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W.P. (MD) No. 14464, 16707 & 16881 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2022

CORAM

THE HONOURABLE MRS. JUSTICE S. SRIMATHY

W.P. (MD) Nos. 14464, 16707 & 16881 of 2015

and

M.P. (MD) Nos. 1, 1 of 2015

and

W.M.P. (MD) No. 20692 of 2018

S. Ramasamy ... Petitioner (In all writ petitions)

vs

1. The Vice Chancellor,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.

2. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

... Respondents (In all writ petitions)

PRAYER in W.P. (MD) No. 14464 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari/Mandamus, to call for the records pertaining to the impugned orders passed by the second respondent in Ref. Estt. IV/Enq. Comm/2015, dated 09.07.2015, refusing to disburse the terminal benefits of the petitioner and the order in Memo No. Estt. IV/5/2009, dated 28.07.2009, suspending the petitioner from services, quash the same and direct the respondents to permit the petitioner to retire from service as on 30.11.2010, the date on which he attained the age of superannuation and disburse his terminal benefits within the time frame fixed by this Court.

For Petitioner : Mr. R. Subramanian

For Respondents : Mr. T. Sakthi Kumaran

PRAYER in W.P. (MD) No. 16707 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned charge memo issued by the second respondent in NO. MKU Estt. IV/S.R. (Sr. Supt.)/2009, dated 03.09.2015 and quash the same.



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W.P. (MD) No. 14464, 16707 & 16881 of 2015

For Petitioner : Mr. S. Saravanan

For Respondents : Mr. T. Sakthi Kumaran

PRAYER in W.P. (MD) No. 16881 of 2015: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned orders passed by the second respondent in NO. MKU/Estt. IV/S.R. (Sr. Supt.)/2009, dated 09.09.2015 for the continuance of the suspension of the petitioner from the date of his attainment of superannuation i.e., from 30.11.2010, quash the same.

For Petitioner : Mr. S. Saravanan

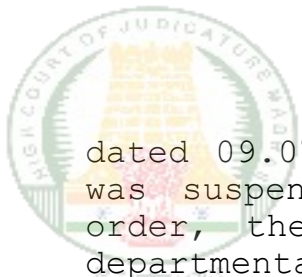
For Respondents : Mr. T. Sakthi Kumaran

O R D E R

These Writ Petitions are filed challenging the impugned order passed by the second respondent against the petitioner.

2. The petitioner joined as Addressograph in Madurai Kamaraj University in the year 1975, then promoted as Junior Assistant, Assistant and then Senior Superintendent in the Directorate of Distance Education (Examination). The second respondent issued a Memo, dated 28.07.2009, placing the petitioner under suspension with effect from 27.07.2009, since the petitioner was arrested by the Directorate of Vigilance and Anticorruption Wing, Madurai. A FIR was registered in Crime No. 18 of 2009. Then Charge Sheet was filed before the Special Court under Prevention of Corruption Act, in Special Case No. 71 of 2011. After trial, the petitioner was acquitted on 26.06.2013. The petitioner has filed a writ petition in W.P. (MD) No. 4886 of 2015, prayed to direct the respondents to disburse retirement benefits based on the representation, dated 26.07.2013 and this Court directed the respondents to pass orders within four weeks from the date of receipt of a copy of the order. The petitioner again submitted a representation on 07.04.2015 and the second respondent has passed an order, dated 09.07.2015, stating that a departmental proceeding is pending against the petitioner, hence the terminal benefits would be decided only after the completion of the departmental enquiry.

