



WP(MD)No.19432 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 16.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.19432 of 2019

B.Vijayakumar

.. Petitioner

v.

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 9.
- 2.The State of Tamil Nadu,
Rep. by its Additional Chief Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 9.
- 3.The Director of Rural Development and Panchayat Raj,
Directorate of Rural Development and Panchayat Raj,
Panagal Building,
Saidapet,
Chennai – 600 015.
- 4.The District Collector,
O/o.District Collector,
Madurai District.

.. Respondents



WP(MD)No.19432 of 2019

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in G.O.(D)No.560, Rural Development and Panchayat Raj (E2) Department, dated 30.11.2015 and the consequential impugned order passed by the first respondent in G.O.(D)No.562, Rural Development and Panchayat Raj (E2) Department, dated 30.11.2015 and the consequential letter issued by the second respondent vide proceedings in Letter No.25541/E2/2018-5 dated 30.01.2019, quash the same and consequently, directing the respondents to allow the petitioner to retire from service with all retirement benefits along with accrued interest thereon.

For Petitioner : Mr.M.Ajmal Khan
Senior Advocate
for M/s.Ajmal Associates

For Respondents : Mr.P.T.Thiraviam,
Government Advocate



ORDER

WEB COPY The petitioner has filed this writ petition as against the order of suspension dated 30.11.2015.

2.Learned Senior Counsel for the petitioner submitted that the impugned order of suspension has been passed under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. This Rule lays down the conditions in which a person may be placed under suspension and the same reads thus:-

"Rule 17(e)(1) – A member of a service may be placed under suspension from service, where,

(i) an enquiry into grave charges against him is contemplated, or is pending; or

(ii) a complaint against him or any criminal offence is under investigation or trial and if such suspension is necessary in the public interest."

3.Learned Senior Counsel contended that the impugned order does not reveal that any disciplinary proceeding has been contemplated against



the petitioner or any criminal case is pending against him. Not even a charge memo was issued as against the petitioner till date. No criminal case was pending against the petitioner as on 30.11.2015, ie., the date of passing of the suspension order. Only in the year 2017, a criminal case was registered by the Department of Vigilance and Anti Corruption.

4.By relying upon the decision of the Hon'ble Supreme Court in *Somesh Tiwari v. Union of India* [(2009) 2 SCC 592], learned Senior Counsel submitted that without any criminal case and without any charges contemplated, the impugned order has been passed placing the petitioner under suspension. This is without any application of mind and therefore, the same is liable to be set aside. The relevant observation made by the Hon'ble Supreme Court in *Somesh Tiwari's* case (supra) is extracted as under:-

"21. ... No vigilance enquiry was initiated against him. The order of transfer was passed on material which was non-existent. The order, therefore, not only suffers from total non-application of mind on the part of authorities of respondent 1, but also suffers from malice in law."



5.Learned Government Advocate submitted that as per Rule 17(e), a person can be placed under suspension even if an investigation of any criminal case is pending on the date. According to the learned Government Advocate, the petitioner was due to retire on 30.11.2015 and on that date, a serious allegation of misappropriation of Government funds was pending as against the petitioner. The petitioner has created false entries, as if electric motors and GI pipes have been fixed and misappropriated a sum of Rs.1,86,320/-. Though an FIR has not been registered as on 30.11.2015, a preliminary enquiry as contemplated under the Vigilance Manual was pending as against the petitioner. In order to protect the Government servants, the Vigilance Manual contemplates for a preliminary enquiry, even though there are materials for registering an FIR. Therefore, the Vigilance Department has conducted a preliminary enquiry and the preliminary enquiry was concluded with the registration of criminal cases as against the petitioner in Crime Nos.5 of 2017 & 11 of 2018.

6.According to the learned Government Advocate, though it was a preliminary enquiry, it is an investigation by the Vigilance and Anti



WP(MD)No.19432 of 2019

Corruption Department, which has to be treated as a pending investigation, as regards Section 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

7.He has also relied on the order passed by this Court in WP.No. 24396 of 2018, dated 18.09.2018 and submitted that the petitioner has already filed a writ petition as against the suspension order before the Principal Seat of this Court. This Court disposed of the writ petition, with a direction to the respondents to reconsider the order of suspension, by considering the representation of the petitioner. Accordingly, they have also reconsidered and passed further orders on 30.01.2019. As on this date, two criminal cases are pending as against the petitioner. Therefore, the ground raised by the petitioner lacks merit and as such, he prayed for dismissal of this writ petition.

