

WP(MD) No.26571 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.04.2024**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD) No.26571 of 2022

and

W.M.P(MD)Nos.20763 & 20765 of 2022

K.Saravanan

... Petitioner

Vs.

1.The Joint Director of School Education,
(Personnel),
Chennai - 600 006.

2.The Chief Educational Officer
Sivagangai,
Sivagangai District.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records from the 1st respondent in his proceedings in Rc.No. 54625/A3/S3/2022 Dated 31.10.2022 and charge memo in Na.Ka.No.054625/A3/E3/2021 Dated 10.11.2022 and quash the same and consequently direct the respondents to permit the petitioner having retired from service on 31.10.2022 on the date of his superannuation with all attended benefits and continuity of service.

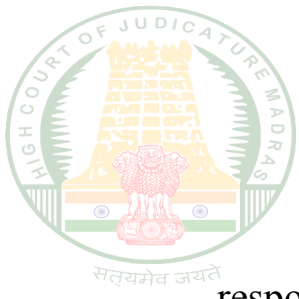
For Petitioner : Mr.N.Sathish Babu

For Respondents : Mr.T.Amjadkhan

Government Advocate

ORDER

The petitioner has filed this Writ Petition seeking for a Writ of Certiorarified Mandamus to call for the records from the 1st



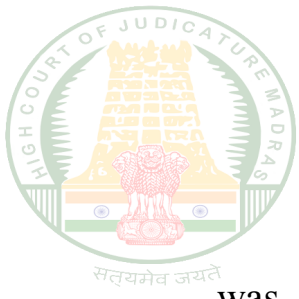
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respondent in his proceedings in Rc.No. 54625/A3/S3/2022 Dated 31.10.2022 and charge memo in Na.Ka.No.054625/A3/E3/2021 Dated 10.11.2022 and quash the same and consequently direct the respondents to permit the petitioner having retired from service on 31.10.2022 on the date of his superannuation with all attended benefits and continuity of service.

2. Heard Mr.N.Sathish Babu, learned counsel for the petitioner and Mr.T.Amjadkhan, learned Government Advocate for the respondents.

3. The petitioner had suffered with the order of suspension exactly on the date of his superannuation for the reason that some enquiry into grave charges is pending against him and it has not been concluded. The petitioner has been issued with the charge memo on 10.11.2022 subsequent to the order of suspension. The charges were to the effect that the petitioner got the Compassionate appointment by suppressing the fact that his mother



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was in Government service and by stating that his mother had deserted him when he was young. The petitioner secured employment on Compassionate grounds as early as on 18.10.1989. From the year 1989 till his date of superannuation, no action has been taken against the petitioner on the above allegations.

4. Having allowed the petitioner to complete his entire tenure of service, the first respondent had chosen to place the petitioner under suspension only on the date of superannuation and by not permitting to retire. In fact, on the day when the petitioner was suspended, he was not even given with the charge memo. However, in the order rejecting his superannuation, it is stated that until the enquiry into grave charges pending against the petitioner has been concluded, the petitioner will not be allowed to retire. But the charge memo itself has been furnished to the petitioner subsequent to his attaining the age of superannuation and not any time, while he was in service.



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5. The learned counsel for the petitioner submitted that the charges have been issued against the petitioner just to satisfy some third parties being inimical to the petitioner, who had sent the complaints to the Department. The respondents cannot act to satisfy the third parties, who just sent complaint to settle their disputes with the petitioner.

6. Had the respondent Department himself found out at any point of time that the petitioner had secured employment by suppressing any material information, it is understandable. But the action appears to have been taken only on the complaint made by third parties, who do not stand in cordial terms with the petitioner.

7. Mr.T.Amjadkhan, learned Government Advocate submitted that the suppression of material facts is a serious flaw and the respondents cannot act in support of the person, who had fraudulently secured an employment.



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8. As stated already, action has not been taken *suo motu* by the Government but on receiving certain complaints from the third parties and after the petitioner had attained the age of superannuation.

9. Time and again, it is held that an employer should not resort to the practice of suspending an employee on the date of his retirement or at the verge of his retirement and initiate disciplinary proceedings after lapse of considerable time.

10. The Supreme Court has held in a case of ***P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board reported in 2005(4) CTC 403***, that initiating departmental proceedings at the time of retirement of the petitioner is prejudicial to him and such a practice should be avoided not only in the interest of the Government employee, but also in public interest. The relevant part of the above judgment is extracted below:

“11. Under the circumstances, we are of the



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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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11. The Government itself has issued guidelines in G.O(Ms)No.144, Personnel and Administrative Reforms (N), Department dated 08.06.2007, not to issue suspension orders to the employees in the last minute i.e., on the date of their retirement.

12. For the sake of convenience, the guidelines issued by the Government in **G.O.(Ms)No.144 Personnel and Administrative Reforms (N), Department dated 08.06.2007**, are extracted hereunder :

“5. The Government direct that the following guidelines be followed to avoid suspension orders on the date of retirement of the Government servants in supersession of orders issued in the reference second read above.

(i) The Disciplinary authority should not resort to last minute suspension of the Government servants (i.e) on the date of their retirement. A decision either to allow Government servant to retire from service or suspend him from service should be taken well in advance (i.e) three months



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prior to the date of retirement on superannuation and orders issued in the matter and such a decision should not be taken on the date of retirement, if final orders could not be issued in a pending disciplinary case against a Government servant retiring from service due to administrative grounds.

