

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE.R.KARUPPIAH

W.P.No.2091 of 2014
and M.P.Nos.1 and 2 of 2014

M.Sekar ... Petitioner/Party-in-Person

Vs.

1.The Registrar General
Madras High Court
Chennai 600 104.

2.The Accountant General
Accounts and Entitlement
Mount Road, Thenampet,
Chennai 600 018.

3.State of Tamil Nadu
Represented by its Secretary to Govt.,
Home (Courts) Department,
Fort St.George,
Chennai-9.

4.State of Tamil Nadu
Represented by its Secretary to Govt.,
Public (Special) Department
Fort St.George,
Chennai-9.

5.State of Tamil Nadu
Represented by its Secretary to Govt.,
Law Department,
Fort St.George,
Chennai-9

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in R.O.C.No.1002/2009/R.G.B2, dated 12.9.2013 from the file of first Respondent/Registrar General Madras High Court and quash the

entire department Disciplinary proceedings proceeded as against the petitioner and consequently, direct the first and second respondents to pay the arrears of salary to the petitioner from 2009 August to December and 2011 July to 25.4.2012 and up to date within prescribed time to be fixed by this Court along with interest and grant damages to the tune of Rs.10,00,000/- and cost to this petitioner.

For Petitioner : Mr.M.Sekar,
Party-in-Person
For 1st Respondent : Mr.S.Haja Mohideen Gisthi
For 2nd Respondent : Mr.V.Vijay Shankar,
Standing Counsel
For Respondents 3 to 5 : Mr.T.N.Rajagopalan,
Special Government Pleader

O R D E R

R.KARUPPIAH, J.,

This Writ Petition has been filed by the Writ Petitioner seeking the reliefs (a) to issue a writ of Certiorarified Mandamus to call for the records in order passed in R.O.C.No.1002/2009/R.G.B2, dated 12.9.2013 and quash the above said departmental disciplinary proceedings; (b) to direct the first and second Respondents to pay the arrears of salary to the petitioner from 2009 August to December and 2011 July to 25.04.2012 with interest; (c) to grant damages to the tune of Rs.10,00,000/-; (d) for costs.

2.1. The brief facts, which are necessary for the disposal of the writ petition, are set out hereunder: The writ petitioner was selected from the Bar and appointed on ad-hoc basis as Additional District and Sessions Judge - Fast Track Court Judge as per G.O.Ms.No.158, Public (Special A) Department, dated 14.02.2002 along with other 14 Judges. The petitioner was posted as Tirupur Fast Track Court Judge as per notification No.19/2002 dated 18.02.2002. The petitioner served in various places and was lastly posted as Fast Track Court Judge, Ariyalur at Perambalur and he took charge of the post on 23.12.2009.

2.2. After taking over the charge, on the same date, the petitioner took the case properties from the file of Additional District Court-Fast Track Court, Ariyalur, including two country made revolvers, with him to his home at Chennai. On 24.12.2009, at about 3.30 a.m., the writ petitioner visited P2 Otteri Police Station in a Car and requested the Head Constable and Sentry to accept the above said two country made revolvers as he had no security at his house. The above said Police personnel hesitated to receive the weapons and therefore, the petitioner handed over the two country made revolvers to the Assistant Commissioner, Pulianthope range on 25.12.2009.

2.3. The Administrative Committee of this Court had considered the letter of Commissioner of Police, report of the Principal District Judge, Perambalur and report submitted by the writ petitioner and found that the conduct of the petitioner amounts to serious misconduct and therefore, the writ petitioner was placed under suspension vide High Court proceedings in R.O.C.No.1002/2009/R.G.B2, dated 12.01.2010 and explanation was called for from the writ petitioner. Accordingly, the writ petitioner submitted his explanation.

2.4. The Administrative Committee of this Court on perusal of the explanation, finally came to a conclusion that the above said explanation is not satisfactory and therefore, the first respondent was directed to frame charges against the writ petitioner. Accordingly, the following charges have been framed on 17.02.2011.

'CHARGE No.1:

That you, Thiru M.Sekar, Additional District Judge, Fast Track Court on ad-hoc basis, directly recruited from the Bar, after taking charge of the post of Additional District Judge, Fast Track Court, Ariyalur on 23.12.2009 on transfer, in the evening, displayed the locker box belonging to the Court of Additional District Judge, Fast Track Court, Ariyalur on the table in your chamber in the presence of the District Munsif, Ariyalur, Thiru Ramalingam, Deputy Superintendent of Police, Ariyalur, Thiru Selvaraj, President, Bar Association, Ariyalur and officials of Fast Track Court, Ariyalur and complained about the safety arrangements for the case properties in the court of Additional District Judge, Fast Track Court, Ariyalur to them; that you smoked several times in your chamber in the presence of the said persons; that keeping the country made Revolver pertaining to a case on the file of Additional District Judge, Fast Track Court, Ariyalur in your hand, you passed comments that

"என்னை சினிமாவில் நடக்க அழைக்கிறார்கள், ஏன்னாலதான் போகமுடியவில்லை" "என்னை பார்த்தால் கொள்ளைகூட்ட பாஸ் மாதிரி இருக்கிறதா?" and thus you have committed the acts of serious misconduct, failure to maintain decorum, unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.'

