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W.A.No.1215 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1215 of 2023
AND
C.M.P.No.12330 of 2023

1.The Government of Tamil Nadu
Rep. by its Principal Secretary to Government
Animal Husbandry, Dairying and Fisheries Department
Secretariat, Chennai-9

2.The Director of Fisheries
Nandanam, Chennai-35

.. Appellants

Vs.

1.K.Natarajan

2.The Principal Accountant General (A&E)
Teynampet, Chennai-18

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 07.07.2022 passed by the learned Judge in W.P.No.26058 of 2018.

For Appellants : Mr.S.Silambanan
Additional Advocate General
Assisted by Mrs.S.Anitha, SGP

For 1st Respondent : Mr.L.Chandrakumar



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JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

This Writ Appeal arises from the order dated 07.07.2022 passed by the learned Judge in W.P.No.26058 of 2018.

2.The necessary facts leading to the filing of this writ appeal are as under:

2.1. The respondent herein is the writ petitioner. He was appointed as Sub Inspector of Fisheries on 04.01.1984 and was subsequently, promoted to the post of Inspector of Fisheries on 10.12.1998. While so, the respondent was subjected to disciplinary proceedings, pursuant to which, he was issued with a charge memo dated 13.07.2009 framing five charges. Thereafter, there was a DVAC trap case against him, consequent to which, another charge memo dated 09.03.2010 was issued for the offence punishable under Sections 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988. Simultaneously, there was a criminal case filed against him. In the above said trap case by DVAC, charge sheet was filed in Spl.C.C.No.2 of 2009 on the file of the Chief Judicial Magistrate, Ramanathapuram. On attaining the age of superannuation, the respondent was permitted to retire from service with effect from 31.07.2012.



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While so, the respondent was acquitted from the criminal case by judgment dated 01.11.2016 passed by the Sub Judge, Ramanathapuram. Thereafter, the appellant Department issued a notice to the respondent on 28.08.2017 calling for explanation against the charges, for which explanation was also submitted by the respondent. Since the enquiry was not concluded, the respondent filed W.P.No.26058 of 2018, challenging both the charge memos dated 13.07.2009 and 09.03.2010 as well as the proceedings dated 28.08.2017.

2.2. The learned Judge, by order dated 07.07.2022, disposed of the aforesaid writ petition in the following terms:

- i. That the impugned charge memos dated 13.07.2009 and 09.03.2010 shall not be proceeded further in view of the aforesaid reasons, where the petitioner was permitted to retire from service w.e.f.31.07.2012.*
- ii. As a sequel, the proceedings issued by the second respondent dated 28.08.2017 is liable to be interfered with and hence, it is set aside.*
- iii. Consequently, based on the retirement and superannuation on 31.07.2012 the petitioner shall be entitled to get service benefits including the retirement benefits and if such benefits have not been extended so far, the same can be extended to him within a period of three months from the date of receipt of a copy of this order."*

Challenging the order so passed by the learned Judge, the appellants / State have filed the present appeal.

3.Amongst many grounds raised in the writ appeal, the learned



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Additional Advocate General appearing for the appellants has mainly contended that the learned Judge ought to have considered the orders issued by the 2nd appellant, allowing the respondent to retire from service without prejudice to the disciplinary proceedings pending against him *vide* proceedings dated 20.07.2012 and the same was endorsed by the Assistant Director of Fisheries (Inland Fisheries) Madurai, which cannot be taken as retirement order, as the Director of Fisheries is the competent authority to issue order. It is further submitted that the sequel letter dated 28.08.2017 was issued by the department as per the existing rules, i.e., only on receiving the explanation, Inquiry Officer can be appointed. It is also submitted that though the respondent has been acquitted from the proceedings in C.C.No.2 of 2009 by the Sub Judge, Ramanathapuram on 01.11.2016, the departmental disciplinary action initiated against him under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is still pending and without its conclusion, service benefits cannot be settled. Thus, according to the learned Additional Advocate General, the learned Judge has not taken note of these aspects and has proceeded to decide the writ petition in favour of the respondent and hence, the same is liable to be set aside.

4.The learned counsel appearing for the respondent / writ petitioner



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submitted that the very same Bench, while dealing with the similar set of facts, in *The District Collector, Dharmapuri District Vs. K.P.Kolandai (W.A.No.1316 of 2023 decided on 30.08.2023)*, dismissed the appeal preferred by the authorities. Therefore, the learned counsel sought to dismiss this writ appeal as well, on the same lines.

5. Heard the learned counsel appearing on either side and perused the materials available on record carefully and meticulously.

6. The first charge memo was issued to the respondent on 13.07.2009 and subsequently, there was a DVAC trap case, pursuant to which a second charge memo was issued on 09.03.2010. In this connection, criminal case was registered against the respondent and in that case, charge sheet was filed, which culminated into the case in CC No. 2 of 2009, on the file of the sub court, Ramanathapuram. In the mean while, the respondent was permitted to retire from service on attaining the age of superannuation on 31.07.2012 and the criminal case ended in acquittal on 01.11.2016. Thereafter only, by communication dated 28.08.2017, the respondent was directed to give reply to the charge memos, which were issued to him in the years 2009 and 2010. Thus, though two set of charge memos were issued in the years 2009 and 2010, the



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same were not proceeded and were kept pending till the respondent attained superannuation and on attaining the age of superannuation, he was permitted to retire without retaining his services for the purpose of continuing the disciplinary proceedings already initiated against him. Once the respondent retired from service, there has been no lien between the respondent and the employer. Even though the appellants had no impediment to proceed against the respondent on the basis of the second charge memo which had arisen out of the DVAC case, they have not done it at least for two years and accordingly, there was no progress in the disciplinary proceedings. The fact remains that though the charge memos were pending, the respondent was permitted to retire from service without imposing any condition. Further, the proceedings issued on 28.08.2017 asking the respondent to give explanation to the charges, was responded by the respondent, but disciplinary proceedings cannot be initiated against him, since there was no lien available with the appellants, on account of permitting him to retire from service without imposing any condition. In such circumstances, the issuance of proceedings dated 28.08.2017 itself is not in accordance with law.

7. Even otherwise, the respondent cannot now, be subjected to disciplinary enquiry, as he was trapped by the officers of Ramanathapuram



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detachment of DVAC on 04.06.2008. Since the charges of demand of illegal gratification have to be established in the manner known to law, which *inter alia* would depend on oral testimony of witnesses, in view of the passage of time, it is improbable that they may be able to give statement or evidence that may stand judicial scrutiny. With the similar observations, the very same Bench has dismissed the writ appeal in WA.No.1316 of 2023 filed by the department, on 30.08.2023, as referred to by the learned counsel for the respondent / writ petitioner. It is also important to note that the respondent herein was already acquitted from the criminal case arising out of the said trap by DVAC.

8.In view of the foregoing, we find no illegality or infirmity in the impugned order passed by the learned Judge and accordingly, the writ appeal stands dismissed. The appellants are directed to comply with the order of the learned Judge within a period of six weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

[R.M.D,J.] [M.S.Q, J.]

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Internet : Yes



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Neutral Citation : Yes/No
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R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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To
The Principal Accountant General (A&E)
Teynampet, Chennai-18

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