BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16431 of 2024 &
W.M.P.(MD)No.14240 of 2024

M.Alagumani ... Petitioner

vs.

1.The Secretary
Revenue and Disaster Management,
Secretariat, Fort. St. George,
Chennai.

2.The Additional Chief Secretary cum
Commissioner of Revenue Administration,
Chepauk, Chennai.

3.The District Collector,
Theni, Theni District.

4.The Revenue Divisional Officer,
Uthamapalayam Circle,
Theni, Theni District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent vide his proceedings in Roc.No.A1/15413/2024 dated 28.06.2024 and the consequential proceedings issued by him in Roc.No.A1/15413/2024 dated 29.06.2024, quash the same and further direct the respondents to allow the petitioner to retire, sanction and disburse all the retirement benefits to the petitioner within a time frame fixed by this Court.

For Petitioner	:	Mr.T.Cibichakraborthy
For Respondents	:	Mr.J.Ashok Additional Government Pleader

ORDER

Heard Mr.T.Cibichakraborthy, learned counsel appearing for the petitioner and Mr.J.Ashok, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has filed this writ petition seeking to quash the impugned proceedings of the third respondent in Roc.No.A1/15413/2024 dated 28.06.2024 and the consequential proceedings in Roc.No.A1/15413/ 2024 dated 29.06.2024 and direct the respondents to allow her to retire and sanction and disburse all the retirement benefits to her within a stipulated time.

3. The petitioner who was working as a Personal Assistant to the District Supply and Consumer Protection Officer and who had attained superannuation on 30.06.2024 was placed under suspension on 28.06.2024 and she was not allowed to retire by stating that a case before the Vigilance and Anti Corruption Department is pending.

4. The allegation against the petitioner is that during the year 2019 when the petitioner was working as a Settlement Tahsildar at Bodinayakanur, he had issued pattas in Government poromboke land classified as natham to private individuals.

5. Mr.T.Cibichakraborthy, learned counsel appearing for the petitioner submitted that even if the petitioner had wrongly given patta to any of the private parties, that is quasi judicial action which is liable to be challenged before appropriate authority. It is his submission that the pattas issued by the petitioner have been cancelled by the Revenue Divisional Officer through his proceedings dated 28.07.2023. So, it is claimed that the act done by the petitioner is quasi judicial function, for which no disciplinary action can be initiated.

6. Reliance has been placed on the Judgment of the Apex Court in ***Zunjarrao Bhikaji Nagarkar v. Union of India and Others reported in (1999) 7 Supreme Court Cases 409*** and the relevant paragraphs are extracted 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 liable to be quashed. In other words, to maintain any chargesheet 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 chargesheet 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."

7. The petitioner has been suspended for the alleged action done by him when he was holding the post of Settlement Tahsildar, Bodinayakanur during the year 2019. But, however, no action has been initiated against him all along and he was placed under suspension on the verge of his retirement and thereby, he was not allowed to retire from service by citing the above reasons.

8. The Government Order in G.O.Ms.No.111, Human Resources Management (N) Department, dated 11.10.2021 gives revised guidelines as to how the disciplinary proceedings should be conducted and completed before the retirement without prejudice to the employees. Despite various instructions are given periodically to avoid the suspension on the last date of retirement, procedures to complete the disciplinary proceedings on any alleged violation committed by the Officers are not followed. In fact, exhaustive guidelines have been given in the above said Government Order. Adopting the said guidelines, relief has been given in respect of similar such petitioners who also faced suspension at the verge of their retirement. For a better clarity, it is worthwhile to reproduce the instructions and guidelines in the above said Government Order.

"7. Now, based on the announcement made by the Hon'ble Chief Minister on the floor of the Assembly on 07.09.2021 under Rule 110 of the Tamil Nadu Legislative Assembly Rules, the Government reiterate the instructions issued in Government Order fourth read above and also direct that the following guidelines be strictly followed to avoid suspension orders on the date of retirement of the Government servants:-

(i) Before initiating disciplinary action under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the competent authorities should personally assess whether the charges / allegations against the Government servants warrant imposition of major penalties such as dismissal or removal from service. Because, proper application of rule reduces unnecessary delay in processing the disciplinary cases.