'CHARGE No.2:

That you, Thiru M.Sekar, Additional District Judge, Fast Track Court on ad-hoc basis, directly recruited from the Bar, after taking charge of the post of Additional District Judge, Fast Track Court, Ariyalur on 23.12.2009 on transfer, on leaving the office, took the properties of the cases on the file of Additional District Judge,

Fast Track Court, Ariyalur Viz.,

1. Two country made Revolvers in R.P.No.243/2006 and Ball 55/2002.
2. Annual Inspection Notes-2009(07.08.2009)
3. Property Register(Last R.P.No.58/2009)
4. Phone No.List Pad.
5. Chest box (Gray colour) with two keys.
6. One Cell Phone in R.P.No.316/2005.
7. White colour plastic box containing five Bullets in R.P.No.201/2002 in S.C.No.61/2005.
8. One small size court seal.
9. One R.C.book No.TN 46-1367 in R.P.No.271/2002.
10. One R.C.book No.TN 45-Y9655 in R.P.No.75/2003 in S.C.No.50/2001.
11. Two Identity Cards in R.P.No.316/2005.
12. One Nokia Cell Phone in R.P.No.17/2009.
13. One R.C.book in TN 49-1900 in R.P.67/2003 & 75/2003 in S.C.No.50/2001.
14. One Pay-in-Slip dated 02.03.2005.
15. Bullet in R.P.No.15/2007 - Ball-53/2006.
16. Nail with thread.
17. One Motorola Cell Phone in R.P.No.316/2005.
18. One Panasony Cell Phone in R.P.No.331/2005.
19. One Key No.A-75315.
20. One two rupees coin.
21. One Brown colour bag in R.P.No.331/2005.
22. Five copies of Official Memorandum (Safe custody to lower courts).
23. One Petition (R.C.book filing) in R.P.No.540/2002 - R.P.No.68/2003.
24. Letter in D.No.202, dated 31.01.2003 of the Judicial Magistrate, Ariyalur.
25. Paper submitted by Thiru Rajendra Prasad, Advocate, dated 16.06.1999 (2 Nos.)
26. Paper in S.C.No.68/2005, dated 02.06.2006.
27. Paper in S.C.No.78/2006 - R.P.No.25/2006.

with you to your home at Chennai and thus you have committed the acts of serious misconduct, irregularity, failure to adhere to procedure, unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.'

''CHARGE No.3:

That you, Thiru M.Sekar, Additional District Judge, Fast Track Court on ad-hoc basis, directly recruited from the Bar, while functioning as Additional District Judge, Fast Track Court, Ariyalur, on 24.12.2009 at about 03.30 a.m., visited the P2 Otteri Police Station in a maruti Wagon-R Car (TN-02-T 1450) in a condition that you were

not in control of your senses and were inebriated and requested Thiru Sundaramoorthy, Head Constable (HC-12856), in-charge officer and Thiru Muthusamy, Sentry (Gr.I P.C.15799) to accept two country made revolvers pertaining to R.P.No.243/2006 and BALL 55/2002 brought by you from the Fast Track Court, Ariyalur, for safe custody, as you had no security at your house at No.18/10, State Bank Colony, Otteri, Chennai-12; when the police personnel hesitated to receive the weapons, you told the Head Constable that you had murdered your wife and daughter and asked them (the police personnel) to receive the revolvers and when Thiru K.Selvaraj, night rounds Sub-Inspector arrived at the Police Station, you changed your mind and did not want to deposit the weapons and left the Police Station; however, Thiru Selvaraj, Sub-Inspector and Thiru P.Shanmugam, Inspector of P1 Pullianthope Police Station (L&O) escorted you upto your residence to find that your wife and daughter were alive and subsequently on 25.12.2009, you handed over the two country made revolvers to the Assistant Commissioner, Pulianthope range and thus you have committed the acts of serious misconduct, irregularity, failure to maintain decorum, taken away the court properties with you to your home at Chennai, causing embarrassment to the office and unbecoming of a Judicial Officer and thereby rendered yourself liable to be proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.'

