

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-01-2016

CORAM:

THE HON'BLE MR.JUSTICE SATISH K.AGNIHOTRI
AND
THE HON'BLE DR.JUSTICE P.DEVADASS

Writ Appeal No.5 of 2016
and
C.M.P.No.85 of 2016

The Commissioner,
Tiruvallore Municipality,
Tiruvallore.

... APPELLANT

Vs.

1.L.Krishnan,
Town Plannning Inspector,
Tiruvallore Municipality,
Tiruvallore.

2.The Commissioner of Municipal Administration,
Chepauk,
Chennai-600 005.

... RESPONDENTS

Appeal filed under Clause 15 of the Letters Patent against the order dated 5.8.2015 made in W.P.No.11915 of 2015 of on the file of this Court.

W.P.No.11915 of 2015:Writ petition has been filed praying for issuance of a writ of Certiorarified Mandamus, to Call for the records relating to the impugned order of suspension issued by the 1st Respondent in Na.Ka.No. 3292/2013/C1-1 dated 27.6.2014 and quash the same and consequently direct the 1st Respondent to submit the Pension proposals to the Director of Local Fund Audit for sanction of Pension and DCRG to the Petitioner.

For Appellant : Mr.P.Srinivas

For Respondent No.1: Mr.T.J.Lakshmipathy for
Mr.T.Ranganathan.

For Respondent No.2: Mrs.A.Srijayanthi,
Special Government Pleader.

JUDGMENT

(JUDGMENT OF THE COURT WAS MADE BY DR.P.DEVADASS, J.)

This Writ Appeal is at the instance of the Commissioner, Tiruvallore Municipality, Tiruvallore (first respondent in the Writ Petition) as against the order of the Writ Court dated 5.8.2015 passed in W.P.No.11915 of 2015.

2. This Writ Appeal arose under the following circumstances.

3. In 1978, Krishnan joined Tiruvallore Municipality as a Meter Reader. Subsequently, he became Town Planning Inspector. In the Court of District Munsif, Ambattur, one T.V.Krishna Rao filed the suit in O.S.No.56 of 2008 as against the said Municipality, seeking certain reliefs.

4. In 2009, under Rule 8(2) of the Tamil Nadu District Municipal Services (Discipline and Appeal) Rules, 1970, Krishnan was proceeded with for his failure to furnish para-war remarks to the Municipal Standing Counsel for the preparation of a reply affidavit to be filed in the said suit. In his reply, Krishnan denied the allegation. An Enquiry Officer was appointed. Enquiry was pending.

5. Krishnan is to retire on 30.6.2014 on his attaining superannuation. The Commissioner of Municipal Administration, Chennai (second respondent in the Writ Petition) directed the Tiruvallore Municipal Commissioner to place him under suspension. Accordingly, on 27.6.2014, he was placed under suspension. The delinquent had attained his age of superannuation on 30.6.2014.

6. Challenging his prolonged suspension, Krishnan filed W.P. No.11915 of 2015 for issuance of Certiorarified Mandamus to quash the suspension order dated 27.6.2014 and for a direction to pay him terminal benefits on the ground that in the public interest, there is no need to suspend him and since as per Fundamental Rule 56(1)(c), his services beyond the date of his superannuation were not extended, his suspension automatically came to an end.

7. The Municipality contended that enquiry is pending against him and on 11.6.2015, written orders extending his services pending finalisation of enquiry against him has been passed.

8. The Writ Court allowed the writ petition since no order extending his services beyond his date of superannuation

has been passed.

9. Aggrieved, the Municipality directed this Writ Appeal.

10. According to the learned counsel for the appellant, in view of the allegations against him and the pending enquiry, the writ petitioner was suspended. Notwithstanding his superannuation, he is deemed to be in service till the finalisation of the enquiry pending against him. Further, a formal order extending his services till the conclusion of the enquiry was also passed on 11.6.2015. In such circumstances, the impugned order of the Writ Court is unsustainable.

11. However, according to the learned counsel for the first respondent/writ petitioner, although enquiry was initiated against the writ petitioner as early as in 2009, it was kept pending. And just 3 days before his date of retirement, he was suspended. On 30.6.2014, no positive order extending his services in view of taking a final decision in the pending enquiry proceedings was passed. The learned counsel for the first respondent further contended that on 30.6.2014 since his services were not so extended, his services came to an end on his superannuation. Thereafter, there was no employer-employee relationship as between both. The suspension order on the said date automatically got revoked, vanished into thin air. It cannot be brought back subsequently by extending his services on 11.6.2015. Thus, the order of the Writ Court is in accordance with law.

