



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.05.2017

Delivered on : 30.05.2017

CORAM :

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

W.P. (MD) No. 9355 of 2017

and

W.M.P. (MD) No. 7129 of 2017

WEB COPY

J.Vijayakumar

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by its
Principal Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai - 9.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai - 5.

3.The Commissioner,
Madurai Corporation,
Madurai.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records connected in Vo2/006029/2017, dated 31.03.2017 and Vo2/006029/2017, dated 31.03.2017 passed by the 3rd respondent and quash the same and direct the respondents to allow the petitioner to retire from service on attaining the age of Superannuation w.e.f. 31.03.2017 as was given to the similarly placed persons based on the Government orders and also based on the Hon'ble High Court orders and also direct the respondents to settle all the retirement benefits to the petitioner with all consequential benefits including the petitioner's promotions.

For Petitioner : Mr.G.Elanchezhian

For Respondents : Mr.A.Muthukaruppan (for R1 & R2)
Additional Government Pleader
Mr.R.Prabhu Ramachandran (for R3)

O R D E R

This writ petition is filed to issue a Writ of Certiorarified Mandamus to call for the records connected in Vo2/006029/2017, dated 31.03.2017 and Vo2/006029/2017, dated 31.03.2017 passed by the 3rd respondent and quash the same and direct the respondents to

allow the petitioner to retire from service on attaining the age of superannuation with effect from 31.03.2017.

2. The case of the petitioner is that while he was working an Assistant in Zone-I at the 3rd respondent corporation, he was issued with a memo on 05.01.2017 by the Assistant Commissioner, Zone-IV of Madurai Corporation. The charge against the petitioner is that he failed to hand over the files of the year 2009. The petitioner has submitted his explanation that since the then custodian of records is no more; the files could not be treated out. Not satisfied with explanation submitted by the petitioner, the 3rd respondent issued a charge memo dated 02.03.2017 to the petitioner. The petitioner therefore narrating the above fact that he was not responsible for the failure to handover the files, submitted his explanation to the 3rd respondent on 09.03.2017. However, the Deputy Commissioner of Madurai Corporation was appointed as an enquiry officer and he conducted enquiry with regard to the above said charge on 27.03.2017 and the petitioner appeared before the enquiry officer on 27.03.2017 and submitted his detailed explanation. Thereafter there was no progress in the said enquiry and no final order was been passed. While so, the petitioner attained the age of superannuation on 31.03.2017, whereas on the said date after the office hours i.e., 5.30 p.m. the 3rd respondent passed the impugned orders of suspension and not permitting him to retire. The impugned orders of suspension and not allowing the petitioner relive from service was served to the petitioner at about 09.40 p.m. in the event of his retirement function. The said orders are impugned herein.

3. Heard Mr.G.Elanchezhiyan, learned counsel for petitioner and Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.R.Prabhu Rajadurai, learned counsel appearing for the third respondent.

4. On perusal of the typed set of papers, it is noticeable that retirement date of the petitioner fell on 31.03.2017. Further a charge memo is pending against the petitioner accusing the petitioner for failure to hand over the files of the year 2009. According to the petitioner, since the person then in charge of the files died, the files could not be traced out. The said charge is only of a simple in nature and it is not attributing serious misconduct of fraud or misappropriation.

The said G.O. states as follows:-

- (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 to suspend him from service should be taken well in advance (i.e) three months 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.

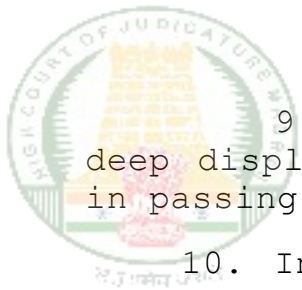
(ii) If an irregularity or an offence committed by the Government servant comes to notice within a period of three months prior to the date of retirement, the disciplinary authority shall process the case on war-footing and take a decision either to permit the Government servant to retire from service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

5. At this juncture, the Learned Counsel for the petitioner has drawn the attention of this Court to the government order in **G.O.Ms.No.144 Personnel and Administrative Reforms Department dated 08.06.2007** and contended that the disciplinary authority should not resort to last minute suspension of the government servant (i.e.) on the date of their retirement. The government order further emphasis that a decision either to allow the government servant to retire from service or suspension from service should be taken well in advance i.e. three months prior to the date of superannuation.

6. But in this case on hand, on perusal of the impugned orders are disclosed that the petitioner was served with the impugned orders only at 09.40 p.m. on his retirement date, that too after office hours. The said attitude of the 3rd respondent is highly arbitrary and unsustainable in law and that apart it is totally against the government order referred above, on that score itself this writ petition is liable to be allowed.

7. Apart from that the Learned Counsel for the petitioner has relied on a judgment of this Court made in **W.P.No.16957 & 16958 of 2014 dated 18.12.2014 made in the matter of R.Mahavalan -Vs- The Additional Director of Association and another**, Wherein this Court set aside the orders of suspension and retention passed against the petitioner therein viz made at the last minute on his retirement date in violation of G.O.Ms.No.144 dated 08.06.2007

8. The issue involved in this writ petition is also identically one and the same. Therefore for the reasons above and in the light of the judgment referred above, I am of the view that there is no justification for the 3rd respondent to issue the impugned orders on the date of the petitioner's retirement and hence it is liable to be set aside. Accordingly, the impugned orders are set aside.



9. Before parting with the case, this court expresses its deep displeasure over the arbitrary conduct of the 3rd respondent in passing such impugned order.

10. In the result,

WEB COPY (a) this writ petition is allowed by setting aside the order in Vo2/006029/2017, dated 31.03.2017 and Vo2/006029/2017, dated 31.03.2017 passed by the 3rd respondent.

(b) the respondents are hereby directed to allow the petitioner to retire from service on attaining the age of superannuation on 31.03.2017.

(c) on the order of retirement of the petitioner, the respondents are hereby directed to settle all the retirement benefits to the petitioner with all consequential benefits including the petitioner's promotion within a period of three weeks.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Chennai - 9.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 5.

3. The Commissioner,
Madurai Corporation, Madurai.

+1cc to Mr. G. Elenchezhlian, Advocate, SR.No.58010

+1cc to Mr. R. Alagumani, Advocate, SR.No.58002

+1cc to Mr. R. Prabhu Ramachandran, standing counsel for Madurai Corporation, SR.No.57997

skn

AE/RR/SAR1/01.06.2017/4P/7C