



W.P.(MD).No.23885 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.08.2023

PRONOUNCED ON : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.23885 of 2022

and

W.M.P(MD)No.17954 of 2022

S.Ovu Reddy

... Petitioner

Vs.

1.The Principal Secretary to Government,
Highways and Minor Ports (HL 1) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2.The Director General of Highways,
Highways and Minor Ports Department,
Guindy,
Chennai – 600 025.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the impugned order passed by the first respondent in his letter No. 1131/HL1/2020 – 5, dated 29.10.2020 and quash the same as illegal and unconstitutional and consequently direct the respondents herein to revoke the petitioner's suspension order dated 30.03.2015 and permitting him to retire from service with effect from 31.03.2015 with all monetary and attendant benefits.

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For Petitioner : Mr.P.Mahendran
For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The prayer of the Writ Petition is as follows:-

The present Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent in his letter No.1131/HL1/2020 – 5, dated 29.10.2020 and consequently direct the respondents herein to revoke the petitioner's suspension order, dated 30.03.2015 and permitting him to retire from service with effect from 31.03.2015 with all monetary and attendant benefits.

2.Heard Mr.P.Mahendran, learned counsel appearing for the petitioner and Mr.M.Prakash, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.



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3.The petitioner was appointed as an Assistant Engineer in the Highways Department on 22.10.1980. Thereafter, he was promoted as Assistant Divisional Engineer and was posted in the office of the Highways Department, NABARD, Sattur on 07.10.2000. He was further promoted to the post of Divisional Engineer, National Highways Department at Ramanad on 10.03.2010. Subsequently, he was posted at Madura National Highways Office. While things stood thus, the Vigilance and Anti Corruption Department, Madurai, initiated criminal proceedings against the petitioner alleging that he was in possession of assets disproportionate to the known source of income, while he was working as Assistant Divisional Engineer (Highways), NABARD and Rural at Sattur and registered a case against him for the offences punishable under Section 109 of I.P.C r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 in Crime No.10 of 2003. The same was taken on file in Special C.C.No.2 of 2008 on the file of the learned Chief Judicial Magistrate, Special Judge, Madurai. Subsequently, the said case was transferred to the Special Court for Vigilance and Anti-Corruption Cases at Madurai and taken on file in Special Case No.56 of 2011 from 19.10.2011 onwards.



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4. In the meanwhile, the petitioner's date of superannuation fell on 31.03.2015. While so, the first respondent issued proceedings in G.O(3D)No.26, Highways and Minor Ports (HL1) Department, dated 30.03.2015, by which the petitioner was placed under suspension pursuant to the filing of Special C.C.No.2 of 2008 before the learned Chief Judicial Magistrate and Special Judge, Madurai. Following which, another G.O(3D)No.27, Highways and Minor Ports (HL1) Department, dated 31.03.2015, was also issued, by which the petitioner was not permitted to retire from service on 31.03.2015 afternoon, but was retained in service. Thereafter, the petitioner contested the aforesaid criminal proceedings before the Special Court for Vigilance and Anti Corruption, Madurai, in which the petitioner and his wife were acquitted from all the charges levelled against them under Section 248(1) of Cr.P.C in Special Case No.56 of 2011 on 31.08.2016. After the pronouncement of the said Judgment, the prosecution did not file any appeal and thus, the Judgment of the Special Court for Vigilance and Anti-Corruption, Madurai, dated 31.08.2016 attained its finality. On being acquitted from the criminal case from all the charges levelled by the first respondent against the petitioner, the petitioner is entitled for revocation of the suspension order, dated 30.03.2015 and also the order dated 31.03.2015 whereby he was not permitted to retire from



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service has to be revoked. For which, he personally approached the respondents requesting to issue suitable orders in accordance with law so as to enable and declare that the petitioner was retired from service on 31.03.2015. However, his request was not heeded to by the respondents. Left with no other option, the petitioner filed a Writ Petition in W.P(MD)No.1235 of 2020 seeking to direct the respondents to consider the petitioner's representation, dated 02.12.2019 to revoke his suspension and to permit him to retire from service as on 31.03.2015 on the basis of the acquittal Judgment dated 31.08.2016 in Special Case No.56 of 2011 on the file of the Special Court for Vigilance and Anti Corruption, Madurai. This Court in the aforesaid Writ Petition in **W.P(MD)No.1235 of 2020, dated 06.02.2020 [S.Ovu Reddy Vs. The Principal Secretary to Government and another]** passed a favourable order to the petitioner and the relevant portion of which is extracted as follows:-

"5.If the submissions of the learned counsel for the petitioner is taken to be true, the action of the respondents suspending him from his service on 13.03.2015 and consequently refusing him to retire from service on 31.03.2015, cannot be appreciated in view of the various orders of this Court



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as well as the guidelines imposed by the Government in cases, where the respondents seek to pass orders by not permitting the Government employee to retire, on the last day of his service. Incidentally, the petitioner herein was implicated in a criminal case, which was initiated in the year 2008. There was absolutely no impediment on the part of the respondents to have initiated departmental action against the petitioner for his involvement in the criminal case from 2008 onwards and the present action of suspending him and passing the consequential order by not permitting him to retire cannot be justified. This court is of the view that atleast now the respondents should take any positive steps to consider the petitioner's case, in view of the order of acquittal passed.