3. The contention of the petitioner is that after the arrest in the said Criminal Case the petitioner submitted a letter, dated 26.08.2009 narrating the events. The contention of the petitioner is that no Charge Memo was issued to petitioner and no departmental enquiry is pending as alleged in the order of the second respondent,



dated 09.07.2015. The suspension order states that the petitioner was suspended with effect from 27.07.2009. After the suspension order, the respondents have not issued any Charge Memo and no departmental proceedings was initiated against the petitioner. Therefore, the petitioner has filed this writ petition in W.P. (MD) No.14464 of 2015 to quash the impugned order, dated 09.07.2015, refusing to disburse the terminal benefits and to quash the order of suspension dated 28.07.2009 and directing the respondents to permit the petitioner to retire from service as on 30.11.2010 on the date when the petitioner has attained superannuation.

4. The respondents have filed a common counter affidavit stating that the Inspector of Police, Vigilance and Anti-Corruption (DVAC), vide letter, dated 28.07.2009, reported that on the complaint, dated 27.07.2009 by one Mr. P. Udhayakumar that the petitioner demanded Rs.2000/- (Rupees Two Thousand Only) to issue the Consolidated Mark Statement and Provisional Certificate for M.A.(Labour Management) course. The complainant has paid the amount and the petitioner was caught red handed while receiving the amount from the defacto complainant on 27.07.2009 evening at the entrance of the Madurai Kamaraj University and issued his Consolidated Mark Statement and Provisional Certificate. Therefore, F.I.R was registered in Cr.No.18 of 2009 under Section 7 and 13 (2) read with Section 13(1) (d) of Prevention of Corruption Act 1988 in the DVAC and remanded to judicial custody. In view of the arrest and detention, the petitioner was placed under suspension and a Memo was issued. The said Memo was challenged in W.P.(MD)No.14464 of 2015. The Director of DVAC, vide letter, dated 10.05.2010, requested the University to accord permission to prosecute the petitioner, under Section 19(1) (c) of the Prevention of Corruption Act, 1988 and accordingly, approval was granted. Thereafter, the Special Case No.71 of 2011 was filed against the petitioner. The petitioner has attained superannuation on 30.11.2010, but in view of the pending Criminal Case, the petitioner was continued under suspension and the subsistence allowance was paid at the rate not exceeding the amount of pension and the petitioner has accepted the extension of suspension and received the subsistence allowance from 01.12.2010 without any murmur. In the Criminal Case, the petitioner was acquitted on the hyper-technical ground that the second respondent is not competent to sanction the prosecution of the University employee (since the approval Syndicate of the University was not produced) and further the defacto-complainant had deposed that he returned back the amount received from the petitioner earlier and thus, the prosecution did not prove the offence beyond reasonable doubt and hence, the benefit of doubt was extended to the accused petitioner. Thereafter, the DVAC has decided not to prefer an appeal and directed the respondent University to initiate the departmental disciplinary action against the petitioner as per the instructions issued in G.O.Ms.No.251 P&AR (Per.N) Department, dated 21.04.2010. The petitioner, in view of his acquittal, made a



representation with a request to revoke his suspension and to disburse his retirement benefits.

5. In the meanwhile, the Deputy Secretary to Government, Higher Education Department, in letter, dated 10.02.2014, directed the respondent University to initiate necessary departmental action against the petitioner. Hence, the second respondent called for the record relating to the DVAC case. In pursuance of the direction of the Government, the respondent University nominated Dr. A. Vijayarangan, Assistant Professor and Syndicate Member as the Enquiry Officer in the proceedings, dated 20.03.2015 with a request to conduct an enquiry in the presence of the Officer of the DVAC. The petitioner has filed W.P. (MD) No. 4888 of 2015 with a prayer to issue a direction to the respondents to consider the case of the petitioner and pass orders revoking his suspension and disburse his retirement benefits. This Court, vide order, dated, 01.04.2015 directed the respondents to consider and pass an order. The contention of the respondents the allegation stated that by deponents against the petitioner shows that the petitioner had committed grave misconduct and hence, the University did not incline to revoke the suspension of the petitioner and proceed with the disciplinary action. Hence the second respondent passed an order, dated 09.07.2015, stating that the payment will be decided after the completion of the enquiry. Then the Charge Memo, dated 03.09.2015 was issued to the petitioner framing the six charges.

