

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.22033 of 2013

and

M.P.No.2 of 2013

and

M.P.No.1 of 2015

R.Gunasekaran

... Petitioner

Vs.

- 1.The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.
 - 2.The Commissioner of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai-15.
 - 3.The District Collector,
Cuddalore District,
Cuddalore.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the orders in Roc.No.8854/2010/PA2, dated 27.04.2012 and Roc.No.285/2012/PA2, dated 30.04.2012 and the 2nd charge memo in the Letter Na.Ka.No.PA2/8854/10, dated 26.04.2013 of the 3rd respondent and to quash the same and consequently, to direct the respondents to settle all retiral benefits.

For Petitioner : Mr.A.R.Nixon

For respondents : Mr.S.Gunasekaran, AGP

* * * * *

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the orders in Roc.No.8854/2010/PA2, dated 27.04.2012 and Roc.No.285/2012/PA2, dated 30.04.2012 and the 2nd charge memo in the Letter Na.Ka.No.PA2/8854/10, dated 26.04.2013 issued by the 3rd respondent and to quash the same and consequently, to direct the respondents to settle all retiral benefits to the petitioner.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows_

2-1.The petitioner was appointed as Road Inspector and he joined duty on 03.09.1981 and thereafter, he was promoted as Overseer on 15.10.1997. The petitioner reached the age of superannuation on 30.04.2012 after putting in more than 30 years of service. But, in the meanwhile, the 2nd respondent had issued a charge memo against the petitioner vide letter in Na.Ka.No.8854/2010/PA2, dated 28.09.2010, on the alleged irregularities in the construction of IAY (Indira Awaaz Yojana) houses at Sundaravandi Village Panchayat, Annagramam Panchayat Union in Cuddalore District. The petitioner had given his explanation stating that he has no role in the alleged irregularities in the construction of IAY houses, since he was already relieved of his duties from the station Annagramam Panchayat Union on transfer order of the 3rd respondent to the Panruti Panchayat Union, before initiating the process of construction work of IAY houses at Sundaravandi Village and the petitioner had also produced documentary evidence in support of his explanation.

2-2.After conducting a fair enquiry, the Enquiry Officer had found that there is no evidence to show the petitioner's role in the alleged irregularities in the construction of IAY houses at Sundaravandi Village Panchayat. He had accordingly submitted his enquiry report to the effect that none of the charges was proved. The 2nd respondent, who is the appointing authority, after examining the charges, petitioner's explanation and the Enquiry Report, had dropped all the charges vide his order in Na.Ka.No.14694/2012/CPC2-2, dated 28.03.2012. In fact, no charges were pending against the petitioner on the date of his retirement. But, the 3rd respondent took a contra decision and has issued orders on the verge of the petitioner's retirement, suspending and not permitting the petitioner to retire on 30.04.2012, vide his proceedings in Roc.No.8854/2010/PA2, dated 27.04.2012 and Roc.No.285/2012/PA2, dated 30.04.2012 respectively. The 3rd

respondent, after an unexplained delay of about one year beyond the date of petitioner's retirement, has issued a charge Memo in his letter Na.Ka.No.PA2/8854/10, dated 26.04.2013 on the subject matter of earlier charge memo, which was dropped by the 2nd respondent in his letter Na.ka.No.14694/2012/DPC2-2, dated 23.03.2012, before the date of his retirement. Hence, challenging the impugned orders, the petitioner has filed the present writ petition before this Court.

3. Along with the writ petition, the petitioner has filed a Miscellaneous Petition in M.P.No.2 of 2013 seeking interim stay of the impugned orders. This Court by order dated 13.08.2013 has granted interim stay.

4. Today, when the matter is taken up for consideration, the learned counsel for the petitioner submitted that earlier, a charge-memo was issued by the 2nd respondent vide his letter Na.Ka.No.8854/2010/PA2, dated 28.09.2010 and after conducting enquiry, the Enquiry Officer submitted his report stating that there is no evidence to show the petitioner's role in the alleged irregularities. The 2nd respondent, who is the appointing authority, after examining the charges, petitioner's explanation and the Enquiry Report, by concurring with the findings of the Enquiry Officer, had dropped all the charges vide his order in Na.Ka.No.14694/2012/CPC2-2, dated 28.03.2012. Thereafter, after lapse of one year, the 3rd respondent has issued second charge memo vide his letter Na.Ka.No.PA2/8854/2010, dated 26.04.2013, on the same set of allegations. According to the learned counsel for the petitioner, the second charge-memo on the same set of allegations is not legally sustainable. The learned counsel for the petitioner relied upon the decision of this Court in W.P.No.6753 of 2006, dated 16.07.2010, [V.Manivannan Vs. The Superintending Engineer, Ennore Thermal Power Station, Tamil Nadu Electricity Board], wherein a learned single judge of this Court while deciding an identical issue, by relying upon the decisions of the Hon'ble Supreme Court, has allowed the writ petition. Thus, the learned counsel for the petitioner submitted that by following the above decision, similar order could be passed in the present writ petition also.