6.In the light of the above observations, the respondent shall consider the petitioner's consideration dated 02.12.2019 and pass appropriate orders atleast within a period of six weeks from the date of receipt of a copy of this order."

5.However, even after the said order passed by this Court, the respondents were not inclined to revoke the petitioner's suspension and permit him to retire from service. Hence, the petitioner filed a Contempt Petition in Cont.P(MD)No.716 of 2020 on the file of



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this Court requesting for compliance of the order passed by this Court in W.P(MD)No.1235 of 2020, dated 06.02.2020. Pursuant to the filing of the said contempt petition, the first respondent issued the impugned order vide Letter No.1131/HL1/2020-5, dated 29.10.2020, whereby the petitioner's representation regarding revocation of his suspension on the basis of the order passed by this Court in W.P(MD)No.1235 of 2020 was rejected on the ground that it was ascertained that another criminal case has been registered as against one A.Elavarasan and others including the petitioner on the allegations of demand of bribe of Rs.2.76 lakhs in a criminal case registered by C.B.I/A.C.B/Chennai in RC MA1 2020 A 0002 dated 04.03.2020. Since the petitioner's name was also implicated in the said crime, he was arrested and detained in judicial custody. On the basis of the said letter, the aforesaid contempt petition was closed on 07.01.2022, by giving liberty to the petitioner to challenge the order passed by the first respondent in the manner known to law. Hence, this Writ Petition came to be filed by the petitioner challenging the impugned order vide Letter No. 1131/HL1/2020-5, dated 29.10.2020 and to consequently direct the respondents to revoke the petitioner's suspension order, dated 30.03.2015 and permitting him to retire from service with effect from 31.03.2015.



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6.The learned counsel appearing for the petitioner submitted that the impugned order passed by the first respondent is liable to be set aside on the grounds of violation of principles of natural justice, since no opportunity whatsoever was afforded to the petitioner before passing the impugned order. He further submitted that as far as the pendency of the criminal case registered by CBI, Anti Corruption Branch, Chennai is concerned, the same pertains to a private affair and the said complaint does not have any connection to the discharge of his official duties during his service period. Without advertting to such fact, the first respondent has issued the impugned order in a mechanical way. He further contended that the order of suspension dated 30.03.2015 came to be passed only with respect to the Special C.C.No.2 of 2008 on the file of the learned Chief Judicial Magistrate and Special Judge at Madurai. The petitioner having been acquitted in the said criminal case by Judgment, dated 31.08.2016 automatically, the petitioner's case ought to have been considered by the respondents for revocation of his suspension and permitting him to retire.



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7.The learned counsel appearing for the petitioner further submitted that it is too unfortunate that the first respondent has miserably failed to consider the petitioner's representation on the basis of a subsequent criminal case registered against the petitioner only on 04.03.2020, after a period of almost five years from the date of his superannuation. The petitioner is aged about 66 years and he is fully dependent on his pension and terminal benefits for his survival and hence, the impugned order dated 29.10.2020, passed by the first respondent is liable to be set aside and the petitioner is entitled to all the terminal benefits whatsoever to which he is entitled to. On these grounds, the learned counsel appearing for the petitioner pressed for allowing the Writ Petition.

8.Per contra, the learned Additional Government Pleader appearing for the respondents has filed a counter-affidavit on behalf of the respondents and vehemently submitted that when the petitioner's representation dated 02.12.2019 was actively under consideration by the first respondent in consultation with the advisory Departments, the petitioner along with two other delinquent officials was arrested and retained in custody for more than 48 hours in respect of a case

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registered by the Central Bureau of Investigation, Anti Corruption Branch, Chennai on the allegation of demand of bribe. Following which, pending investigation, the petitioner was arrested by the Central Bureau of Investigation and was retained in custody for more than 48 hours and only on the basis of which, the impugned order rejecting the petitioner's representation came to be passed by the first respondent. The investigation by the Central Bureau of Investigation is still under process and the co-delinquents along with the petitioner, who belonged to the respondent Department, are also under suspension. He further insisted that in the said case registered by the Central Bureau of Investigation, Anti Corruption Branch, Chennai, in the F.I.R, the name of the petitioner found place as Ovu Reddy, JR Consultancy. When the petitioner was not permitted to retire from service on 31.03.2015, but was placed under suspension and was retained in service, he was liable to remain in Headquarters and could not be employed anywhere. But the registration of the Central Bureau of Investigation, Anti Corruption Branch, Chennai would make it clear that the petitioner had left the Headquarters without prior permission of the disciplinary authority and had been engaged in JR Consultancy when his services in the Government remained extended. Though the petitioner was acquitted by the Special Court in Special C.C.No.56 of 2011 by order dated

