



W.P.No.33616 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.33616 of 2023
and WMP No.33441 of 2023

S.Ramkumar

...Petitioner

-Vs-

1.The Principal Secretary to Government,
Rural Development and Panchayat Raj (E1) Department,
Fort St.George,
Chennai-09.

2. The Director of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai-15.

3. The District Collector,
Nagapattinam District,
Nagapattinam.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in connection with the impugned order passed by him in G.O.(2D) No.28 Rural Development and Panchayat Raj (E2) department dated 27.04.2023



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and G.O.(2D) No.30 Rural Development and Panchayat Raj (E2) department dated 28.04.2023 and quash the same and further direct the respondents to permit the petitioner to retire from service and to settle the retirement benefits within the reasonable time.

For Petitioner : Mr.Ali Hassan Khan
For Mr.S.Sivakumar

For Respondents : Mr.M.Bindran
AGP

ORDER

Heard Mr.Ali Hassan Khan, learned counsel for the petitioner and Mr.M.Bindran, learned Additional Government Pleader for the respondents.

2. The case of the petitioner is that when the petitioner was serving as Block Development Officer of Mugaiyur Panchayat Union, Villupuram District, he has been falsely implicated in a criminal case registered in Cr.No.02/AC/2009/VPM under the Prevention of Corruption Act and the criminal case initiated against the petitioner in Special Case No.01 of 2010 on the file of Special Court/Chief Judicial Magistrate, Villupuram ended in acquittal on 13.12.2013. For the same set of allegations, departmental action has also been initiated and the same ended in



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favour of the petitioner and finally he was promoted as Assistant Director on 25.04.2023.

3. It is the case of the petitioner that even after passing the impugned order of suspension on 27.04.2023, the respondents have not chosen to issue any charge memo and the petitioner is under suspension for the past seven monthths. Though he had sent a representation to the respondents on 06.11.2023, the respondents have not chosen to pass any orders and hence, the petitioner has filed the present writ petition.

4. Learned counsel for the petitioner submits that though the peititoner was placed under suspension and not permitted to retire on 27.04.2023 and 30.04.2023 respectively through the impugned orders, charges have not been framed till date and the criminal case, in which, he was implicated in the year 2010, also ended in acquittal.

5. It is pertinent to point out that initially the criminal case registered against the petitioner under the Prevention of Corruption ended in acquittal on 13.12.2013



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in S.C.No.01/2010 on the file of Special Court/Chief Judicial Magistrate. Further, on the same set of allegations, the departmental action initiated against the petitioner ended in his favour. However, when the petitioner herein had reached the age of superannuation on 30.04.2023, he was placed under suspension through the impugned order dated 27.04.2023 and another order was passed on 28.04.2023, not permitting the petitioner to retire from service. The request made by the Director General of Police, Vigilance and Anti-Corruption, seeking for permission to include the petitioner as an Assistant Director in a preliminary enquiry was sent on 29.01.2023. Thus, when the petitioner was placed under suspension on 27.04.2023 and order was passed on not permitting him to retire on 28.04.2023, even this request by Director General of Police, Vigilance and Anti-Corruption, seeking for proceeding against the petitioner was only under consideration at this stage and no final orders were passed on the proposal, when he had reached the age of superannuation.

6. G.O.Ms.No.111 Human Resources Management (N) Department dated 11.10.2021 orders the Government to avoid issuing of suspension orders on the date of retirement and that the case should be examined atleast three months prior



to the date of retirement on superannuation of the government servant. The Government Order further states that to avoid suspension on the date of retirement, decision should be taken well in advance i.e., three months prior to the date of retirement on superannuation,

7. It would be apt and appropriate to extract Fundamental Rule 56(1), which reads as follows:-

Fundamental Rule 56(1)

56. (1) Retirement on Superannuation.— (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic



Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years :

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.

8. Thus, when admittedly, no charges were pending against the petitioner on the date, on which, he reached the age of superannuation and no final orders were also passed on the request of Director General of Police, Vigilance and Anti-Corruption, the action of the respondents in placing the petitioner under suspension and not permitting to retire is illegal and also opposed to G.O.Ms.No.111 Human Resources Management (N) Department dated 11.10.2021.



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9. Accordingly, the impugned orders dated 27.04.2023 and 28.04.2023 are hereby quashed and the Writ Petition stands allowed. Consequently, there shall be a direction to the respondents herein, to forthwith pass appropriate orders, permitting the petitioner to retire from service, together with all the monetary, retirement and pensionary benefits. Such orders shall be passed at least within a period of one week from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

10. No costs. Consequently, connected miscellaneous petition is closed.

14.12.2023

Index:Yes
Internet:Yes
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To

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M.S.RAMESH,J.,

SR

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