2.5. The above said charge memo was duly served to the writ petitioner and he was directed to submit his written statement of defence. Accordingly, the petitioner submitted his written statement of defence dated 13.2.2011 to the charges framed against him.

2.6. During the pendency of the above said disciplinary proceedings, the Government, in its G.O.Ms.No.475-Home(Courts,II) Dept., dated 26.08.2011, issued orders for permanent retention of 49 Fast Track Courts functioning on temporary basis and all the 49 Fast Track Courts were re-designated as Additional District Courts as per notification No.52 of 2012 dated 11.04.2012.

2.7. Thereafter, the then Administrative Committee, in its meeting dated 16.4.2012, considered the case of the petitioner, who was under suspension, along with three other Additional District Judges, Fast Track Court, who were all appointed on ad-hoc basis, for retention in service. It was resolved by the Administrative Committee as follows:

"Considered. In view of G.O.Ms.No.475 - Home (Courts.II) Department, dated 26.8.2011 making all Fast

Track Courts into regular Additional District Courts it is resolved that the services of the following Officers, who are appointed as Additional District Judges on contract basis, are discontinued, and they are relieved from their contractual service forthwith -

Thiru./Tmt./Selvi

- (1)Tmt R.Radha, Additional District Judge, Fast Track Court-V, Chennai
- (2)Tmt. G.Savithri, Additional District Judge, Fast Track Court, Tiruvallur
- (3)Tmt A.S.Hassina, Additional District Judge, Fast Track Court - IV, Chennai
- (4)Thiru M.Sekar, formerly Additional District Judge, Fast Track Court, Ariyalur (now placed under suspension)."

Subsequently, based on the proceedings of the Administrative Committee, the first respondent passed an order wherein, the services of the writ petitioner and three other Additional District Judges were discontinued and they were relieved from service vide High Court proceedings in R.O.C.No.21/2012/Con.B2 dated 25.04.2012, and it reads as follows:

"The Government in its G.O.Ms.No.475-Home (Courts.II) Dept., Dated 26.8.2011, issued orders for permanent retention of 49 Fast Track Courts functioning on temporary basis. Consequent to the said G.O., 40 Judicial Officers of Tamil Nadu State Judicial Service functioning as Additional District Judges, Fast Track Courts on ad-hoc basis were appointed as District Judges (Entry Level) on regular basis vide reference 5th cited and all the 49 Fast Track Courts were re-designated as Additional District Courts vide High Court's Notification in the reference 6th cited.

Consequent to the permanent retention of 49 Fast Track Courts and re-designation of the post of Additional District Judges, Fast Track Courts as District Judges (Entry Level) and re-designation of Fast Track Courts as Additional District Courts, the cases of 1. Tmt A.S.Hassina, 2. Tmt. R.Radha, and 3. Tmt G.Savithri, who were directly recruited from the Bar as Additional District Judges, Fast Track Courts on contract basis and functioning as Additional District Judges, Fast Track Courts as on date in the courts which were made permanent, and the case of Thiru M.Sekar, who was directly recruited from the Bar as Additional District Judge, Fast Track Court on contract basis and now under suspension, were considered by the High Court and it has been ordered that the services of the following

Officers, who were appointed as Additional District Judges, Fast Track Courts on contract basis, are discontinued, and they are relieved from their contractual services forthwith-

1. Tmt A.S.Hassina, then Additional District Judge, Fast Track Court - IV, Chennai, now re-designated as XVIII Additional Judge, City Civil Court, Chennai.
2. Tmt R.Radha, then Additional District Judge, Fast Track Court-V, Chennai, now re-designated as XIX Additional Judge, City Civil Court, Chennai.
3. Thiru M.Sekar, formerly Additional District Judge, Fast Track Court, Ariyalur, now under suspension and
4. Tmt. G.Savithri, then Additional District Judge, Fast Track Court, Tiruvallur, now re-designated as I Additional District Judge, Tiruvallur.

As ordered, the services of the following officers viz.,
1. Tmt A.S.Hassina, 2. Tmt. R.Radha, and 3. Tmt G.Savithri who were directly recruited as Additional District Judges, Fast Track Courts on contract basis are discontinued and they are relieved from their contractual services forthwith.

As ordered, the services of Thiru M.Sekar, who was directly recruited as Additional District Judge, Fast Track Court on contract basis and then functioned as Additional District Judge, Fast Track Court, Ariyalur on ad-hoc basis and now under suspension pending disciplinary proceedings is discontinued and he is relieved from his contractual services forthwith.