(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date or retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service without prejudice to the disciplinary case pending against him or to place him under suspension, based on gravity of the irregularities committed by him.

(iii) In respect of Directorate of Vigilance and Anti-Corruption and Tribunal for Disciplinary Proceedings cases, the disciplinary authorities should strictly adhere to the time limit prescribed by the Government. It is noticed that Directorate of Vigilance and AntiCorruption and Tribunal for



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disciplinary Proceedings cases are dragged on for a long time without adhering to the time limit prescribed by the Government in Letter first read above. In such cases, 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 final orders issued 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 to place him under suspension well in advance (i.e) prior to the date of retirement of the Government servants and not on the date of retirement.

(iv) 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.

(v) Where the delinquency committed by a Government servant is very grave which warrants



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imposition of major penalty such as dismissal or removal from service and if it is not possible 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. However, where a Government servant is already under suspension, orders retaining the services of Government servant beyond the date of superannuation under Fundamental Rule 56 (1) (c) have to be issued on the date of retirement only .

(iv) 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 servant to retire from service without prejudice to the departmental proceedings.



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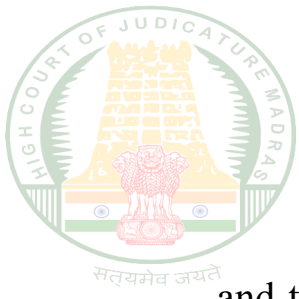


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(vii) If the disciplinary authority comes to know of the commission of a delinquency which warrants imposition of major penalty such as dismissal or removal from service, within three months prior to the date or retirement of the Government Servant and charges could not be framed before the date of retirement of the Government servant, then also 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)(a) (c). In such cases also, the disciplinary authorities may ensure that the suspension orders are not issued on the date of retirement of the Government servant.

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

13. In the case on hand, the petitioner was placed under suspension completely in contradiction with the above guidelines



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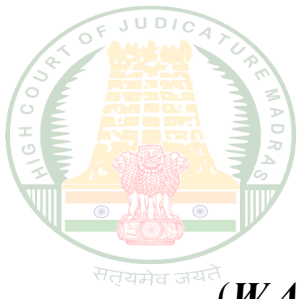
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and the petitioner was issued with the suspension order exactly on the date of his superannuation and the charge memo has been given to him subsequently.

14. When the suspension order itself is illegal, it is needless to state that the consequential charge memo at this distant point of time i.e., nearly after 25 years of time, is also thoroughly illogical.

15. The delayed action initiated by the Government in complete contradiction to its own Government orders would vitiate all the proceedings including the impugned order of suspension dated 31.10.2022 and the charge memo, dated 10.11.2022 issued by the first respondent.

16. In this regard, it is appropriate to cite the judgment of the Division Bench of this Court held in *Joint Director of School Education and others Vs. C.Lesley Jayaseelan*,



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(**W.A(MD)No.116 of 2010, dated 23.2.2011**) wherein, it is held as

under:

“13. Therefore, we are of the opinion that the termination of service after a lapse of 22 years, would certainly affect the livelihood of his entire family at this length of time. Moreover, as observed by the learned single Judge, the appointment given to the respondent is not against any statutory regulations and moreover, the removal is not based on any misconduct. Therefore, we are of the considered view that the respondent, having been allowed to continue for over 22 years in Government service, will not be removed from service on the ground that he got employment on furnishing false information. Therefore, we do not find any infirmity in the order passed by the learned single Judge and under such circumstances, the writ appeal is liable to be dismissed.

Accordingly, the writ appeal fails and is dismissed. No costs. Consequently, connected M.P.is closed.”



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17. After having allowed the petitioner to complete the service, now the respondent placed the petitioner under suspension and issued the charge memo stating that he has suppressed the material facts in securing the employment. Such kind of action itself is a mockery and that would not only cause inconvenience to the Government but also discourage the morale of the Government employees who rendered their services, till the date of attaining the age of superannuation.

18. In such circumstances, allowing the respondents to proceed with the Department proceedings would no doubt be prejudicial to the interest of the petitioner. There cannot be any other mental agony given to an employee than by placing him under suspension exactly on the date of his superannuation.

19. This is a typical case where the powers of the Government shall not be exercised in a way prejudicial to the interest of an employee whose services have been utilized for a



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quarter Century. So without any doubt, the impugned suspension order, dated 31.10.2022 and the charge memo, dated 10.11.2022 issued by the first respondent are illegal and are liable to be set aside.

20. Hence, the Writ Petition is **allowed** and the impugned order of suspension, dated 31.10.2022 and the charge memo, dated 10.11.2022 issued by the first respondent are set aside. The respondents are directed to permit the petitioner to retire from service with effect from 31.10.2022 with all attendant benefits and release the terminal benefits within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

26.04.2024

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

RM

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To

- 1.The Joint Director of School Education,
(Personnel),
Chennai - 600 006.
- 2.The Chief Educational Officer
Sivagangai,
Sivagangai District.



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R.N.MANJULA, J.

RM

Order made in
W.P.(MD)No.26571 of 2022

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