12. We have anxiously considered the rival submissions, perused the impugned order of the Writ Court and the materials on record.

13. Now the question is whether even without a positive written order extending the services of a delinquent staff, who is facing enquiry proceedings beyond his date of superannuation, is deemed to be in service enabling the Government to inflict on him punishment based on the outcome of the enquiry proceedings against him.

14. This issue has been considered in several decisions.

15. In S.P.Tiwary and Ram Das Sinha vs. State of Bihar and Others {1993 (2) LLJ 1162 (Patna)}, a Division Bench of the Patna High Court held as under:-

"4. Having regard to the fact that the petitioners have been superannuated from service, it is not necessary to go into the question as to whether the initiation of the proceedings were mala fide and misconceived. It is well settled that the power of

disciplinary control is a necessary concomitant of employer-employee or master-servant relationship. The disciplinary control of the employer or master continues till such time as the employee is under his employment. Once that relationship ceases to exist, the power of disciplinary control also comes to an end unless there are rules to the contrary. Apart from other reasons, an employee who is no more in the employment of the employer cannot be punished by the employer, because it may not be possible to impose any punishment against him. Obviously, one who is not in employment cannot be demoted in rank, nor can his increment be stopped. He cannot be suspended, nor can he be dismissed. It is, therefore, well settled that the employer can exercise disciplinary control over his employee only so long as the employee is under his employment. That power cannot be exercised after the employee ceases to be his employee in the absence of rules to that effect."

16. In *State Bank of India vs. A.N.Gupta and Others* {(1997) 8 SCC 60}, the Hon'ble Supreme Court held that once an employee ceases to be in the service of the Bank continuation of disciplinary proceedings against him was not permissible unless there is a specific provision to that effect in the Service Rules.

17. Subsequently also the said view has been reiterated by the Hon'ble Supreme Court in *Secretary, Forest Department and Others vs. Abdur Rasul Chowdhury* {2009 (7) SCC 305}. Also see *Chairman-cum-Managing Director, Mahanadi Coalfield Ltd vs. Rabindranath Choubey* {2013 (6) CTC 342}.

18. Referring to Hon'ble Supreme Court's judgment in *Bhagirathi Jena vs. Board of Directors, O.S.F.G. and Others* {AIR 1999 SC 1841}, a Division Bench of the Bombay High Court in *Ramdas Govind Bakhle vs. Maharashtra State Financial Corporation* {2000 (1) LLJ 1307 (Bombay)}, held that when the employee reached the age of superannuation and retired from service, the employer had no disciplinary jurisdiction over him in the absence of Rules to the contrary.

19. Close on the heels in *G.Ramamoorthy vs. Board of Directors of Hindustan Photo Films Manufacturing Company Ltd* {2003 (2) LLJ 241}, this Court held that when the employee reached his age of superannuation in the absence of any order extending his services beyond his date of retirement, the jural relationship of employer and employee gets snapped.

20. So far as Government Servants in this State are concerned, for similar situation, when the suspension of a Government Servant is inconclusive and he reaches his age of superannuation, what has to be done has been stated in Rule 56 (1) (c) of the Fundamental Rules.

21. The said Rule runs as under:-

"56. (1) Retirement on Superannuation.- (a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years :

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years.

[G.O. Ms. No. 365, Personnel and Administrative Reforms (FR.IV) Department, dated 4th October 1996-with effect from 1st January 1993.]

Explanation I.-When a Government servant is required to retire, revert or cease to be on leave on attaining a specific age, the day on which he attains that age is reckoned as a non-working day and the Government servant shall retire, revert or cease to be on leave, with effect on and from that day.

Explanation II.-The grant under rule 86 or corresponding other rules of leave extending beyond the date on which a Government servant must retire or beyond the date upto which a Government servant has been permitted to remain in service shall not be treated as sanctioning an extension of service for the purpose of Pensionary or Contributory Provident Fund benefits or retention of lien. The Government servant shall, for purpose of pensionary benefits, be deemed to have retired from service on the date of retirement or on the expiry of the extension of service, if any, and shall become eligible to all pensionary benefits from the date of retirement or from the day following the date of termination of extension of service, as the case may be.

