



W.P. No.5027 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.5027 of 2017

and

W.M.P.Nos.5304, 5305 & 5306 of 2017

G.Eswaran

... Petitioner

Vs.

1.The State of Tamil Nadu rep by
Its Secretary to Government,
Housing and Urban Development (UDII(1)) Department,
Fort. St. George, Chennai-9.

2.The Commissioner,
Commissionerate of Town and Country Planning,
807, Anna Salai, Chennai-92

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the first respondent made in G.O(3D) No.45 Housing and Urban Development (UDII(1)) Department dated 24-2-2017 and quash the same and consequently permit the petitioner to retire from service on 28-2-2017 and to settle all his service benefits.



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For Petitioner : Mr.Vijay Narayanan
Senior Counsel.
For Respondents : Mr.P.Kumaresan
R1 & R2 : Additional Advocate General
assisted by
Mr.M.Murali
Special Government Pleader

ORDER

While the petitioner was working as Assistant Director/Member Secretary Tiruppur Local Planning Authority, by issuing impugned order in G.O.(3D).No.45 Housing and Urban Development [UDII(1)] Department dated 24.02.2017, he was placed under suspension under Sub-rule (e) of Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on the ground that the criminal case in C.C.No.30/2013 is pending for trial before the Special Court dealing with Offences and Prevention of Corruption Act, 1988. The said order of suspension was issued 4 days prior to the date of superannuation of the petitioner. Accordingly, the petitioner is being continued under suspension. Aggrieved by the same, the petitioner approached this Court by filing the present writ petition.



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2. Mr.Vijay Narayanan, the learned Senior Counsel appearing for the petitioner has brought to the notice of this Court an order in CrI.O.P.No.5835 of 2017 dated 21.04.2017, wherein this Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure quashed the proceedings pending against the petitioner in C.C.No.30/2013 on the file of Special Court for Cases under the Prevention of Corruption Act, Chennai. Thus, the criminal proceedings that were pending against the petitioner which is the basis for issuing the impugned order, stood quashed, by an order passed by this Court as early as on 21.04.2017.

3. It is contended by Mr.P.Kumaresan, the learned Additional Advocate General that in view of the pendency of the appeal filed against the order in CrI.O.P.No.5835 of 2017, the same is to be treated as continuation of the criminal proceedings that are initiated against the petitioner and the impugned suspension order would survive as the proceedings are still pending before the Hon'ble Apex Court. He also placed reliance on Clause(c) of Sub Rule 1 of Rule 56 of the Tamil Nadu Fundamental Rules to sustain the impugned suspension order.



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4. This Court had carefully gone through the said Fundamental Rule. The said Fundamental Rule only enables the respondents to continue an employee under suspension only in case any criminal proceedings are pending against him. But as already observed above, in the instant case, there is no criminal case pending against the petitioner as on date.

5. Though an appeal is filed against the said order in CrI.O.P.No.5835 of 2017 dated 21.04.2017 in SLP CrI.No.1260/2018, leave was granted by an order dated 13.09.2019 by the Hon'ble Apex Court, there is no stay of operation of the order dated 21.04.2017 passed in CrI.O.P.No.5835 of 2017. Thus, the impugned proceedings that were pending against the petitioner in C.C.No.30/2013 which is the basis for issuing the impugned suspension order are no more pending.

6. Mere pendency of appeal against the order passed by this Court under Section 482 of the Code of Criminal Procedure would not amount to and cannot be treated as continuation of the proceedings. By virtue of quashing the C.C.No.30/2013, the entire proceedings that are initiated against



the petitioner stood wiped out. Hence, mere pendency of Special Leave Petition or appeal thereon cannot be treated as continuation of the criminal proceedings against the petitioner. Hence, the very basis for issuing impugned order is not available to continue the impugned order any further.

7. In the light of the above, the impugned order cannot be sustained and the same is accordingly set aside. The second limb of the relief sought for by the petitioner to permit him to retire from services and for release of all terminal benefits is concerned, admittedly, the petitioner had attained the age of superannuation on 28.02.2017 and it is only by virtue of impugned order, the petitioner continued in service by keeping him under suspension. As the impugned order is set aside by this order, the respondents are under an obligation to permit the petitioner to retire from service on attaining the age of superannuation with effect from 28.02.2017 and settle all his terminal benefits.

8. Accordingly, the writ petition is allowed duly setting aside the impugned order. Further, the respondents are directed to permit the



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petitioner to retire from service with effect from 28.02.2017 and to settle all the terminal benefits as expeditiously as possible at any rate within four (4) months from the date of receipt of a copy of this order.

9. Consequently, the connected miscellaneous applications, if any, shall stand closed. No costs.

05.04.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

To:

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