Accordingly, 1. Tmt A.S.Hassina, 2. Tmt. R.Radha, and 3. Tmt G.Savithri are directed to hand over the charge of their respective posts to the nearest Principal District Judge / Additional District Judge as the case may be, immediately and get themselves relieved.

The Officers who relieve the Officers are required to hold full additional charge of the additional posts until further orders.

The receipt of this Official Memorandum is required to be acknowledged at once."

(emphasis supplied)

2.8. Subsequently, the Administrative Committee, in its meeting dated 14.2.2013, considered the written statement of defence

submitted by the writ petitioner regarding charges framed against him and nominated the Hon'ble Mr. Justice N. Kirubakaran as Enquiry Judge to conduct the departmental enquiry against the petitioner. As the written statement of defence submitted by the petitioner was found not satisfactory, the Enquiry Judge of this Court has fixed the date of enquiry on 23.09.2013 and issued summons to the petitioner as per letter dated 13.09.2013. Immediately, on 20.09.2013, this writ petitioner filed this writ petition challenging the above said disciplinary proceedings and also for other consequential reliefs as already stated above. An interim order as follows was passed on 14.7.2014:

"Since the petitioner has challenged the charge memo and the writ petition having been admitted, this Court is of the view that the enquiry posted today at 5.00 p.m. may be deferred for a period of one week, so that the matter can be decided on merits."

The enquiry, however, did not proceed further for reasons not explained.

3.1. The main contention of the writ petitioner is that he was appointed as Fast Track Court Judge (Additional District and Sessions Judge) on ad-hoc basis and therefore, his service is only on the basis of contract and he was not appointed in regular Government service. The writ petitioner further submits that after suspension and during the pendency of the disciplinary proceedings, the first respondent passed an order discontinuing the petitioner's services and accordingly, he was relieved from his contractual service as per order dated 25.04.2012. After the petitioner was relieved from service on 25.04.2012, there is no jural relationship between the petitioner and the High Court on and from 25.04.2012 and therefore, the petitioner is not under the control of High Court since there is no master and servant relationship existing between the petitioner and the High Court.

3.2. The writ petitioner further pointed out that on the basis of the resolution of the Administrative Committee dated 14.2.2013, the first respondent continued the disciplinary proceedings even though there is no provision under the Act or the Rules to support the said action, and therefore, the continuation of the disciplinary proceedings against the petitioner after relieving him of the post is absolutely illegal and hence, he prayed to quash the above said disciplinary proceedings. In support of the above said contention, the writ petitioner relied on the following decisions of Hon'ble Apex Court and this Court (i.e.) (i) AIR 1990 SCC 463 (C.L. Verma v. State of M.P., and another); (ii) (1999) 3 SCC 666 (Bhagirathi Jena v. Board of Directors, O.S.F.C. and Others); (iii) 2008 Writ L.R.104 (N. Kunnai Gowder v. The Coimbatore District Co-op. Milk Producers' Union Ltd, & another); and (iv) Dev Prakash Tewari v. U.P. Cooperative

Institutional Service Board, Lucknow & Others, (2014) 7 SCC 260.

3.3. The writ petitioner further submitted that in respect of the alleged misconduct said to have been taken place on 23.12.2009, the petitioner was suspended from service on 12.01.2010, the charges have framed against the petitioner on 17.02.2011, and the petitioner was relieved from contractual service on 25.04.2012 without any stigma and in the above said circumstances, a High Court Judge was appointed as Enquiry Judge on 14.02.2013 and date for enquiry was fixed on 16.09.2013. He emphasised the said dates to plead that there was a delay of three years one month and 21 days for appointment of Enquiry Judge and the above said delay is not at all explained. Therefore, he pleaded that the above said unexplained inordinate delay itself is sufficient to quash the enquiry proceedings. In support of the above said contention, he relied on three decisions (i.e.) (i) 2013 (1) CLT 509 (N.Vajravelu v. The Superintendent of Police, Tiruvannamalai District, Tiruvannamalai and Others); (ii) 2008(3)CTC781 (Ranjeet Singh v. State of Haryana & Others); and (iii) 2005(5)CTC 380 (A.Obaidhullah v. The State of Tamil Nadu).

4.1. Per contra, the learned counsel appearing for the respondents would submit that the petitioner was appointed as Additional District Judge/Fast Track Court Judge, only on ad-hoc basis. The learned counsel pointed out the relevant portion (i.e.,) condition No.11, in the terms and conditions prescribed in the High Court's Official memorandum in R.O.C.No.101/2001/con-B2, dated 21.11.2001 at the time of appointment, and it is extracted as follows:

'11. The Fast Track Court Judges shall be governed by the Tamil Nadu Civil Services (Discipline and Appeal) Rules.'

