



W.P.(MD)No.9031 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2023

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.9031 of 2020

and

W.M.P.(MD)No.8255 of 2020

P.Jeyaraman

... Petitioner

Vs

1.The State of Tamilnadu

Represented by its Principal Secretary to Government,
Home (Police XVII) Department,
Chennai.

2.The Director,

Fire & Rescue Service Department,
Chennai.

... Respondents

Prayer:- Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd respondent in his proceedings in PR. No. 02/2019 dated 16.09.2019 and quash the same and direct the respondents to settle all the retirement benefits with consequential pension benefits with admissible interest to the petitioner.



W.P.(MD)No.9031 of 2020

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For Petitioner : Mr.V.Panneer Selvam
For Respondents : Mr.T.Villavan Kothai
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined the fire and rescue service department as Station Fire Officer in the year 1987. He was promoted as Assistant Divisional Fire officer and then as Divisional Fire Officer. Sometime in the year 2011, he was implicated in a criminal case. He was also placed under suspension. The criminal case culminated in final report and it was taken on file by the Special Court and the Spl.S.C.No.9 of 2014. It ended in acquittal on 31.01.2019. The petitioner had retired in the meanwhile on 31.01.2016. The department did not file any appeal challenging the judgment of acquittal nor disburse the petitioner's retiral benefits. Therefore, the petitioner filed W.P.(MD)No.17371 of 2017. Vide order dated 07.08.2019, the writ petition was disposed of. Thereafter, the impugned charge memo



W.P.(MD)No.9031 of 2020

dated 16.09.2019 came to be issued. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to quash the impugned charge memo and allow this writ petition as prayed for. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. The first contention raised by the learned Additional Government Pleader is that W.P.(MD)No.17371 of 2019 was disposed of with the set of directions. They are follows:

" i) the first respondent is directed to issue suitable instructions to the officers concerned to comply with the aforesaid Government Order dated 22.02.1983 in letter and spirit without any deviation, within a period of four weeks from the date of receipt of a copy of this order;

ii) based on the aforesaid instruction, the officers concerned officials for taking appropriate action against the erring officials and staffs of the respondent department, who are involved in criminal charges registered under the provisions of



W.P.(MD)No.9031 of 2020

WEB COPY

Prevention of Corruption Act, 1988, lodged by the DV &AC Department. If no disciplinary action is taken by the officials concerned, the officers concerned are directed to take necessary action against the officials concerned;

(iii) the second respondent shall also furnish the relevant documents to the disciplinary authorities concerned in accordance with rules for initiating departmental disciplinary proceedings against the <http://www.judis.nic.in> W.P.(MD)No. 17371 of 2019 erring officials and staffs of the respondent department based on the criminal charges under the provisions of Prevention of Corruption Act, 1988, lodged by the DV&AC Department; and

iv) the first respondent is also directed to consider the petitioner's representation dated 16.02.2019 and pass appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order; "

The Government had issued G.O.66 Human Resource Management Department dated 06.07.2022 in compliance with the aforesaid directions. The stand of the respondent is that the very issuance of the charge memo is in consonance with the directions issued by this Court. He would also point out that an enquiry officer was appointed and the oral enquiry has already



W.P.(MD)No.9031 of 2020

WEB COPY

over and that report from the enquiry officer is awaited. His further contention is that the acquittal rendered by the special Court will not operate as a bar for issuing the impugned charge memo. In this view of the matter, he called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. The FIR against the petitioner was registered on 16.11.2011. The case was taken cognizance in the year 2014 in Special Case No.9 of 2014 on the file of the Special Court for Prevention of Corruption Act Cases, Theni. The petitioner reached the age of superannuation on 31.01.2016. The case ended in acquittal on 31.01.2019. The impugned charge memo was issued on 16.09.2019. When the petitioner reached the age of superannuation, he was not allowed to retire but retained in service. It is relevant to note here that the petitioner came to be suspended on 25.03.2013. G.O.(Ms)No.68 Home(Police-XVII) Department dated 31.01.2016, whereby the petitioner was retained in service reads as follows:



W.P.(MD)No.9031 of 2020

" AND WHEREAS Thiru.P.Jayaraman, formerly Divisional Officer, Fire and Rescue Services, Theni Division under suspension is attained the age of his superannuation on the afternoon of 31.1.2016 and inquiry into a criminal case against him is still pending.

