



W.P.(MD)No.11982 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.11982 of 2024

K.Chellamuthu

... Petitioner

vs.

The District Collector,
Sivagangai District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.A1/C.Pa.59/2023 dated 29.05.2024 and the consequential impugned order in Roc.No.A1/2558/2020 dated 30.05.2024 on the file of the respondent and quash the same as illegal and consequently for a direction, directing the respondent to disburse the retirement benefits and pension with all other consequential monetary benefits within the time period stipulated by this Court.

For Petitioner

:Mr.T.Lajapathi Roy,
Senior Counsel for
Mr.T.Aswin Raja Simman

For Respondent

:Mr.N.Ramesh Arumugam,
Government Advocate



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ORDER

Mr.N.Ramesh Arumugam, learned Government Advocate takes notice for the respondent.

2. The petitioner has filed this writ petition challenging the impugned order passed by the respondent in Na.Ka.A1/C.Pa.59/2023 dated 29.05.2024 and the consequential order in Roc.No.A1/2558/2020 dated 30.05.2024 and to direct the respondent to disburse the retirement benefits and pension with all other consequential monetary benefits to the petitioner within a stipulated period.

3. The petitioner who was appointed as Junior Assistant had reached up to the level of Deputy Tahsildar and he reached the age of superannuation on 31.05.2024. The respondent issued the impugned charge memo, dated 29.05.2024 and the same was served on the petitioner on 30.05.2024, which is just one day prior to his retirement. The charges raised against the petitioner is that the petitioner had issued a joint patta in favour of one Mayan, S/o.Sundararasu, instead of relegating the parties to



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the appellate authority namely the District Revenue Officer by forwarding the records.

4. The learned counsel for the petitioner submitted that the said act on the part of the petitioner cannot be called as misconduct and it is only a quasi judicial function of the petitioner. The order of effecting transfer of patta made by the petitioner is found to be incorrect. But, the same could have been cancelled by the appellate authority and the petitioner cannot be subjected to any disciplinary action.

5. The learned counsel for the petitioner further submitted that the disciplinary action appears to have been initiated on the complaint made by one Karuppu, who entered into a compromise with the said Mayan in whose favour the joint patta was issued by the petitioner. Further, the petitioner was enquired for the very same charge by the Assistant Commissioner of Exercise by issuing a notice, dated 10.05.2023. For that, the petitioner also appeared in person on 19.05.2024 and submitted his explanation. However, no action has been



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dated 08.06.2007, it is clearly mentioned that if an irregularity or an offence committed by a Government servant comes to the notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing basis and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on the gravity of the irregularities committed by him.

9. In the instant case, the petitioner was given with the charges on the complaint made by one Karupu. In fact, the complaint given by the said Karuppu is shown as a document to be relied on the side of the Department for initiating the departmental action against the petitioner. The complainant by name Karuppu has compromised the matter with Mayan in whose favour the petitioner is said to have issued joint patta.

10. As submitted by the learned counsel for the petitioner, departmental action has been initiated and the petitioner was enquired as



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early as on 10.05.2023 for the very same allegations. But, no decision has been taken within three months on a war-footing basis despite the fact that petitioner's age of superannuation was ensuing on 31.05.2024. The respondent kept quiet for more than one year and all of a sudden, one day prior to the date of retirement of the petitioner, the charges have been given.

11. The charges as seen in the charge memo has contained the same allegation that the petitioner had effected joint patta instead of forwarding the papers to the District Revenue Officer. The party aggrieved has got every right to challenge the order so passed by the petitioner by filing an appeal before the District Revenue Officer who is the appellate authority. Anyway, the order passed by the petitioner is based upon an enquiry on a petition given to him and in exercise of his quasi judicial power. Any order passed by invoking the law while exercising the quasi judicial functions of an Officer who has got quasi judicial power cannot be termed as misconduct.



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12. In the case on hand, the petitioner had understood the procedure wrongly and he had effected the joint patta in the name of Mayan without forwarding it to the appellate authority/District Revenue Officer. So, the aggrieved party could have challenged the order of the Tahsildar by preferring an appeal before the District Revenue Officer and got it set aside. Since the order passed by the petitioner while exercising the quasi judicial function, is erroneous, that cannot constitute a charge of misconduct.

13. In this context, it is worthwhile to refer to the judgment of the Hon'ble Supreme Court in ***Zunjarrao Bhikaji Nagarkar v. Union of India and Others*** reported in ***(1999) 7 Supreme Court Cases 409*** and to extract the relevant paragraph as under:

“43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it



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liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.”

14. Even in the guidelines issued for initiating disciplinary proceedings in G.O(Ms).No.144, Personnel and Administrative Reforms(N) Department, dated 08.06.2007, it is stated that the charges are not so grave and do not warrant major punishment, the Government may allow the employee to retire from service without prejudice to the case pending against him.



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15. In the instant case, no charge memo has been issued against the petitioner until he reached the age of superannuation. But, the charge memo has been issued just one day prior to the date of his retirement for the action taken by the petitioner while exercising his quasi judicial power, but however on wrong understanding. Though enquiry had been made against the petitioner for the very same subject before one year, no decision has been taken against the petitioner until his retirement.

16. On the same reasons, this Court has held in *W.P(MD)No.26571 of 2022, vide order dated 26.04.2024(K.Saravan v. The Joint Director of School Education(Personnel), Chennai and another*, that the delayed action initiated by the Government in complete contradiction to its own Government Orders would vitiate all the proceedings.

17. Further, the complainant who was instrumental for issuing the charge memo against the petitioner, had entered into a compromise with Mayan in whose favour the petitioner had issued joint patta and



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hence, nothing will serve or come out in any departmental action on the basis of the charges framed against the petitioner and it is a wasteful exercise. In view of the above stated reasons, I feel that the impugned orders are liable to be set aside.

18. In the result, this writ petition is allowed and the impugned order passed by the respondent in Na.Ka.A1/C.Pa.59/2023 dated 29.05.2024 and the consequential impugned order in Roc.No.A1/2558/2020 dated 30.05.2024, are set aside. The respondent is directed to permit the petitioner to retire from service with effect from 31.05.2024 with all attendant benefits and release the terminal benefits within a period of six weeks from the date of receipt of a copy of this order. No Costs.

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NCC: Yes/No
Index : Yes/No
PM
To
The District Collector,
Sivagangai District.



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R.N.MANJULA, J.

PM

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