4.2. The contention of the respondents is that from the above said terms and conditions, it is clear that the Tamil Nadu Civil Services (Discipline and Appeal) Rules are governing the service conditions of the Fast Track Court Judges and following the above said Rules, the petitioner was suspended from service and disciplinary proceedings were also initiated even prior to relieving him of the post and therefore, the disciplinary proceedings is maintainable. The learned counsel appearing for the respondents in support of his contention relied on a decision of Hon'ble Apex Court in Registrar General, High Court of Judicature at Madras v. R.Periachi and Others, (2011) 12 SCC 137 and pointed out the relevant portion (i.e.) 'Judges have been described as 'hermits'. They have to live and behave like 'hermits' who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat. This is necessary so that their latent desire to run the High Court administration may not sprout before time, at least, in some cases'. According to the respondents, the continuance

of the disciplinary proceedings even after relieving the petitioner from the post is maintainable and also necessary, since there is no bar in continuance of disciplinary proceedings.

5. Heard the petitioner/Party-in-Person and the learned counsel appearing for the respondents and perused the materials available on record.

6. Admittedly, the petitioner was appointed on contract basis as Additional District and Sessions Judge / Fast Track Court Judge, (i.e.,) on ad-hoc basis. It is also not in dispute that the petitioner was suspended from service on 12.01.2010 and three charges have been framed against the petitioner on 17.02.2011 and the above said disciplinary proceedings are still pending.

7. While things stood thus, the first respondent, by proceedings dated 25.4.2012, discontinued the services of the petitioner and relieved him from service. As rightly pointed out by the petitioner, in the above said relieving order, it is not specifically stated that the disciplinary proceedings pending against the petitioner will continue even after he is relieved from the post. For better clarity, the relevant portion of the relieving order is extracted, as follows:-

'As ordered, the services of Thiru.M.Sekar, who was directly recruited as Additional District Judge, Fast Track Court on contract basis and then functioned as Additional District Judge, Fast Track Court, Ariyalur on ad-hoc basis and now under suspension pending disciplinary proceedings is discontinued and he is relieved from his contractual services forthwith.'

8. A careful reading of the above said proceedings of the first respondent reveals that the first respondent has not reserved the right to continue the disciplinary proceedings even after relieving him of the post. A perusal of the terms and conditions prescribed by High Court in R.O.C.No.101/2001/Con.B2 dated 21.11.2001 at the time of appointment does not reveal that the first respondent can continue a disciplinary proceedings in the event of relieving an officer from his post in case of delinquency. In the terms and conditions, it is merely stated that the Fast Track Court Judges shall be governed by the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The counsel for the first respondent is unable to show the provisions of law that enable the continuation of disciplinary proceedings even after relieving the officer without reserving such a right.

9. The main contention of the writ petitioner is that the petitioner was appointed only on the basis of contract and not as a regular Government servant and the first respondent has relieved him from the above said contractual service and thereafter, there is no master and servant relationship between the first respondent and the

petitioner on and from the date of relieving him of the post on 25.04.2012. The learned counsel for the first respondent and other respondents have not pointed out any provision in the Tamil Nadu Civil Services (Discipline and Appeal) Rules or any other Rules or in the terms and conditions already issued by first respondent, at the time of appointment of the petitioner on ad-hoc basis which enable the first respondent to continue disciplinary proceedings after relieving the petitioner from the post. The counter filed by the first respondent or other respondents also does not state any specific provision enabling the first respondent to continue the disciplinary proceedings after relieving the petitioner from the post.

10. The writ petitioner in support of his contention relied on a decision of a Division Bench of this Court reported in 2008 Writ L.R.104 (N.Kunnai Gowder v. The Coimbatore District Co-op.Milk Producers' Union Ltd, & another) wherein, this Court discussed in detail about various decisions (i.e.,) the law laid down by Hon'ble Supreme Court reported in (1999) 3 SCC 666 (Bhagirathi Jena v. Board of Directors, O.S.F.C. and Others), an earlier decision of another Division Bench of this Court reported in State of Tamil Nadu v. R.Karupiah, (2005) 2 MLJ 555, and another decision of a Division Bench of this Court reported in P.Muthusamy v. Tamil Nadu Cements Corporation Ltd., (2006) 4 MLJ 504, and finally came to conclusion that an order reserving the right to continue the disciplinary proceedings after superannuation is illegal and without jurisdiction. The relevant portions of the above said decision of this Court are extracted as follows:-

"7.2 While dealing with the effect of continuance of disciplinary proceedings after superannuation in the absence of specific provisions, the Apex Court in Bhagirathi Jena v. Board of Directors, O.S.F.C.(1999) 3 SCC 666, held as under:

'7. In view of the absence of such a provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.06.1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and

the appellant was entitled to full retiral benefits on retirement.'