6. The petitioner has not submitted any explanation, but has filed a writ petition in W.P. (MD) No. 16707 of 2015. In pursuance of the continuation of the disciplinary proceedings and enquiry, the petitioner was informed about the continuation of the suspension till the conclusion of the disciplinary proceedings, vide communication, dated 09.09.2015. The said order was challenged in W.P. (MD) No. 16881 of 2015 and this Court has passed an Interim Stay. Therefore, the respondents have filed a Vacate Stay petition in M.P. (MD) No. 1 of 2015.

7. Heard Mr. S. Saravanan and Mr. R. Subramanian, Learned Counsel appearing for the petitioner and Mr. T. Sakthi Kumaran, learned Counsel appearing for the respondents.

8. The contention of the petitioner is that the respondents have issued only suspension order and there is no Charge Memo at all. A Charge Memo was issued in the year 2015 only. Therefore, the said Charge Memo is a belated Charge Memo and ought to be quashed in threshold itself. The petitioner relied on judgments rendered in

a. ***C. Mathesu's case by Honourable Full Bench reported in 2013 (3) CTC 369***



b. **P. Rajangam's case by Honourable Single Judge in W.P. (MD) No.5657 of 2012, dated 23.01.2017**

c. **W.P. (MD) No.4156 of 2016.**

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In DVAC case the Institution is empowered to proceed with the disciplinary proceedings and has directed the respondents to take action against the erring officials.

9. Admittedly, the respondents have not initiated disciplinary proceedings and a Charge Memo was also not issued. The only letter the respondents have issued is a Memo dated 28.07.2009. In the letter it is stated that the petitioner is suspended with effect from 27.07.2009 and states that the petitioner should appear for enquiry whenever required. Now the petitioner takes a stand as per Rule 9(A) of the Tamil Nadu Civil Servants (Discipline & Appeal) Rules the period of limitation prescribed is four years. The contention of the petitioner is that beyond four years as stated in Rule 9(A), the respondents cannot issue any proceedings.

10. But this Court is not able to close the eyes because the allegation against the petitioner is illegal gratification. The petitioner has issued provisional certificate along with the consolidated mark statement by taking a demand of Rs.3000/- (Rupees Three Thousand only) and later the request was reduced to Rs.2000/- (Rupees Two Thousand only). In a Criminal Case, the petitioner was acquitted on a technical ground, the proceedings ought to be initiated by the Registrar, but in the present case, the in-charge Registrar has initiated the proceedings. In a Criminal Case it has been held that in-charge has not power to issue the Exhibit P-1. The P.W-1 in the Criminal Case has admitted that the Syndicate of Madurai Kamaraj University delegated powers to him through a resolution to accord sanction order to prosecute the petitioner but no such orders was produced in the case. Therefore, it is not an "Hon'ble Acquittal", it is only a technical acquittal.

11. The Learned Counsel appearing for the petitioner has also submitted that the petitioner is in terminal stage of cancer. It is a case of illegal gratification. Therefore taking all these facts and factors into consideration, to meet the ends of justice it would be appropriate to impose the punishment of compulsory retirement on the petitioner. This order is passed based on the facts and circumstances of the case and this cannot be referred as precedent in future. Therefore, this case is disposed of with the direction to the respondents to impose the punishment of compulsory retirement and the respondents are also directed to disburse the terminal benefits as applicable to the punishment of compulsory retirement. The said exercise shall be completed within a period of four weeks from the date of receipt of copy of the order.



12. With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

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 Vice Chancellor,
Madurai Kamaraj University,
Palkalai Nagar, Madurai.
2. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-5816[F] dated 14/02/2022)

Order made in
W.P. (MD) Nos. 14464, 16707 & 16881 of 2015
11.02.2022

KG (CO)
TR (21.03.2022) 6P 4C