



W.P.(MD).Nos.12233 and 12643 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).Nos.12233 and 12643 of 2024

and

W.M.P.(MD)Nos.10857 and 11255 of 2024

W.P.(MD).No.12233 of 2024:

Nabiyathul Musiriyal

...Petitioner

Vs

1.The Secretary to Government,
Rural Development and Panchayat Raj (E2) Department,
Secretariat,
Chennai – 600 009.

2.The Director of Rural Development and Panchayat Raj,
Panagal Building,
Chennai – 600 015.

3.The District Collector,
Dindigul District,
Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent in proceedings G.O.(2D).No.39 of Rural Development and Panchayat Raj (E2) Department dated 31.05.2024.



W.P.(MD).Nos.12233 and 12643 of 2024

For Petitioner : Mr.R.AnandhaRaj

For Respondents : Mr.J.Ashok
Additional Government Pleader

W.P.(MD).No.12643 of 2024:

Nabiyathul Musiriyal

...Petitioner

Vs

1.The Secretary to Government,
Rural Development and Panchayat Raj (E2) Department,
Secretariat,
Chennai – 600 009.

2.The Director of Rural Development and Panchayat Raj,
Panagal Building,
Chennai – 600 015.

3.The District Collector,
Dindigul District,
Dindigul.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned suspension order in proceedings G.O.(2D).No.36 of Rural Development and Panchayat Raj (E2) Department dated 30.05.2024.



W.P.(MD).Nos.12233 and 12643 of 2024

For Petitioner : Mr.R.AnandhaRaj

For Respondents : Mr.J.Ashok
Additional Government Pleader

COMMON ORDER

The petitioner who was kept under suspension just one day prior to her retirement and who was not allowed to retire has filed these Writ Petitions challenging the order of suspension and the order for not allowing her to retire.

2. Mr.R.Anandha Raj, learned counsel for the petitioner submitted that the petitioner has been suspended on 30.05.2024 on the allegation that she has signed in the document as Assistant Executive Engineer District Rural Development Agency, Perambalur, as executive in charge and has fixed very high rate for the LED Street lights for the year 2015-2016 and 2016-2017 than the original market rate in the scheme for placing the existing lights to LED street lights and thereby caused loss to the Government Exchequer in Rural Development and Panchayat Raj Department.



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3. It is learnt from the submission of the learned counsel for the petitioner that a criminal case has been registered under Vigilance and Anti Corruption against the then Minister of Municipal Administration and Rural Development. However, the details of the above case has not been furnished. The matter remains that the said criminal proceedings have been initiated against the then Minister who held the concerned port folio before one year. The petitioner is said to be holding the additional charge of Executive Engineer during the period between 2015-2016 and in that capacity she was the member of the District Level Committee for fixing the rate for LED street lights for the year 2015-2016 and 2016-2017. The grievance of the petitioner is that despite the Department had knowledge about the alleged scam, no action has been initiated so far and the petitioner was placed under suspension just one day prior to her retirement and the order of suspension so issued is completely in violation of the Government Order in G.O.Ms.No.144 Personnel and Administrative Reforms (N) Department dated 08.06.2007.



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4. Mr.J.Ashok, learned Additional Government Pleader for the respondents submitted that the allegations against the petitioner as seen in the suspension order is grave and hence the petitioner was rightly not allowed to retire and she was kept under suspension.

5. Even when the delinquency committed by a Government servant is very grave and it warrants an imposition of major penalty such as dismissal or removal from service, the authorities have to ensure that the suspension orders ought not to have issued on the date of retirement of the Government servants. In the instant case, the suspension order was not served on the date of retirement of the petitioner but it was just served one date prior to her retirement and that does not make much difference.

6. As per the guidelines given in the Government Order in G.O.Ms.No.144 Personnel and Administrative Reforms (N) Department dated 08.06.2007, if the disciplinary authority comes to know the commitment of delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three months prior to the date of retirement of the Government servants, the charges ought to



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have been framed much prior to the date of retirement of the Government servants. In the instant case, it is not denied that the facts about the scam in the concerned Department has come to the knowledge of the disciplinary authority and in fact it was of such a magnitude that the then Minister who held the respective port folio was also fixed in a criminal case. In such case, the respondent Department ought to have been vigilant in initiating appropriate action against the petitioner without waiting for the date of her retirement. Even when an offence is committed by the Government servant comes to notice within a period 3 months prior to the date of retirement, the disciplinary authority is expected to process the case on a 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 the Government servant or to place him under suspension based on gravity or irregularity committed by him.

7. Admittedly, the petitioner has not been added as one of the accused in the alleged criminal case and the particulars of which were not furnished and hence there is no material to conclude at this point of time that the petitioner had committed any offence. It might be possible



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that during the course of investigation of the criminal case registered under Vigilance and Anti Corruption, there may or may not be the availability of some incriminating materials as against the petitioner. So, it is always open to the Investigation Agency to implead the petitioner at that point of time if they get any materials binding the petitioner also. But so far it has not been done by giving the presumption that no incriminating material is available against the petitioner. So far as the disciplinary proceedings are concerned, the petitioner has not been given with any show cause till her retirement, even in view of the criminal case or on the allegation made therein. Since the order of suspension has been issued in complete violation of the Government Orders issued in this regard in G.O.Ms.No.144 Personnel and Administrative Reforms (N) Department dated 08.06.2007, I feel the petitioner has made out a case in her favour.

8. In this regard, it is worthwhile to cite the judgment of the Supreme Court held in the case of ***P.V.Mahadevan Vs Managing Director, Tamil Nadu Housing Board*** reported in ***2005(4) CTC 403***. In the said case, it is held that initiating departmental proceedings at the time of retirement of the petitioner is prejudicial to her and such a



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practice should be avoided not only in the interest of the Government employee, but also in public interest. It is worthwhile to extract the relevant part of the above judgment as under:

“11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplined proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”



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9. Even when the Government servant is suspected on prima facie grounds that he is involved in a gross misconduct, it is obligatory on the part of the respondents to initiate a charge well in advance before he/she attains the age of superannuation. But here is a situation where the respondents are aware that the Ex-Minister has involved in a case involving Vigilance and Anti Corruption regarding his then portfolio. The petitioner was working in the concerned Department at relevant point of time by holding additional charge of Executive Engineer. Even then, no action has been taken against her so far.

10. The suspension order has been issued at the verge of retirement of the petitioner when there was no criminal case or disciplinary proceedings have been pending against her. I feel that the suspension order is liable to be set aside in the light of the above Government Orders issued in this regard and also in accordance with the dictum laid down by the Hon'ble Supreme Court decision cited above.



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11. In view of the above stated reasons, the Writ Petitions are **allowed** and the impugned impugned order passed by the first respondent in proceedings G.O.(2D).No.39 of Rural Development and Panchayat Raj (E2) Department dated 31.05.2024 and impugned suspension order in proceedings G.O.(2D).No.36 of Rural Development and Panchayat Raj (E2) Department dated 30.05.2024. are set aside. The respondents are directed to allow the petitioner to retire and pass appropriate orders forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

13.06.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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R.N.MANJULA, J.

Nsr

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