7.3. A Division Bench of this Court in State of Tamil Nadu v. R.Karupiah, (2005) 2 MLJ 555, also held as under:

'29. From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of mis-conduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule has vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside.'

7.4. Again a Division Bench of this Court in P.Muthusamy v. Tamil Nadu Cements Corporation Ltd., (2006) 4 MLJ 504, wherein taking note of the service rules of Tamil Nadu Cements Corporation Limited, it was held that retiring a person with liberty to continue disciplinary proceeding, after superannuation, is illegal and without jurisdiction, in the absence of such a provision in the service rules.

8. In view of the admitted factual position in the case on hand that there is no specific enabling provision in the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder and legal position as referred to above, we hold that the order of the first respondent, reserving the right to continue the disciplinary proceedings after superannuation, is illegal and without jurisdiction."

(emphasis supplied)

11. The writ petitioner also relied on a recent decision of Hon'ble Supreme Court reported in Dev Prakash Tewari v. U.P.Cooperative Institutional Service Board, Lucknow & Others, (2014) 7 SCC 260) wherein in para 8 it was held as under:-

'8. Once the appellant had retired from service on 31.03.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had

lapsed and the appellant was entitled to get full retiral benefits.''

12. From the above said proposition of law laid down by the Hon'ble Supreme Court and this Court, it is clear that once an employee is permitted to retire from service, without reserving the right to proceed further with the disciplinary proceedings in accordance with the governing provisions of law, then there is no authority vested for continuing the disciplinary proceedings even for the purpose of imposing any reduction in the retirement benefits payable to the above said employee.

13. In the instant case, as rightly pointed out by the petitioner, he was appointed only on ad-hoc basis and first respondent has relieved him of the post on 25.4.2012. It has not been specifically mentioned in the said order that the disciplinary proceedings will continue even after the petitioner is relieved of the post. On the side of the respondents they have not pointed out any provision in the Tamil Nadu Civil Services (Discipline and Appeal) Rules to show that even after relieving an officer from the post, the disciplinary proceedings can continue. Therefore, the above said proceedings is liable to be quashed.

14. The writ petitioner further submitted that the resolution of the Administrative Committee cannot be construed as competing with the statutory rules. In this regard, the writ petitioner relied on a decision reported in AIR 1990 SCC 463 (C.L.Verma v. State of M.P., and another) wherein, in paras 6 and 7 it was held as under:-

'6. The question which arose for consideration in the writ petition before the High Court at the instance of the appellant was whether in the face of the mandate in R.29 the administrative order could operate. It is not the stand of the State Government that the order dated 15th of May, 1981, is one under the proviso to R.29. In fact, the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employee. An administrative instruction cannot compete with a statutory rule and if there be contrary provisions must give way and the rule shall prevail. We are, therefore, of the view that the appellant, in terms of R.29, ceased to be a Government employee on his attaining the age of 58 years, two days prior to the order of dismissal. In view of the fact that he had already superannuated, Government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. The ratio of the decision in R.T.Rangachari v. Secretary of State for India in Privy Council, 64 Ind. App. 40; (AIR. PC 27) supports the position.

7. The appeal is allowed, the order of the High Court is reversed and the order of dismissal and the proceedings initiated thereafter on a set of charges are quashed.''

15. The principle of law laid down by Hon'ble Supreme Court in the above said decision is to the effect that an administrative instruction cannot compete with or override the statutory rules. In any event, the rules will prevail. In the instant case, the respondents have not pointed out any statutory rules enabling the first respondent to continue the disciplinary proceedings, without complying with the provisions of Rule 56(1)(c) of the Fundamental Rules, assuming it is applicable, after relieving the officer of the post, as already discussed. For better understanding, Rule 56(1)(c) of the Fundamental Rules is extracted hereunder:

"Rule 56. (1) Retirement on Superannuation.—

(a), (b) ***

(c) Notwithstanding anything contained in clause (a), a Government servant who is under suspension,

(i) on a charge of misconduct; or

(ii) against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii) against whom an enquiry into grave charges is contemplated or is pending; or

(iv) against whom a complaint of criminal offence is under investigation or trial

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 the enquiry into allegations of criminal misconduct or the enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3 (c) of the Tamil Nadu Police Sub-ordinate service (Discipline and Appeal)

Rules, as the case may be, in respect of item (iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority.

Explanation.—For the purpose of this clause, the expression 'criminal misconduct' shall have the same meaning as in Section 13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56 (1) (c).—Whether a Government

servant referred to in clause (c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date."

