when the writ petitioners attained the age of superannuation, they were not facing any charges of misconduct. No enquiry into grave charge of criminal misconduct was pending or even contemplated. The impugned order of suspension contains the following recital:

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“Whereas Thiru.K.S.Rajmohan, formerly Assistant Director (Panchayat) now Personal Assistant to the Collector (NMP) Pudukkottai District was placed under suspension from service with immediate effect in the Government Order second read above.

And whereas the said Thiru.K.S.Rajmohan, formerly Assistant Director (Panchayat) now Personal Assistant to the Collector (NMP) Pudukkottai District who is on attaining the age of superannuation on the afternoon of 31.05.2019 and an enquiry (Regular Case) into the grave charges by the appropriate Investigating Authority is pending against him.

And whereas in the circumstances of the case, it is necessary that the said Thiru.K.S.Rajmohan, formerly Assistant Director (Panchayat) now Personal Assistant to the Collector (NMP) Pudukkottai District (under suspension) shall not be permitted to retire on his reaching the date of superannuation i.e., 31.05.2019 A.N but shall be retained in service. Orders.



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Now, therefore, it is hereby ordered, under Rule 56(1)(c) of the Fundamental Rules, that the said Thiru.K.S.Rajmohan, formerly Assistant Director (Panchayat) now Personal Assistant to the Collector (NMP) Pudukkottai District (under suspension) is not permitted to retire from service on his reaching the date of superannuation on the afternoon of 31.05.2019, but retained in service until disposal of Regular Case is pending against him.

2.During such extension of service, the service rights of the said Thiru.K.S.Rajmohan, formerly Assistant Director (Panchayat) now Personal Assistant to the collector (NMP) Pudukkottai District (under suspension) shall freeze at the level reached on the date of superannuation viz., 31.05.2019 A.N and the salary during that period shall not exceed the amount of pension which he would have been entitled otherwise on the date.

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“Whereas Thiru.R.Chellakannu, formerly Assistant Project Officer, District Rural Development Agency, Pudukkottai District, now Assistant Director/Personal Assistant (Noon Meal) to Collector, Sivagangai District was placed under suspension from service with immediate effect in the Government Order second read above.

And whereas the said Thiru.R.Chellakannu, formerly Assistant Project Officer, District Rural Development Agency, Pudukkottai District now Assistant Director/Personal Assistant (Noon Meal) to Collector, Sivagangai District who is due to retire on attaining the age of superannuation on the afternoon of 28.02.2019 and an enquiry (Regular Case) into the grave charges by the Appropriate Investigating Authority is pending against him.

And whereas in the circumstances of the case, it is necessary that the said Thiru.R.Chellakannu, formerly Assistant Project Officer, District Rural Development



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Agency, Pudukkottai District now Assistant Director/Personal Assistant (Noon Meal) to Collector, Sivagangai District (under suspension) shall not be permitted to retire on his reaching the date of superannuation i.e., 28.02.2019 A.N but shall be retained in service.

Now, therefore, it is hereby ordered, under Rule 56(1)(c) of the Fundamental Rules, that the said Thiru.R.Chellakannu, formerly Assistant Project Officer, District Rural Development Agency, Pudukkottai District now Assistant Director/Personal Assistant (Noon Meal) to Collector, Sivagangai District (under suspension) is not permitted to retire from service on his reaching the date of superannuation on the afternoon of 28.02.2019, but retained in service until disposal of Regular Case is pending against him.

2.During such extension of service, the service rights of the said Thiru.R.Chellakannu, formerly Assistant Project Officer, District Rural Development Agency, Pudukkottai District now Assistant Director/Personal Assistant (Noon Meal) to Collector, Sivagangai District (under suspension) shall freeze at the level reached on the date of superannuation viz., 28.02.2019 A.N. and the salary during that period shall not exceed the amount of pension which he would have been entitled otherwise on the date.”

