
(2007) 11 MAD CK 0202

In the Madras High Court

Case No : Writ Petition (MD) No. 8843 of 2007 and M.P. (MD) No. 1 of 2007

G. Andy

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2007) 11 MAD CK 0202

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; S.C. Herald Singh, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—Prayer in the writ petition is to quash the order of suspension dated 29.6.2005 with a direction to the

respondents to permit the petitioner to retire from service from 30.6.2005 with all consequential benefits.

2. The case of the petitioner is that he joined as Sub-Inspector of Police on 1.4.1970 and was promoted as Inspector of Police from 16.4.1982.

Even though he was eligible to be promoted as Deputy Superintendent of Police Category-I from the panel year 1995-1996, his name was

deferred on account of the pendency of the criminal proceedings initiated against him in connection with the atrocities committed by various Forest,

Police and Revenue officials at Vachathi in Dharmapuri District on 20.6.1992. A criminal case in crime No. RC.3/S/95 was registered by the CBI

and the same is pending as S.C. No. 117 of 1996 on the file of the Sessions Court, Krishnagiri. Petitioner is arrayed as accused No. 158. In view

of the pendency of the said sessions case, petitioner was not allowed to retire on 30.6.2005 and the impugned order of suspension was passed.

3. Even according to the affidavit petitioner is arrayed as accused No. 158 in S.C. No. 117 of 1996 on the file of the Sessions Court, Krishnagiri.

For the said atrocities committed by various Forest, Police and Revenue officials at Vachathi Village, a Fact Finding Enquiry Commission was

appointed and more than 350 victims were paid compensation by the Government.

4. Earlier this Court directed the matter to be investigated by CBI, pursuant to which the CBI investigated the case and the case is now pending for

trial. It seems a direction was also issued by this Court to dispose of the said sessions case expeditiously. Due to the pendency of the criminal case

against the petitioner, third respondent is justified in passing the impugned order so as to prevent the petitioner from retiring on 30.6.2005.

5. Under F.R. 56(1)(c), the department is empowered to suspend a Government servant, not allowing to retire on a charge of misconduct; or

against whom enquiry into grave charges of criminal misconduct or allegations of criminal misconduct is pending; or against whom an enquiry into

grave charge is contemplated or is pending; or against whom a complaint of criminal offence is under investigation or pending.

6. As against the petitioner, admittedly a sessions case is pending. Therefore there is no illegality in placing the petitioner under suspension and

retaining the petitioner in service on his reaching the age of superannuation on 30.6.2005.

7. The contention raised by the learned Counsel for the petitioner that there is inordinate delay in disposal of the criminal case pending against him

is not sustainable in view of the fact that this Court has already given a direction to the Sessions Court, Krishnagiri, to dispose of the criminal case

expeditiously. Further, there is no prejudice caused to the petitioner due to the delay in disposal of the criminal case. Petitioner might have been put

to hardship as his terminal benefits are not paid to him due to the pendency of criminal case and impugned order, not allowing him to retire. That

itself would not be a cause of action to challenge the impugned order.

8. The other contention raised that similarly placed accused officials have been permitted to retire and hence petitioner is also entitled to get the

order of retirement cannot be accepted as the factual aspect; the allegations made against the other similarly placed officials; and their nature of involvement in the criminal case, are not established. Further, even assuming that they are similarly placed, the said orders cannot be treated as precedent for getting same treatment by the petitioner, as the said action of the respondents is in violation of F.R. 56(1)(c), which clearly states that if a complaint of criminal offence is under investigation or trial, the Government servant shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or enquiry into the allegations of criminal misconduct is concluded and a final order passed thereon by the competent authority or by any higher authority. Hence the alleged permission granted by the respondents to retire other officials is to be treated as illegal orders and the same cannot be treated as precedent by the petitioner for invoking Articles 14 and 16 of the Constitution of India.

9. It is well settled in law that no equality can be pleaded based on the illegal orders and if the same is permitted, it will amount to giving premium for perpetuating illegality. The Supreme Court in the decision reported in AIR 2007 SCW 2554 Bihar Public Service Commission v. Kamini in paragraph 10 held as follows:

...It is well settled and needs no authority that misconstruction of a provision of law in one case does not give rise to a similar misconstruction in other cases on the basis of doctrine of equality. An illegality cannot be allowed to be perpetuated under the so-called "equality doctrine". That is not the sweep of Article 14....

Therefore the above said contention raised by the learned Counsel for the petitioner is also rejected.

10. In a recent decision reported in Bank of India and Others Vs. T. Jogram, , the Supreme Court considered the scope of judicial review in administrative actions and held that now it is well-settled principle of law that judicial review is not against the decision, but it is against the decision making process.

11. For the foregoing reasons I hold that there is no merit in the writ petition and the same is dismissed. No costs. Connected miscellaneous

petition is also dismissed.