IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.09.2023**

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P No.30683 of 2018
And
W.M.P.No. 35790 of 2018

K.Vinayagamoorthy ... Petitioner

-Vs-

1. The Principal Commissioner
Revenue Administration
Chepauk,
Chennai – 600 005.

2. The Special Commissioner
The Commissioner of Revenue Administration
Chepauk, Chennai – 600 005.

3. The Director of Vigilance and Anti Corruption
P.S. Kumarasamy Raja Salai,
Raja Annamalai Puram,
Chennai – 600028.

4. The Accountant General
O/o. The Accountant General
Teynampet, Chennai – 600 018.
5. The Accountant General

O/o. The Accountant General
Nandhanam, Chennai – 600 035.

6. The District Collector
Collectorate of Nagapattinam
Nagapattinam Town and Taluk
Nagapattinam District.

7. The District Revenue Officer
O/o. The District Revenue Officer
Collectorate of Nagapattinam
Nagapattinam Town and Taluk
Nagapattinam District.

8. The Deputy Superintendent of Police
Vigilance and Anti-Corruption
Nagapattinam Town and Taluk
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9. The Revenue Divisional Officer
O/o. The Revenue Divisional Officer
Myladuthurai Town and Taluk,
Nagapattinam District.

10. The Thasildhar
O/o. The Thasildhar
Sirkazhi Town and Taluk,
Nagapattinam District.

11. The Revenue Thasildhar
O/o. The Revenue Thasildhar
Sirkazhi Town and Taluk
Nagapattinam District.

12. The Inspector of Police

Vigilance and Anti-Corruption
Nagapattinam Town and Taluk,
Nagapattinam District. ... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the impugned order in R.C.No. 11301/2013/A7 dated 31.08.2017 issued by The Thasildhar, Sirkazhi Town and Taluk, Nagapattinam District, the 10th respondents herein through proper channel and quash the same and consequently direct the 7th, 9th and 10th respondents herein to permit the petitioner herein to become retirement from his service and grant exceeding all his service benefits along with his pension.

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For Petitioner	:	Mr. Dalit Tiger C.Ponnusamy
For RR 1 to 3 & 6 to 12	:	Mr. S.Ravi Kumar Special Government Pleader
For RR 4 & 5	:	Ms. T.S.Selvarani Standing Counsel

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking records of the order in R.C.No. 11301/2013/A7 dated 31.08.2017 issued by the Thasildhar, Sirkazhi Town and Taluk, Nagapattinam District. The petitioner seeks to set aside the same and direct the 7th, 9th and 10th respondents to permit the petitioner to retire from service and grant all service benefits including pension.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner had originally joined as Village Assistant on 01.02.1995 at Kattur Revenue Village in Mahendrapalli Post in Sirkazhi Taluk, Nagappattinam District. His services were regularised on 01.06.1995 and he was working there till 2006. He was then transferred to Pudupattinam Revenue Village and Post in Sirkazhi Taluk in the year 2006 and was working there between 2006 to 2011. He was then transferred to Pulianthurai Village and Post in the year 2012 and worked there between 2012-2013. He was then again transferred to Kattur Village in the year 2014 and was working there till his date of superannuation / 31.08.2017. But however, on 31.08.2017, in the afternoon he was served with an order of suspension by invoking Section 56 (1)(c) of the Fundamental Rules by the Thasildhar, Sirkazhi Town and Taluk / 10th respondent herein by the impugned order dated 31.08.2017 in R.C.No. 11301 / 2013/A7. It had been stated that till date, he has been kept under suspension and only subsistence allowance alone has been paid to him.

3. The primary ground on which the suspension order was passed was that when he was earlier working at Puthuppattinam Revenue Village and Post in Sirkazhi Taluk, four charges were levelled against four persons including him, consequent to a report given by the Thasildar dated 19.08.2013. It had been stated that the petitioner was the third delinquent. The entire issue surrounded misuse of flood relief fund and their disbursement to the villagers of Puthuppattinam Revenue Village. It had been stated that the petitioner had affixed his left thumb impression instead of one of the beneficiary by name Mrs.Revathy, W/o. Alavanthar in Serial No. 42-207 in the list of beneficiaries. It was alleged that the petitioner had misused the said relief fund. It is also stated that he had affixed his left thumb impression even with respect to the beneficiaries in Serial Nos. 304, 331, 366 and 973 and thus enabled others to misuse the flood relief fund. All these acts were in the year 2008.

4. It had been stated that regarding this aspect, the Revenue Divisional Officer was appointed as Enquiry Officer and an Enquiry Report was also submitted on 07.04.2015. However, no orders have been passed consequent to the enquiry report. The petitioner was however placed under suspension on the afternoon of the date when he was to retire on attaining the age of superannuation / 31.08.2017. It is alleged that the petitioner had been discriminated and that orders have not been passed deliberately. The present Writ Petition has thus been filed.

5. A counter affidavit has been filed by the fourth and fifth respondents / the Accountant General Office wherein they stated that the authority to revoke the suspension order against the petitioner was the Revenue Department and that the Accountant General Office, can only authorise the retirement benefits to be released to the petitioner herein and in no way can be called upon to interfere with the order of suspension.