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“Whereas Thiru.K.Panneerselvam, Assistant Project Officer (Wage Employment), District Rural Development Agency, Pudukkottai District was placed under suspension from service with immediate effect in the Government Order second read above.

And whereas the said Thiru..K.Panneerselvam, Assistant Project Officer (Wage Employment), District Rural Development Agency, Pudukkottai District who is on attaining the age of superannuation on the afternoon



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of 31.05.2019 and an enquiry (Regular Case) into the grave charges by the appropriate Investigating Authority is pending against him.

And whereas in the circumstances of the case, it is necessary that the said Thiru.K.Panneerselvam, Assistant Project Officer (Wage Employment), District Rural Development Agency, Pudukkottai District (under suspension) shall not be permitted to retire on his reaching the date of superannuation i.e., 31.05.2019 A.N but shall be retained in service.

Now, therefore, it is hereby ordered, under Rule 56(1)(c) of the Fundamental Rules, that the said Thiru.K.Panneerselvam, Assistant Project Officer (Wage Employment), District Rural Development Agency, Pudukkottai District (under suspension) is not permitted to retire from service on his reaching the date of superannuation on the afternoon of 31.05.2019, but retained in service until disposal of Regular Case is pending against him.

2.During such extension of service, the service rights of the said Thiru.K.Panneerselvam, Assistant Project Officer (Wage Employment), District Rural Development Agency, Pudukkottai District (under suspension) shall freeze at the level reached on the date of superannuation viz., 31.05.2019 A.N. and the salary during that period shall not exceed the amount of pension which he would have been entitled otherwise on the date.”

8.Because the petitioners were suspended from service, as a corollary and natural consequence, they were not be allowed to retire. They were retained in service. Thus, the primary order that has to be tested is only the suspension order. If the suspension order goes, then the other order will also go as a matter of consequence. Now, coming to the



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question as to whether the suspension order is valid or not. One has to see, it would fall under Rule 56(1)(c)(iv) of Tamil Nadu Government Servants Fundamental Rules. Rule 56 (1)(c)(iv) of Tamil Nadu Government Servants Fundamental Rules reads as follows:

“56(1) Retirement on Superannuation

- (a).....
- (b)
- (c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,
 - (i) on a charge of misconduct; or
 - (ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or
 - (iii) against whom an enquiry into grave charges is contemplated or is pending; or
 - (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 or 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 Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3(c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal) Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.*

Explanation.—For the purpose of this clause, the expression ‘criminal misconduct’ shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).



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Instruction under Rule 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.”

9.It is admitted by the respondents that the criminal case against the petitioners was registered only on 30.07.2020. The learned Additional Advocate General would point out that on account of the amendment made to the Prevention of Corruption Act, 1988 and the incorporation of Section 17(A) with effect from 26.07.2018, prior approval have to be obtained. Section 17(A) reads as follows:

“17(A). (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval-

(a)in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b)in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;



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(c)in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.”

10.A mere reading of the aforesaid provision would indicate that the police officer cannot conduct the investigation in respect of the offences falling within the purview of the aforesaid provision without obtaining prior approval. In other words, these are two distinct concept namely approval and investigation. In this case, only approval had been granted. Admittedly, there was no investigation into the offences against the writ petitioners. Since I am therefore more than satisfied that the requirement set out in Rule 56(i)(c)(4) of Fundamental Rules has not been fulfilled in this case.

11.In this view of the matter, the suspension orders made against the writ petitioners are set aside. As a consequence, the orders retaining



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them in service are also set aside. The writ petitions stand allowed. The first respondent is directed to permit the writ petitioners to retire from service and their retirement benefits also should be paid along with accrued interest and disburse the same within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes/No

Internet : Yes/No

Rmk

To

- 1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat, Chennai-9.
- 2.The Director of Rural Development and Panchayt Raj,
Directorate of Rural Development and Panchyat Raj,
Panagal Building, Saidapet, Chennai 600 015.



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