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Writ Petition No.6648 of 2023`

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.6648 of 2023
WMP No.6715 and 6716 of 2023

E.Sivakumar

.. Petitioner

Vs.

1. The Director,
The Directorate of Public Health and
Preventive Medicine,
No.359, Anna Salai, DMS Complex,
Teynampet, Chennai 600 006
2. Deputy Director Medical Services (Leprosy),
Kancheepuram and tiruvallur District
at Poonamallee, Chennai 600 056
3. The Superintendent of Police, CBI, AC III,
New Delhi
[R3 Suomotu impleaded as per order dated
2904.2024 in WP No.6648 of 2023 by
DBCJ]

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorairfied Mandamus to call for the
records relating to the proceedings of the 1st respondent in R.No.089191



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/PHC3/A1/2018 dated 30.06.2022 and quash the same and direct the 1st

respondent to allow the petitioner to retire with all benefits.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.M.Bindran
Additional government Pleader
for R1 and R2

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent in R.No.089191 /PHC3/A1/2018 dated 30.06.2022 and for a consequential direction to the 1st respondent to allow the petitioner to retire from service with all benefits.

2. The case of the petitioner is that when he was working as a Health Inspector Grade I, the 1st respondent issued a suspension order dated 26.09.2018 on the ground that the criminal case is pending against the petitioner and which was investigated by the CBI in RC 8(A) /2018 dated 29.05.2018. The petitioner filed a writ petition in WP No.28855 of 2019, which was disposed of on 01.10.2019 by directing the respondents to consider the representation made by the petitioner to revoke the suspension.



Ultimately, the suspension was revoked through the proceedings dated 01.04.2022 by the 1st respondent and the petitioner was reinstated into service.

3. The petitioner rejoined as a Health Inspector Grade II. All of a sudden, on 30.06.2022, when the petitioner was attaining the age of superannuation, he was not permitted to retire from service by virtue of the impugned proceedings of the 1st respondent dated 30.06.2022. Aggrieved by the same, the present writ petition has been filed before this Court.

4. The respondents have filed a counter affidavit.

5. They have taken a stand that the petitioner is involved in a very serious criminal case which is investigated by CBI. In that case, the petitioner was also arrested on 24.09.2019. He was kept under suspension and thereafter, based on the orders passed by this Court, the suspension was revoked. The Criminal proceedings did not come to an end. Therefore, the petitioner was once again placed under suspension through proceedings dated 27.06.2022, since he was attaining the age of superannuation on



30.06.2022. On 30.06.2022, a separate order was passed not permitting the petitioner to retire from service. It is further stated in the counter that the criminal case is pending and therefore, the very departmental proceedings against the petitioner will depend upon the result in the criminal proceedings. Accordingly, the respondents have taken a stand that FR 56 (1) has been strictly followed and have sought for the dismissal of the writ petition.

6. Heard Mr.G.Murugendran, learned counsel for the petitioner and Mr.M.Bindran, learned Additional government Pleader for Respondents 1 and 2.

7. The main ground that was urged by the learned counsel for the petitioner is that the impugned proceedings of the 1st respondent dated 30.06.2022, is a consolidated order which covers both suspension as well as not permitting the petitioner to retire from service. Therefore, it was contended that the order is not in accordance with FR 56. To substantiate this submission, the learned counsel relied upon the order passed by this Court in WP No.4644 of 2024 dated 01.07.2024.



8. The learned counsel further relied upon the order passed by the

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Division Bench in *[The Commissioner, Tiruvallore Municipality, Tiruvallore Vs.L.Krishnan, Town Planning Inspector, Thiruvallore Municipality, Tiruvallore and another]* reported in 2016 3 CTC 374.

9. The learned counsel further submitted that the petitioner ought to have been given provisional pension by resorting to Section 9(2) (b) of the Pension Rules and whereas, the petitioner has been deprived of pension which goes against the Constitutional right guaranteed under Article 300A of the Constitution of India. To substantiate this submission, the learned counsel relied upon the judgement of the Apex Court in *[State of Jharkhand and others Vs Jitendra Kumar Srivastava and another]* reported in 2013 12 SCC 210.

10. The learned counsel further submitted that till date not even a charge memo has been issued against the petitioner and the petitioner is being kept under prolonged suspension. Therefore, the order of suspension and the order not permitting the petitioner to retire from service is liable to be interfered by this Court.



WEB COURT

11. In the considered view of this Court, the impugned order dated 30.06.2022 is not a consolidated order dealing with both suspension as well as not permitting the petitioner to retire from service. There was an earlier order passed on 27.06.2022 whereby the petitioner was suspended from service. Only thereafter, the subsequent order was passed on 30.06.2022 not permitting the petitioner to retire from service. This is in compliance with FR 56(1). The judgements that were cited by the learned counsel for the petitioner in this regard will not apply to the facts of the present case.

12. Insofar as the right of pension is concerned, the same will not apply to the case of the petitioner. In the judgement that was cited by the learned counsel for the petitioner, the employee therein had retired from service and he was not paid the pension. Therefore, the Apex Court said that a person cannot be denied pension and it is a right vested on the employee to receive such pension. This case will not apply to the case in hand. The petitioner has not been allowed to retire from service.

13. Insofar as the last ground that was raised by the learned counsel for the petitioner regarding prolonged suspension, this Court holds



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that the departmental proceedings itself is based on the criminal case pending against the petitioner. Therefore, the further proceedings to be initiated by the respondents will depend upon the result in the criminal proceedings. Parallely, the department cannot proceed further with the departmental proceedings till the criminal proceedings comes to an end. Therefore, the petitioner has to necessarily await for the finality in the criminal proceedings. In such an event, the petitioner cannot be deemed to be in prolonged suspension as is claimed by the petitioner.

14. In the result, this Court does not find any ground to interfere with the impugned proceedings of the 1st respondent in R.No.089191 /PHC3/A1/2018 dated 30.06.2022 and accordingly, this writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

22.08.2024

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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N.ANAND VENKATESH, J

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