In the case on hand, it is not the case of either side that the petitioner is a Government Servant and the first respondent has not passed any order retaining the petitioner in service till the completion of the enquiry contemplated against him. However, at this juncture, we are not going into the issue on the plea of the writ petitioner that he is not a regular government servant and he is only an ad hoc appointee for a certain period and, therefore, disciplinary proceedings are not maintainable under the said Rules. We find that in the contract of service, specific clause is provided for the applicability of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

16. Another contention of the writ petitioner is that on the ground of inordinate delay also the disciplinary proceedings pending against the petitioner is liable to be quashed. The contention of the petitioner is that the date of alleged misconduct is 23.12.2009, the petitioner was suspended from service on 12.01.2010, charges have been framed on 17.02.2011 and during the pendency of proceedings, the petitioner was permitted to relieve from the post on 25.04.2012, and in the disciplinary proceedings, Enquiry Judge was appointed only on 14.02.2013 and therefore, on the ground of inordinate delay also, the disciplinary proceedings is liable to be quashed. In support of his contention, the writ petitioner relied on three decisions reported in (i) 2005(5)CTC 380 (A.Obaidhullah v. The State of Tamil Nadu); (ii) 2008(3)CTC781 (Ranjeet Singh v. State of Haryana & Others), and (iii) 2013 (1) CLT 509 (N.Vajravelu v. The Superintendent of Police, Tiruvannamalai District, Tiruvannamalai and Others).

17. On a careful reading of the above said decisions, we are of the view that the facts in the above said cases differ from the facts of the present case and therefore, the said decisions are not applicable to the facts of the present case. In the above said cases, there was unexplained delay in issuing Show Cause Notice and also no explanation for the delay in issuing charge memo for several years and the above said proceedings were pending for 9 years, 12 years, etc. But, in the instant case, the date of alleged misconduct of the petitioner is 23.12.2009 and immediately, the writ petitioner was suspended on 12.01.2010 and the writ petitioner submitted his written explanation for show cause notice served to him. Not satisfied with

the explanation, the first respondent framed charges on 17.02.2011 and the writ petitioner submitted his written statement of defence on 09.03.2011. The first respondent has appointed Enquiry Judge on 16.09.2013 and the enquiry is pending. From the above said facts, it is clear that there is no inordinate delay in the disciplinary proceedings as contended by the writ petitioner.

18. There are number of disciplinary proceedings against Judicial Officers and Court Officials pending before this Court. Further, the writ petitioner has not taken steps to revoke the order of suspension immediately and only after he was relieved from the post, the writ petitioner filed this writ petition contending that there is inordinate delay in the disciplinary proceedings. Therefore, the facts of the decisions relied on by the writ petitioner are not applicable to the facts of the present case. We are, therefore, of the considered view that on the ground of delay in the disciplinary proceedings the same cannot be quashed, as contended by the writ petitioner. However, as already discussed, on the other grounds the disciplinary proceedings against the petitioner lapses on being relieved and, therefore, is liable to be quashed.

19. Yet another contention of the writ petitioner is that respondents 1 and 2 failed to pay the arrears of salary from August to December 2009 and July 2011 to 25.04.2012. As already discussed in earlier paras, the petitioner was appointed as Fast Track Court Judge on ad-hoc basis and the writ petitioner was suspended from service on 12.01.2010 and relieved from the post on 25.04.2012. The petitioner himself admitted that he was appointed only on the basis of contract on ad-hoc basis and not as a regular Government servant.

20. A perusal of order of suspension dated 12.01.2010 shows that the first respondent has stated that the writ petitioner is entitled to subsistence allowance and Dearness Allowance as admissible to him under Fundamental Rule 53(1). But, in the order dated 25.04.2012, passed by the first respondent relieving him of the post, it is not stated that the writ petitioner is entitled to only subsistence allowance from the date of suspension till the date on which he was relieved from his service (i.e.) on 25.04.2012. In the absence of any specific direction regarding payment from the date of suspension till date of relieving him of the post, in our view the petitioner is entitled to full salary with allowances for the above said period, since the petitioner was restrained from doing work only on the basis of suspension order passed by first respondent. By virtue of the order dated 25.4.2012 relieving the petitioner from the post, the order of suspension lapses. Therefore, the question of withholding the salary does not arise. More so, in view of our finding that the disciplinary proceedings pending before the first respondent as against the petitioner has lapsed, as it was not continued in accordance with any provision of law. The said plea of the writ

petitioner gains support from the decision of the Supreme Court in (1999) 3 SCC 666 (Bhagirathi Jena v. Board of Directors, O.S.F.C. and Others) wherein in para 9 it was held as under:

'9. The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payable to the appellant during the period he was kept under suspension and up to the date of superannuation. Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him after deducting the suspension allowance that was paid to him during the above said period.'