(ii) The disciplinary authority should follow the time frame stipulated in the Government letter second read above, which ensures, issue of final orders without inordinate delay. The time limit given in the above Government letter is in general. Considering the date of retirement of the Government servant against whom disciplinary proceeding is pending, the concerned disciplinary authority should prescribe suitable calendar of activities subject to principle of natural justice in terms of providing opportunities to defend for each case in line with the general instructions. The reason for non adherence should be recorded in writing by the disciplinary authority and same should be monitored by the Inspection Cell concerned.

(iii) To avoid suspension on the date of their retirement, decision should be taken well in advance (i.e.) three months prior to the date of retirement on

superannuation, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(iv) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war footing manner and take a decision either to permit the Government servant to retire from service so as to continue the disciplinary case pending against him under the Tamil Nadu Pension Rules, 1978 or to place him under suspension based on gravity of the irregularities committed by him.

(v) In cases where charges have been framed and the disciplinary authority is of the view that a pension cut or withholding of pension under the Tamil Nadu Pension Rules, 1978 would suffice for the delinquency committed, the disciplinary authority may allow the Government servants to retire from service so as to continue the same as deemed departmental proceedings.

(vi) Any failure on the part of the disciplinary authority to issue final orders three months before the date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government servant concerned.

(vii) Where the delinquency committed by a Government servant is very grave which warrant imposition of major penalty such as dismissal or removal from service and if it is not possible to frame charges to initiate action before retirement or to pass final orders in such departmental proceedings, then it is necessary to suspend the Government Servant from service and not to permit him to retire on attaining the age of superannuation under Fundamental Rule 56(1)(c). In such cases also the disciplinary authorities have to ensure that the

suspension orders are not issued on the date of retirement of the Government servants.

(viii) In respect of Directorate of Vigilance and Anti-Corruption and Tribunal for Disciplinary Proceedings cases, if any delay on their part, the disciplinary authorities should take up the matter with the Directorate of Vigilance and Anti-Corruption or Tribunal for Disciplinary Proceedings to expedite such cases and issue of final orders within the time limit prescribed. In unavoidable circumstances, if final orders could not be issued, even in such cases, the disciplinary authorities should take a decision well in advance and not to place him under suspension on the date of retirement.

(ix) The above Instructions shall not be made applicable to cases of Directorate of Vigilance and Anti-Corruption enquiry and criminal cases.

9. However, Mr.J.Ashok, Additional Government Pleader appearing for the respondents submitted that the lapses against the petitioner has come to the notice of the authorities only on 17.06.2023, on which date, the report from the petitioner's successor was received by the fourth respondent.

10. The impugned order does not state that the pattas have been issued with the *malafide* intention or by receiving bribe. Unless the quasi judicial function of the authority is tainted with *malafide* intention or tainted with corruption, such functions will not be subjected to disciplinary proceedings as per the dictum laid down by the Apex Court in the case *cited* supra.

11. In fact, while cancelling the pattas issued by the petitioner, the fourth respondent himself has stated that the mistake occurred only during computerization of Town Survey Land Register and such errors occurred during computerization would lie beyond the control of the petitioner and hence, the petitioner should not be found fault with. Leaving alone the merits of the allegations, the fact remains that the respondents did not take any action against the petitioner by having proper check and plan mechanism over the computerization process. The petitioner has been placed under suspension at the verge of his retirement for the act done by him in his quasi judicial capacity and that too during the computerization of the records. In such circumstances, I feel the impugned order is liable to be set aside.

12. In view of the above observations, the writ petition is **disposed of** and the impugned proceedings of the third respondent in Roc.No.A1/15413/2024 dated 28.06.2024 and Roc.No.A1/15413/ 2024 dated 29.06.2024 are set aside. The third respondent is directed to pass orders allowing the petitioner to retire from service within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

22.07.2024

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

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R.N.MANJULA, J.

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