5. But, the learned Additional Government Pleader, by filing detailed counter along with the Vacate Stay Petition (M.P.No.1/2014), would contend that based on the prima facie evidence emerged out during the preliminary enquiry into the allegation of misappropriation of Government funds under Indira Awaas Yojana, the DV & AC has registered a case on 07.02.2011 and conducted a detailed enquiry against the petitioner and others of the said allegation. After the enquiry, the DV & AC has submitted its final report to the Government on 06.03.2012 and the same was received by the 3rd respondent on 29.03.2012.

Based on the report of the DV & AC, the petitioner was placed under suspension and retained in the service beyond the date of his superannuation. Though the instructions issued in G.O.(Ms). No.144, P & AR (N) Department, dated 08.06.2007 has termed that the disciplinary authority should not resort to last minute suspension of the Government servants ie., on the date of the retirement, the said instructions shall not be made applicable to the cases of the DV & AC enquiry and criminal cases. The learned Additional Government Pleader would also submit that earlier only preliminary enquiry was conducted and no evidence was examined; therefore, there is no impediment in issuing the second charge-memo. Thus, the learned Additional Government Pleader sought for dismissal of the writ petition.

6.Keeping in the view the submissions made on either side, I have carefully perused the materials available on record and I find that based on the earlier charge-memo dated 28.09.2010, an enquiry was conducted and the Enquiry Officer has given a report to the effect that charges levelled against the petitioner were not proved. The findings of the Enquiry Officer were also accepted by the 2nd respondent, appointing authority and charges were dropped as against the petitioner. When that being so, there cannot be any second charge-memo on the same set of allegations, that too after a lapse of nearly one year, from the date of superannuation of the petitioner. In an identical case, in W.P.No.6753 of 2006, dated 16.07.2010, [V.Manivannan Vs. The Superintending Engineer, Ennore Thermal Power Station, Tamil Nadu Electricity Board], a learned Single Judge of this Court has held as follows—

"6.(a) In the decision reported in (2004) 13 SCC 342 (Lt.Governor, Delhi Vs. HC Narinder Singh), in para 4, the Supreme Court held as follows—

"4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action...."

(b) In (2006) 12 SCC 28 (Union of India Vs. Kunisetty Satyanarayana) in para 18, the Supreme Court held thus,

"18. We agree with the learned counsel for the respondent that if the charge which has been levelled under the memo dated 23.12.2003 had earlier been enquired into in a regular enquiry by a competent authority, and if the respondent had been exonerated on that very charge, a second enquiry would not be maintainable....."

(c) A Division Bench of this Court in the decision reported in 2005 (1) CTC 566 (Union of India Vs. V. Sekar) in paragraph 15 held as follows—

"15. An employer who desires to initiate the disciplinary action, should bestow all his attention while framing the charges and once the charges were framed against the delinquent employee, the employer should stand or fall by the charges framed against the delinquent and can never be permitted to revive the charges after the conclusion of the whole proceedings and allowed to contend that the proceedings can be revived by framing a new set of charges."

7. In view of the above cited decisions of the Honourable Supreme Court and Division Bench of this Court, the impugned show cause notice, issued for the charges of producing bogus Diploma Certificate while joining duty, is definitely not permissible on the sole accepted principle of double jeopardy. On the said ground alone the writ petition is allowed and the impugned charge-memo dated 30.12.2005 is quashed. No costs. Connected Miscellaneous Petition is closed."

The above cited decision is squarely applicable to the present facts of the case also. Hence, following the same, the present writ petition is also liable to be allowed.

8. Accordingly, the writ petition is allowed as prayed for and the impugned orders are quashed, with a direction to the respondents to settle all the retiral benefits to the petitioner forthwith. Consequently, connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To,

1. The Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai-9.

2. The Commissioner of Rural Development and
Panchayat Raj, Panagal Buildings,
Saidapet, Chennai-15.

3. The District Collector,
Cuddalore District,
Cuddalore.

+1 cc to Mr. A.R. Nixon Advocate sr 56502

+1 cc to Government Pleader sr 57103

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M.P.No.2 of 2013
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M.P.No.1 of 2015

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