



W.P.(MD)Nos.14468 of 2024 & 17159 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)Nos.14468 of 2024 & 17159 of 2023 &
W.M.P.(MD)Nos.12715 & 12716 of 2024 & 14350 of 2023

N.Thanasingh

... Petitioner in both cases

vs.

The Directorate of Town Panchayats,
Directorate of Town Panchayats,
Urban Administration Office Building,
7th & 8th Floor, MRC Nagar,
Chennai - 28.

... Respondent in both cases

Prayer in W.P.(MD)No.14468 of 2024: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for records relating to the impugned order made by the Respondent vide ROC.No.5802/2024/A1 dated 29.05.2024 and the consequential order passed by the respondent vide ROC No. 5802/2024/A1 dated 31.05.2024 and quash the same and consequently direct the respondent to permit the petitioner to retire from service on 31.05.2024 on the date of his superannuation with all attended benefits and continuity of service.



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Prayer in W.P.(MD)No.17159 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned charge memo issued by the respondent in Na.Ka.No.6384/2018/vuo1 dated 29.03.2023 along with all annexure and quash the same as illegal and arbitrary.

In W.P.(MD)No.14468 of 2024

For Petitioner : Mr.K.Harishankar
For Respondent : Mr.J.Ashok
Additional Government Pleader

In W.P.(MD)No.17159 of 2023

For Petitioner : Mr.M.Rajarajan
For Respondent : Mr.J.Ashok
Additional Government Pleader

COMMON ORDER

Heard Mr.K.Harishankar and Mr.M.Rajarajan, learned counsels appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondent.



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2. The petitioner has filed these writ petitions seeking to quash the charge memo issued by the respondent in Na.Ka.No.6384/2018/vuo1 dated 29.03.2023, orders of the respondent in ROC.No.5802/2024/A1 dated 29.05.2024 and ROC No.5802/2024/A1 dated 31.05.2024 and to permit him to retire from service on 31.05.2024 on the date of his superannuation with all attendant benefits and continuity of service.

3. The petitioner who was working as a Selection Grade Executive Officer, Eral Town Panchayat, Thoothukudi District was placed under suspension on 29.05.2024 which is two days prior to his superannuation, which is on 31.05.2024. In view of the suspension order, the petitioner was not able to retire. The petitioner was placed under suspension on the grounds of pending criminal case and disciplinary proceedings.

4. Mr.K.Harishankar, learned counsel appearing for the petitioner submitted that even though the petitioner was placed under suspension on the ground of pending criminal case, he has not been given



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with any charge memo so far and in fact, certain charges have already been dropped by issuance of the Government Order in G.O.(2D)No.26, Municipal Administration and Water Supply (TP.4) Department, dated 10.04.2015.

5. So, according to the petitioner, he has been placed under suspension for the charges which have been already dropped against him.

6. However, Mr.J.Ashok, learned Additional Government Pleader appearing for the respondent submitted that the petitioner has already been given with charge memo on 06.05.2019 on the allegation that he did not maintain registers and other documents properly. The petitioner has challenged the same by way of filing a writ petition in W.P. (MD)No.13992 of 2019 and the same was allowed on 20.11.2019. The appeal preferred by the respondent against the above order in W.A. (MD)No.1035 of 2023 is pending before this Court and an interim stay has also been granted. It is his further submission that the petitioner has been given with another charge memo on 29.03.2023, wherein, it is



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alleged that the petitioner had created forged documents and thereby has caused loss of revenue to the Government and in this regard, a case has been registered against the petitioner under the Prevention of Corruption Act in Crime No.2 of 2015 by the Vigilance and Anti Corruption Department, Kanyakumari District.

7. Attention was drawn to the Government Order in G.O. (2D)No.26, Municipal Administration and Water Supply (TP.4) Department, dated 10.04.2015 and it is submitted by the learned counsel appearing for the petitioner that despite further action has been dropped in respect of certain allegations, charge memos have been issued repeatedly.

8. However, so far as those allegations, against which further action dropped, appear to be conspiracy and swindling the amount from account no.II to account no.I of Vilavoor Town Panchayat by issuing a self cheque in favour of a private contractor. Other allegations involved in the Government Order is also similar to misappropriation. As regards the suspension order dated 29.05.2024 is concerned, it is in view of the



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pending criminal case. So, what now can be seen from the records is that the disciplinary action and criminal proceedings against the petitioner have no relevance to the charges which have been dropped in pursuant to the Government Order in G.O.(2D)No.26, Municipal Administration and Water Supply (TP.4) Department, dated 10.04.2015.

9. It is pertinent to point out that in view of the stay order granted in W.P.(MD)No.17159 of 2023 on 17.07.2023 in respect of the disciplinary proceedings, no further action seems to have been taken.

10. The learned counsel appearing for the petitioner submitted that even though the charges against the petitioner are under the Prevention of Corruption Act, those matters pertain to the years 2015 & 2016 and the petitioner has attained superannuation only in the year 2024. So, it is claimed that the guidelines issued in the Government Order in G.O.Ms.No.81, Human Resources Management (N) Department, dated 04.08.2022 have not been followed.



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11. Though the dictum laid down by the Apex Court in *Ajay Kumar Choudhary vs. Union of India reported in (2015) 7 SCC 291 [Ajay Kumar Choudhary's case]* states the suspension shall not be continued beyond a period of three months if charge memo has not been furnished, the Full Bench Judgment of this Court in the case of *P.Kannan vs. 1.The Commissioner of Municipal Administration and others in W.P.Nos.2165 of 2015 and 21628 of 2018 dated 15.03.2022*, held that the dictum laid down by the Apex Court cannot be considered as absolute proposition and each case has to be considered individually by taking into consideration of the whole situation including the gravity of the charges.

12. The aforesaid Government Order in G.O.Ms.No.81, Human Resources Management (N) Department, dated 04.08.2022 has been issued consequent to the above Full Bench Judgment wherein, some time line has been prescribed stating that, for the cases registered by the Directorate of Vigilance and Anti Corruption, it should be ensured that the investigation is completed within a period of one year; the enquiry before the Tribunal is completed within another one year; and thereafter,



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order should be passed by the Head of the Department within a period of four months. But, the said time line has not been followed despite the criminal case has been pending against the petitioner since 2015. So far as other charges are concerned, it is the petitioner who had stalled it in view of the pending litigations filed challenging the same. So, it cannot be said in the strict sense that delay has been caused only due to the departmental lapse.

13. It is needless to state that the standard of proof required for criminal proceedings and disciplinary proceedings are different and hence, nothing will prevent the respondent to complete the disciplinary proceedings even though a criminal case is pending.

14. Since the order of suspension can be reviewed only depending upon the outcome of the pending disciplinary proceedings against the petitioner, I feel it is appropriate to direct the respondent to complete the disciplinary proceedings within a stipulated time. It is up to the petitioner to place any request for paying the alleged loss caused to



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the Government without prejudice to the pending disciplinary proceedings. In such case, the respondent shall consider to permit the petitioner to retire from service subject to the pending criminal proceedings.

15. In view of the above observations, the writ petitions are **disposed of** and the respondent is directed complete the disciplinary proceedings pending against the petitioner within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.07.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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R.N.MANJULA, J.

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