6. The Tahsildar, Sirkali Taluk, who had passed the impugned order also filed a counter affidavit. He was the tenth respondent. He stated that information had been received about various acts of commission and omission committed in the disbursement of flood relief fund which was sanctioned by the Government owing to Nisha Cyclone which had hit Sirkali Taluk in Nagapattinam District including Pudupattinam Village. Various facts were stated with respect to the involvement of the petitioner herein. It may however not be appropriate on the part of this Court to examine those facts in detail particularly since they are the subject matter of the enquiry already conducted and in which an enquiry report had also been forwarded by the enquiry officer in the year 2015.

7. Be that as it may, it is similar to what has been stated by the petitioner in his affidavit. It had been stated that in view of those charges against the petitioner and others, the petitioner was not permitted to retire on 31.08.2017. It also been stated that subsistence allowance was being paid to the petitioner herein in accordance with the provisions of the Fundamental Rules.

8. The twelfth respondent, Inspector of Police, Vigilance and Anti Corruption, Nagapattinam, had also filed a counter affidavit once again traversing into the facts of the allegations against the petitioner herein. As stated, it would be extremely inappropriate on this part of this Court to examine in detail the charges since an enquiry had already been conducted, but no orders have been passed by the respondents consequent to such enquiry.

9. During the course of hearing of the Writ Petition, this Court sought the details about the payment of subsistence allowance to the petitioner, who had been kept under continuous suspension from 31.08.2017 to till this date, for more than six years.

10. It had been stated on instructions by the learned Special Government Pleader appearing for the first to third and sixth to twelfth that sanction for pension from January 2023 till April 2023 together with dearness allowance as admissible had been given by the respondents. The

Court had made it clear that subsistence allowance should be paid every month.

11. Heard the learned counsel for the petitioner and also the learned Special Government Pleader appearing for the respondents.

12. It is the insistence of the learned counsel for the petitioner that the petitioner had been placed under suspension in the afternoon on 31.08.2017, the very date when he was to retire on attaining the age of superannuation, and it is contended that though charges have been framed against the petitioner herein and enquiry had been conducted, further orders have not been passed.

13. It is not the case of the respondents that the petitioner had not co-operated during the enquiry. Even though the enquiry report had been submitted in the year 2015 itself, final orders have not been passed. The petitioner had been kept continuously under suspension. It is contended by the learned counsel for the petitioner that placing the petitioner under suspension continuously is violative of his rights. It had also been contended that the petitioner was only working as Village Assistant and was not directly involved in any of the charges. It was also contended that out of several charges raised against the petitioner herein, only one stood proved and since no orders have been passed, even the subsistence allowance had not been paid regularly to the petitioner herein. The hardship suffered by the petitioner was highlighted by the learned counsel for the petitioner herein.

14. The learned Special Government Pleader however stated that the entire issues surrounds misappropriation of Government funds particularly, the cyclone relief fund sanctioned by the Government for the benefit of those who had suffered owing to Nisha Cyclone which struck Sirkazhi Taluk and more particularly Pudhuppattinam Village, where the petitioner was working as Village Assistant in the year 2008. It was stated that the role of the petitioner was determined during the enquiry proceedings. It is also contended by the learned Special Government Pleader that the subsistence allowance had been sanctioned and paid and disbursed to the petitioner herein. But however, it is seen that the subsistence allowance for the period from January 2023 till April 2023 was sanctioned only after that particular block period to the petitioner herein.

15. I have carefully considered the arguments advanced and perused the records.

16. It is a fact that the petitioner was working as Village Assistant at Pudhuppattinam Village in the year 2008 when the village was affected by Nisha Cyclone. The other allegations against the petitioner about disbursement of the benefit funds which had been sanctioned by the Government, about beneficiaries who suffered owing to Nisha Cyclone, are the subject matter of the enquiry proceedings and therefore, it would not be appropriate on the part of this Court to enter into any discussion on the merits of those aspects. An Enquiry Officer had been appointed and enquiry had been conducted. The petitioner had also participated in the enquiry.

17. It must be kept in mind that the petitioner was only the Village Assistant and could not have been directly in charge or control of the funds which had been sanctioned by the respondents. Be that as it may, he is one of the individuals who was also responsible for identifying the beneficiaries. All these aspects are the subject matter of the enquiry proceedings. But keeping the petitioner under suspension from 2017 till this date cannot withstand the scrutiny of the Court. This is also so since the enquiry had been completed and the enquiry report had been furnished way back in the year 2015 itself. When the enquiry report had been submitted in the year 2015, I find no justification for placing the petitioner under suspension from the year 2017 till this date. The respondents should realise that they should pass the final orders on the basis of the enquiry report. The delay is purely on their part in not passing orders. It is now eight years from the date of submission of the enquiry report and no orders have been passed. On the other hand, the petitioner has been made to suffer, from the year 2015-2017 without knowing the result of the enquiry report and from the year 2017 onwards, till this date, since he was placed under suspension and not permitted to retire and the terminal benefits also not being released to him.

18. In view of all these facts, the following directions are therefore issued:-

(i) The respondents are directed to pass orders on the basis of the enquiry report within a period of 8 weeks from the date of receipt of a copy of this order;

(ii) The petitioner to be granted all opportunities and due procedure as enunciated by law to be followed;

(iii) The petitioner should be paid all arrears of subsistence allowance within a period of 8 weeks and thereafter, depending on the nature of the order passed on the enquiry report, further steps to be taken with respect to the service of the petitioner herein;

19. No further orders are required.

20. Accordingly, the Writ Petition stands disposed of. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

vsg 19.09.2023

Index:Yes/No
Neutral Citation:Yes/No

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C.V.KARTHIKEYAN,J.

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