(emphasis supplied)

21. In the light of the above said findings of Hon'ble Supreme Court, our considered view is that the writ petitioner in the present case is also entitled to full emoluments (i.e.,) pay and allowances payable to him till the date of relieving him of the post (i.e.) on 25.04.2012, after deducting the amount already paid to him from the date of suspension till the date on which he was relieved from the said post.

22. As rightly pointed out by the learned counsel appearing for the 2nd respondent, the petitioner is not entitled to any pensionary benefits since Rule (2) of Tamil Nadu Pension Rules 1978 shall not apply to the persons employed on contract, except when the contract provides otherwise. In the instant case, it is not the case of the petitioner that the contract provides for grant of pensionary benefits to the petitioner. As per Tamil Nadu Pension Rules, the service rendered by the petitioner on contract basis cannot be treated as pensionary service and therefore, he is not entitled to any pensionary benefits after being relieved from the post. From the above said discussion, we are of the view that the petitioner is entitled to full pay and allowances till 25.04.2012, of course after deducting the amount already paid to him from the date of suspension till the date on which he was relieved from the said post. The petitioner is however not entitled to any pensionary benefits.

23. The last contention of the writ petitioner is that delay in paying the salary and other allowances caused mental agony and compelled him to get loan from others and the petitioner claimed damages to the tune of Rs.10,00,000/-. We have seen that the charges levelled against the writ petitioner/Judicial Officer are relating to a serious mis-conduct. Further, this Court already considered the fact that the petitioner was appointed only as ad-hoc Judge on contract basis and was relieved of the post, during the pendency of the disciplinary proceedings. Admittedly, the petitioner has not challenged the order of suspension passed by the first respondent

dated 12.01.2010 for several years. Further, the delay in the disciplinary proceedings has occurred due to various reasons and the writ petitioner was also responsible for the delay. Therefore, from both sides submissions and also from the conduct of the petitioner, the petitioner is not entitled to any damages or interest for delay as claimed by him in the writ petition.

24. For the foregoing reasons, we are of the considered view that the disciplinary proceedings in R.O.C.No.1002/2009/R.G.B2, dated 12.09.2013 pending on the file of the first respondent is liable to be quashed and the petitioner is entitled to full emoluments (i.e.,) pay and allowances payable to him till the date of relieving him of the post (i.e.) on 25.04.2012, after deducting the amount already paid to him from the date of suspension till the date on which he was relieved from the said post. However, the petitioner is not entitled to any damages as claimed in the writ petition.

25. During the pendency of the writ petition, this Court passed an order on 26.11.2014, directing the first respondent to release the subsistence allowance amount for the period from 01.07.2011 to 25.04.2012. The first respondent filed a petition in M.P.No.2 of 2014 to modify the direction of this Court dated 26.11.2014. According to the first respondent, the writ petitioner drew excess amount to the tune of Rs.1,08,121/- and he is entitled to only subsistence allowance from 12.01.2010 to 25.04.2012 and therefore, sought modification of the above said direction of this Court dated 26.11.2014 for recovery.

26. We have already discussed the contentions of either side and finally held that the disciplinary proceedings pending against the petitioner is liable to be quashed and also the petitioner is entitled to full emoluments (i.e.,) pay and allowances only till the petitioner was discontinued and relieved from his service on 25.04.2012, (i.e.,) after reducing the amount already paid to him from the date of suspension till the date on which he was relieved from the said post. This is an issue on fact which has to be separately reconciled as per procedure prescribed by law. If excess is paid, recovery can be resorted to as per law and the petitioner can defend such a claim, if he has any basis.

27. The writ petition is ordered in the above terms. No order as to costs. Consequently, connected miscellaneous petition M.P.Nos.1 and 2 of 2014 are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn/sasi

To

1.The Registrar General
Madras High Court
Chennai 600 104.

2.The Accountant General
Accounts and Entitlement
Mount Road, Thenampet,
Chennai 600 018.

3.The Secretary to Govt.,
Home (Courts) Department,
Fort St.George,
Chennai-9.

4.The Secretary to Govt.,
Public (Special) Department
Fort St.George,
Chennai-9.

5.The Secretary to Govt.,
Law Department,
Fort St.George,
Chennai-9.

1 cc to Mr.V.Vijay Shankar ,Advocate, SR.No.8852

1 cc to Government Pleader, Sr.No8614

W.P.No.2091 of 2014
and
M.P.Nos.1 and 2 of 2014

ssi(co)
pmk.26.2.2015

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