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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.18192 of 2020
and
W.M.P(MD)No.15172 of 2020

1.E.Arunachalam (Died)

2.A.Vellathai

3.A.Kasi @ Karthick

4.A.Esakkimuthu

5.A.Muthukumar

6.A.Selvam

7.A.Kannagi ... Petitioners

(P2 to P7 are impleaded vide order, dated 08.09.2023 in W.M.P(MD)No.18575 of 2021)

Vs.

The Tahsildar,
Nanguneri,
Tirunelveli District. ... Respondents

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

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records relating to the impugned charge memo issued by the respondent in Na.Ka.A6/2386/2006, dated 23.10.2019 and the consequential impugned order not allowing the petitioner to retire issued by the respondent in Roc.A6/1033/2020, dated 28.02.2020 and quash the same and consequently direct the respondent to permit the petitioner to retire from service and pay all service, monetary and retirement benefits with arrears.

For Petitioners : Mr.Alwin Balan

For Respondent : Mr.D.Gandhiraj
Special Government Pleader

ORDER

The present writ petition has been filed to call for the records relating to the impugned charge memo issued by the respondent in Na.Ka.A6/2386/2006, dated 23.10.2019 and the consequential impugned order not allowing the petitioner to retire issued by the respondent in Roc.A6/1033/2020, dated 28.02.2020 and quash the same and consequently direct the respondent to permit the petitioner to retire from service and pay all service, monetary and retirement benefits with arrears.

2. The 1st petitioner was appointed as Village Assistant at Singikulam old village, Nanguneri Taluk on 08.06.1990 as a part-time worker and

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subsequently, he was regularized on 01.06.1995. During 2005, a criminal case in Crime No.1 of 2005, dated 24.10.2005 came to be registered as against the 1st petitioner by the CBCID, Tirunelveli. Following which, on 15.03.2006, he was arrested and remanded to judicial custody and accordingly, the respondent had placed him under deemed suspension by an order, dated 15.03.2006. Later, on 11.02.2008, the suspension was revoked and he joined duty and continuously worked for a period of 12 years till he attained his age of superannuation on 29.02.2020. He was issued with the impugned charge memo under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Thereafter, at the verge of his retirement i.e., 2 days before his age of superannuation, the order of suspension came to be passed by the respondent vide order, dated 27.02.2020 and consequential impugned order, dated 28.02.2020 not permitting the petitioner to retire from service came to be issued, thereby retaining him in service under Fundamental Rule 56 (1) (c). The aforesaid order came to be served on him on 29.02.2020 i.e., the actual date of his age of superannuation. Challenging the said charge memo, dated 23.10.2019 and consequential impugned order, dated 28.02.2020 not permitting the petitioner to retire from service, this writ petition came to be filed.

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3. The learned counsel appearing for the petitioner submitted that the impugned charge memo came to be issued after a period of 14 years from the date of alleged occurrence on 24.10.2005. Even after issuing the same on 23.10.2019, the disciplinary proceedings were not conducted as against him till his death on 11.05.2021. On the death of the 1st petitioner, his legal heirs were impleaded in the writ petition as petitioners 2 to 7. That apart, only a part of gratuity to which the 1st petitioner was entitled to was released and the remaining amount was withheld by the respondent. More over, his retirement benefits were also not disbursed due to the pendency of the disciplinary proceedings. On that basis, the learned counsel for the petitioner pressed for allowing the writ petition.

4. The respondent has filed a counter affidavit and the learned Special Government Pleader submitted that even the 1st petitioner was not permitted to be relieved from duty, the respondent has already disbursed 50% of the gratuity amount from March 2020 to April 2021 till his death. However, the service benefits of the deceased E.Arunachalam could be considered only after closing of the case against the deceased person. However, the learned counsel

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appearing for the petitioner pointed out that the said criminal case has been abated due to the death of the 1st petitioner and nothing survives.

5. I have dealt with a case of disciplinary proceedings in ***W.P(MD)No. 19527 of 2022 (C.Muthukrishnan Vs. The Director of Elementary Education, Chennai-6 & Another)*** and have passed favourable orders on 23.01.2024 with respect to a case of issuance of charge memo after inordinate delay. The relevant portion of which is extracted as follows:

> "*7. I carefully perused the materials available on record and coming to the instant case, I have no hesistation to observe that there is no independent application of mind by the competent authority. The charge memo has been admittedly framed under the same set of facts and the same set of witnesses as relied by the Special Judge in the special case. That apart, the question of inordinate lapse of more than 11 years is also not properly explained. This Court has also already passed an interim order dated 23.08.2022 by relying upon the list of documents and the list of references 2 and 3 of charge memo with respect to the same witnesses and documents before the Criminal Court which had resulted in aquittal order. The issue in hand is not more res integra and this Court in the case of W.P.No.20282 of 2021 dated 28.07.2023 has dealt with a similar issue of Vigilance and Anti Corruption and has passed favourable order to the petitioner and the relevant portion is extracted as follows:*

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"6. The learned counsel has also relied on the judgment passed by the Hon'ble Apex Court in the case of G.M.Tank vs. State of Gujarat and others reported in 2006 (5) SCC 446, wherein, it was stated that when the departmental proceedings and charge before the Criminal Court are one and the same and the criminal case ended in acquittal, it would not be prudent to continue the disciplinary proceedings after the acquittal by the Criminal Court on the basis of very same charges and evidence. The preposition of law as laid down by the Hon'ble Supreme Court of India followed in catena of decisions, this Court passed order in W.A.No.2346 of 2019 dated 16.04.2021 in an identical case, quashing the charge memo."

8. The Hon'ble Apex Court in the case of P.V.Mahadevan Vs.M.D. Tamil Nadu Housing Board, reported in 2005 (6) SCC 636 has dealt with a similar case. For better appreciation, the relevant portion is extracted hereunder:

"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 disciplinary 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

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for initiating the disciplinary proceedings, the appellant should not be made to suffer." "

6. In similar lines, I have no hesitation to hold that allowing the respondent to keep the departmental procedures pending endlessly to an extremely distant point of time would obviously be prejudicial to the interest of the employee and his family. In the instant case, though the charge memo, dated 23.10.2019 came to be issued by the respondent after a prolonged delay of 14 years from the date of occurrence i.e., from 24.10.2005, the respondent did not proceed to complete the disciplinary proceedings within a time frame and kept it pending till the death of the 1st petitioner, dated 11.05.2021. This Court condemns the callousness of the respondent in handling the disciplinary proceedings against the 1st petitioner endlessly. Even at this point of time, the learned Special Government Pleader submitted that, unless and until the criminal case is closed, the terminal benefits cannot be released. In view of the same, this Court hereby quash the impugned charge memo, dated 23.10.2019 and the consequential impugned order, dated 28.02.2020 and directs the respondent to pay all the monetary benefits to the petitioners 2 to 7.

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7. With the above direction, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

The Tahsildar,
Nanguneri,
Tirunelveli District.

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L.VICTORIA GOWRI, J.

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