AND WHEREAS in the circumstances of the case, it is necessary that the said Thiru. P.Jayaraman, formerly Divisional Officer, Fire and Rescue Services, Theni Division (now under suspension) shall not be permitted to retire on his reaching the date of superannuation i.e., 31.1.2016 afternoon 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.P.Jayaraman, formerly Divisional Officer, Fire and Rescue Services, Theni Division (now under suspension) is not permitted to retire from service on his reaching the date of superannuation on the afternoon of 31.1.2016, but shall be retained in service, until the enquiry into a criminal case pending against him before the Chief Judicial Magistrate Court, Theni, is concluded and final orders passed thereon by the competent authority."

6. A reading of the aforesaid G.O., would indicate that the only ground on which the petitioner was retained in service was due to the pendency of the criminal trial. FR 56(1)(c) reads as follows:

"56(1)(c) Notwithstanding anything contained in



W.P.(MD)No.9031 of 2020

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 a final order passed thereon by the competent authority or by any higher authority."

7. Even though the expression employed in the aforesaid G.O.No.68 dated 13.01.2016 does not exactly reflect the language set out in FR 56(1)



W.P.(MD)No.9031 of 2020

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(c), I can safely conclude only on account of the pendency of Criminal trial before the learned Chief Judicial Magistrate, Theni, the petitioner was retained in service. From a reading of the said G.O., whereby the petitioner was retained in service one cannot come to the conclusion that the employer had any proposal or intention to proceed against the petitioner departmentally. Therefore, once the criminal case ended in acquittal, consequence will have to necessarily follow in favour of the petitioner.

8. The issue can be looked at from yet another angle. The authority was never barred from conducting any departmental enquiry parallelly. In other words, the petitioner came under adverse notice in the year 2011. Nothing stopped the department from initiating departmental enquiry simultaneously and concluding the same. They need not have waited till the outcome of the criminal case.

9. The learned counsel appearing for the petitioner draws my attention to the judgment of the Hon'ble Division Bench rendered in W.A.No.1573 of 2017 dated 30.11.2017 (M.Gokulakrishnan Vs RTO, Nagapattinam). In the



W.P.(MD)No.9031 of 2020

WEB COPY

said case, the Hon'ble Division Bench had quashed the charge memo on the ground that there is no independent application of mind by the competent authority and the charge memo was mechanically framed. The criminal prosecution and the charge memo are founded on the same set of facts. Before the criminal Court, the defacto complainant Nagarajan stood his ground. He did not turn hostile. The acquittal was on merits.

10. The criminal Court took note of the fact that the petitioner herein was the enquiry officer in an enquiry against a department official and that the defacto complainant was related that official. When the criminal court had rendered a judgment on merits and the acquittal was also not put to challenge, the departmental authority must assign reason as to why he wants to proceed against the delinquent independently. The counter affidavit is silent on this aspect. There is nothing on record to show that the disciplinary authority has independently applied his mind and come to the conclusion that notwithstanding the acquittal of the writ petitioner in the criminal case, there are good grounds for initiating departmental action and framing charge memo. For the aforesaid three reasons, I have to interfere.



W.P.(MD)No.9031 of 2020

WEB COPY

11. It is true that during the intervening period, oral enquiry appears to have concluded. But then developments that have taken place during the pendency of the writ petition will have to abide by the outcome of the writ petition. The occurrence admittedly has taken place way back in the year 2011. The petitioner has been under suspension since 2013. He retired in the year 2016 and for more than seven years he had not received his terminal benefits. The judgment of acquittal rendered by the criminal Court has not been put to challenge.

12. Accordingly, the impugned charge memo is quashed and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

09.03.2023

NCC : Yes/No
Index :Yes/No
Internet :Yes / No



W.P.(MD)No.9031 of 2020

To

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W.P.(MD)No.9031 of 2020

G.R.SWAMINATHAN, J.

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W.P.(MD)No.9031 of 2020

09.03.2023