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31.08.2016, the subsequent registration of corruption cases by the Central Bureau of Investigation, Anti Corruption Branch, Chennai has resulted in the passing of the impugned order by the first respondent. Therefore, the criminal case registered by the Central Bureau of Investigation, Anti Corruption Branch, Chennai, against the petitioner cannot be taken as a private affair since the service of the petitioner is being extended and the petitioner has been paid subsistence allowance by the Department during the entire period of his suspension. The petitioner's engagement in JR Consultancy and involvement in a conspiracy in the name of the private firm is an offence. Precisely, the petitioner's request could be considered only based on the outcome of the investigation by the Central Bureau of Investigation, Anti Corruption Branch, Chennai which is now under process and the said impugned order is legal and hence, need not be interfered with by this Court.

9.It is significant to mention here that pursuant to the notification of G.O(3D)No.26, Highways and Minor Ports (HL1) Department, dated 30.03.2015, by which the petitioner was suspended and the consequent G.O(3D)No.27, Highways and Minor Ports (HL1) Department, dated 31.03.2015, by which the petitioner was not



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permitted to retire on his reaching the age of superannuation ie., on 31.03.2015 afternoon, neither any charge memo nor any departmental enquiry/disciplinary proceeding was initiated as against the petitioner. No doubt, the criminal case in Special C.C.No.56 of 2011 on the file of the Special Court for Vigilance and Anti-Corruption Cases, Madurai, ended in fully acquitting the petitioner and his wife from all the charges levelled against them vide Judgment, dated 31.08.2016.

10.Now the pertinent question which has to be decided is in view of the acquittal from all the charges levelled against the petitioner in the aforesaid criminal case, whether the petitioner is entitled to seek a revocation of his suspension, dated 30.03.2015 and further seek to permit him to retire from service with effect from 31.03.2015? and the other question which has to be decided is whether the subsequent registration of another criminal case in R.C. 2(A)/2020/CBI/ACB/Chennai, dated 04.03.2020 by the Central Bureau of Investigation, Anti Corruption Branch, Chennai, as against the petitioner would be a bar for the respondents to consider the petitioner's request for revocation of suspension and permission to retire from service with effect from 31.03.2015? The relevant provision which deals with the facts and circumstances of this case is elaborated



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in Rule 56 of the Fundamental Rules of the Tamil Nadu Government and the same is extracted as follows:-

"F.R.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:

[G.O.Ms.No.62, P & A.R. (FR.II) Department, dated 01.06.2020 – w.e.f 07.05.2020.]

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



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service on attaining the age of sixty years.

[G.O. Ms. No. 365, Personnel and Administrative Reforms (FR.IV) Department, dated 4th October 1996— with effect from 1st January 1993.]

Explanation I.—When a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government servant shall retire, revert or cease to be on leave, with effect on and from that day.

Explanation II.—The grant under rule 86 or corresponding other rules of leave extending beyond the date on which a Government servant must retire or beyond the date upto which a Government servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of Pensionary or Contributory Provident Fund benefits or retention of lien. The Government servant shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible

to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be.

(b) Omitted.



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(c) Notwithstanding anything contained in 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 (G.O.Ms.No.29, P & A.R (S) Department, dated 25.02.2021.) 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 and a final order passed thereon by the competent authority or by any higher authority.

Explanation.—For the purpose of this clause, the



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expression 'criminal misconduct' shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56(1)(c).—Whether a Government servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.”

11.The learned counsel appearing for the petitioner relying upon the case in ***the Commissioner Vs. Krishnan and another*** reported in ***2016 (3) CTC 374***, submitted that on attaining the age of superannuation after retirement, the jural relationship between an employer, Master and the employee ceases to exist and hence, the first respondent cannot be justified in passing the impugned order, dated 29.10.2020, thereby refusing to revoke the suspension of the petitioner and permitting him to retire from service. However, a clear perusal of the mandates of the Fundamental Rules of the Tamil Nadu



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Government extracted supra would reveal that only with respect to a Government employee, who is permitted to retire, the jural relationship of employer and employee would cease. However, in this case, the respondents have carefully fulfilled the requirement of Rule 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government which is mandatory by issuing G.O(3D)No.26, Highways and Minor Ports (HL1) Department, dated 30.03.2015, under Rule 53(1) of the Fundamental Rules of the Tamil Nadu Government by placing the petitioner under suspension and subsequently, fulfilling the requirement under Rule 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government by refusing to permit the petitioner to retire from service and by retaining him in service.