8.This Court considered the rival submissions made on either side and perused the materials placed on record.



9.As per Rule 17(e) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, a person may be placed under suspension, if an enquiry into grave charges is contemplated / pending or a criminal case is under investigation / trial. In the case on hand, as on the date of superannuation, ie., on 30.11.2015, no departmental enquiry on any grave charges was pending against the petitioner. No criminal case was also pending against him as on that date. However, a preliminary investigation was contemplated by the Vigilance Department and the same was pending as on that date.

10.The issue to be decided is as to whether the pendency of a preliminary enquiry contemplated by the Vigilance Department can be treated as a criminal case under investigation as regards Rule 17(e).

11.In criminal jurisprudence, whenever a *prima facie* case is made out, a criminal case (FIR) would be registered. However, if a complaint has been made as against a Government Servant and that too, with regard to misappropriation / corruption, that has to be registered only after



conducting a preliminary enquiry, even if a *prima facie* case is made out.

This process of preliminary enquiry is to prevent any abuse of investigation and registration of cases as against the Government Servants. The Vigilance Manual has contemplated the procedures for registering an FIR by conducting the preliminary enquiry, filing a report and getting an approval from the Director and then to register a case.

12. In this case, a preliminary enquiry was pending as on the date of suspension on 30.11.2015. The preliminary investigation also ended with the registration of two criminal cases in Crime Nos.5 of 2017 & 11 of 2018. Therefore, this Court does not accede the ground raised by the petitioner.

13. That apart, though the petitioner has filed a writ petition as against the suspension order dated 30.11.2015, in WP.No.24396 of 2018, when the said writ petition came up for hearing on 18.09.2018, the petitioner has confined his relief only for reconsideration of the issue by the Government. The relevant paragraph of the earlier order passed by this Court is extracted as under:-



“3. However, during the course of hearing on admission, it being submitted by the learned counsel appearing for the petitioner that though the petitioner has sought for a larger relief, it would suffice, if the respondents are directed to respond to the representation of the petitioner and intimate the stage, in which, contemplation of disciplinary proceeding is there and also to conclude the same within a specified period.

4. In response, the learned Additional Government Pleader appearing for the respondents submits that, since it is not known at what stage, the contemplated disciplinary proceeding is there, it would not be proper on the part of this Court without seeking reply affidavit to give such direction as sought for by the petitioner, but, it is fairly submitted by her that the respondents will respond to the representation of the petitioner and intimate the petitioner with regard to the stage of the contemplated disciplinary proceeding against him, if it not already intimated to him.

5. Regard being had to the aforesaid facts and submissions made, especially, the nature of relief now sought for by the learned counsel appearing for the petitioner at the time of admission, therefore, this Court dispose of this Writ Petition without seeking reply affidavit with a direction to the respondents to respond to the representation of the petitioner within a period of four weeks from the date of receipt of a



copy of this order by intimating him about the status of the contemplated disciplinary proceeding and also take all effective steps, if any disciplinary proceeding is pending, for disposal of the same, in accordance with law as expeditiously as possible, inasmuch as, the petitioner was not allowed to retire in view of the contemplated disciplinary proceeding against him by putting him under suspension under Rule 17 (e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

14.Pursuant to this order dated 18.09.2018, the Government has reconsidered the issue and passed a further order dated 30.01.2019. On this date, admittedly, two criminal cases are pending against the petitioner. Therefore, this Court does not find any error in the issuance of the impugned order of suspension.

15.The respondents further claimed that they are about to issue charge memo, based on the criminal cases pending against the petitioner, however, in view of the pendency of this writ petition before this Court, they have not issued the charge memo so far. Learned Senior Counsel for



WP(MD)No.19432 of 2019

the petitioner intervened and pointed out that the petitioner, who attained the age of superannuation in the year 2015, has been retained in service for the past ten years. Therefore, he sought for a direction for early disposal of the proceedings.

16.Considering the above submissions, this Court directs the respondents to conclude the disciplinary proceedings, on merits and in accordance with law, within a period of six months from the date of receipt of a copy of this order.

Accordingly, this writ petition stands disposed of. There shall be no order as to costs.

Index : Yes / No
NCC : Yes / No
gk

16.12.2024

To

1.The Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai – 9.



WP(MD)No.19432 of 2019

2. The Additional Chief Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Raj Department,
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