12.In view of the same, this Court is of the considered view that the officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation, but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. For the continuation of a disciplinary proceeding, despite the officer ceasing to be in service on the date of superannuation, a legal fiction has been created providing that the delinquent officer would be



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deemed to be in service until the proceedings are concluded and final order passed thereon and such regulation as mandated in the said Fundamental Rules of the Tamil Nadu Government is statutory in nature and should be given full effect. But strangely and significantly in this case, no disciplinary proceeding was initiated as against the petitioner despite the registration of a corruption case and the pendency of a Special Case before the Special Court for Vigilance and Anti Corruption, Madurai. The respondents have deliberately refrained from issuing even a show cause notice as against the petitioner.

13.A Full Bench of this Court in the case of ***C.Mathesu Vs. The Secretary to Government and others*** reported in **2013 (3) CTC 369**, while dealing with the disciplinary proceeding in a similar line has concluded as follows:-

"28.From the aforesaid discussion, the following broad principles emerge:

(i) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or



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removal from service can be imposed.

(ii) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(iii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(iv) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(v) Since in the present case, the appellant was



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permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9(2)(b) of the Pension Rules.”

14. Adopting the broad principles which have emerged from the Judgment elaborated supra, if a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government enquiry against him can proceed and in that case, if charges of misconduct are proved, he can even be imposed with the extreme penalty of removal from service. But strangely, I reiterate to mention at this point that despite keeping the petitioner under suspension and despite not permitting him to retire, the respondents have refrained from initiating any kind of enquiry as against him. That apart, the criminal case which was registered as against him which culminated in the Special C.C.No.56 of 2011 on the file of the Special Court, Vigilance and Anti Corruption Cases, Madurai also concluded in fully acquitting the petitioner from all the charges framed as against him vide Judgment



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dated 31.08.2016. Hence, automatically on being acquitted in the aforesaid Special case and in view of the principle which has emerged by the Full Court Judgment in **C.Mathesu Vs. The Secretary to Government and others** reported in **2013 (3) CTC 369**, the respondents cannot initiate any departmental proceeding hereafter for those alleged incidents on the basis of which the aforesaid crime was registered which culminated in Special C.C.No.56 of 2011 on the file of the Special Court, Vigilance and Anti-Corruption Cases, Madurai, since more than five years has elapsed from the date of registration of the said crime and also more than five years has elapsed even from the date of acquittal. On these two counts, the first question is answered in favour of the petitioner that the respondents ought to have revoked the suspension dated 30.03.2015.

15.Though the petitioner was not permitted to retire from service and technically in view of the Rules 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government, the petitioner would be deemed to be in service until the proceedings are concluded and final order is passed thereon. This is a critical case where even after a lapse of more than five years from the date of suspension and even after a lapse of more than five years from the date of acquittal



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from the criminal case mentioned in the suspension G.O, no departmental proceedings were ever initiated. Hence, in view of the Full Court Judgment, as discussed supra, the respondents are debarred from initiating any departmental proceeding any further for those alleged incidents which had taken place before suspension. Similarly, without the sanction of the Government, the respondents cannot initiate any departmental proceedings with respect to the subsequent crime which has been registered as against the petitioner by the Central Bureau of Investigation, Anti Corruption Branch, Chennai in RC 2(A)/2020/CBI/ACB, Chennai on 04.03.2020, which has also been registered as a result of the petitioner's alleged involvement pertaining to a private affair. Though it is contended by the learned Additional Government Pleader appearing for the respondents that the registration of the said criminal case by the Central Bureau of Investigation cannot be taken as a private affair since the petitioner was not permitted to retire, I make it a point here that the aforesaid G.Os', dated 30.03.2015 and 31.03.2015, by which the petitioner was suspended and was not permitted to retire were only with respect to Special C.C.No.2 of 2008 on the file of the Special Court, Vigilance and Anti-Corruption Case, Madurai and has nothing to do with the case of the CBI. On this ground, the second question is also answered

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favourably to the petitioner.

16.In view of the above, the impugned order passed by the first respondent, dated 29.10.2020 is hereby quashed and consequently, this Court hereby directs the respondents to revoke the suspension order, dated 30.03.2015 and permit him to retire from service with effect from 31.03.2015. As far as the terminal and other monetary benefits are concerned, provisional pension as provided under Rule 60 of the Tamil Nadu Pension Rules, 1978 shall be sanctioned in view of the pending CBI case as against the petitioner.

17.Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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To

- 1.The Principal Secretary to Government,
Highways and Minor Ports (HL 1) Department,
Secretariat,
Fort St. George,
Chennai – 600 009.
- 2.The Director General of Highways,
Highways and Minor Ports Department,
Guindy,
Chennai – 600 025.



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L.VICTORIA GOWRI, J.

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