(b) Omitted.

(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."

22. In N.M.Somasundaram vs. The Director General of Police, Madras-4 {1997 W.L.R. 120}, the said Fundamental Rule 56 (1)(c) came for consideration before a Division Bench of this Court. The Division Bench held as under:-

"A reading of Rule 56(a) and (c) together would lead to an irresistible conclusion that in order to retain a public servant or a Government servant in service on attaining his age of superannuation, a positive order in writing shall have to be passed by the Government giving the reasons as to on what grounds which should be on public grounds, a Government servant is retained in service. No doubt Rule 56 (c) says that a Government servant under suspension on a charge of misconduct should not be required or permitted to retire of his reaching the date of compulsory retirement. It further says that he should be retained in service until the enquiry into the charge

is conducted and a final order passed thereon by the Competent Authority. Therefore, even though it may not be necessary to permit to Government servant against whom a disciplinary proceeding is pending, to retire from service, in order to retain him in service for the purpose of disciplinary proceedings, a positive order in writing is required to be passed. The public ground for passing the said order is the pendency of the disciplinary proceeding. But, what is necessary is that there should be an order passed by the Government not permitting a Government Servant to retire from service. The instruction under Rule 56(c) also does not help the State Government. The instruction reads thus:-

"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 compulsory 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 compulsory retirement and the salary during the period shall not exceed the pension which has accrued to the Government servant on the date."

It only provides that in a case where a Government servant is exonerated or not, he shall be considered to have been on extension of service for the period from the date of termination of the proceedings. The further words in this instruction are, 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 compulsory retirement and the salary during that period shall not exceed the pension, which has accrued to the Government servant on the date. The instruction only takes away the effect, if any, of the orders passed by the State Government in writing, retaining a Government servant even after attaining the age of superannuation. Therefore, it states that even retention does not help him for obtaining any service benefits and those service benefits will freeze on the date he attains the age of superannuation."

23. In C.Mathesu vs. The Secretary to Government, Revenue Department, Fort St. George, Chennai-9 {2013 (3) CTC 369}, when similar question cropped up before a Full Bench of this Court, as regards the ambit, purport and scope of the said F.R. 56 (1) (c), the Full Bench referred to the view of the Division Bench expressed in N.M.Somasundaram (supra).

24. Thus, the jural relationship between an employer, Master and the employee, Servant will continue to exist till the employee ceases to be an employee. Once he ceases so, the said relationship also ceases unless there is a provision in the Service Rules to the contrary or unless his services were

extended. Such extension cannot be a matter of assumption or by way of a legal fiction or it cannot be a matter of his services being deemed to have been extended. In view of the continuation of the disciplinary proceedings beyond his age of retirement, there must be a positive written order extending his services. However, without prejudice to such pending disciplinary proceedings or any criminal proceedings, if he is permitted to retire, the enquiry proceedings may go on, but as per Rule 9(2) of the Tamil Nadu Pension Rules, 1978, only a portion of the pension can be withheld or loss, if any, caused to the Department can be recovered from the gratuity after due enquiry, but no major penalty can be imposed because employer and employee relationship has already been brought to an end.

25. Now in the case before us, the writ petitioner was issued with a charge memo as early as in 2009. The enquiry was pending for five long years. Just three days before his date of superannuation i.e., on 27.6.2014, he was suspended pending enquiry. On 30.6.2014, he attained his age of superannuation. No positive written order extending his services in terms of F.R. 56(1)(c) was passed. Thus, in the normal course, on 30.6.2014 he retired from service on superannuation. The Department cannot assume without passing any written order extending his services, that he is continuing in service till the finalisation of the enquiry proceedings. It cannot be revived retrospectively by a prospective order as in the present case which was passed on 11.6.2015.

26. In this view of the matter, we are of the view that the view taken by the Writ Court is correct.

27. In the ultimate analysis, this Writ Appeal fails and it is dismissed. The appellant and the second respondent shall disburse all the terminal benefits less amounts, if any, already paid to the writ petitioner, within a period of eight weeks from the date of receipt of a copy of this judgment, in default, thereafter it will carry 12% interest per annum. No costs. Consequently connected C.M.P is also dismissed.

Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

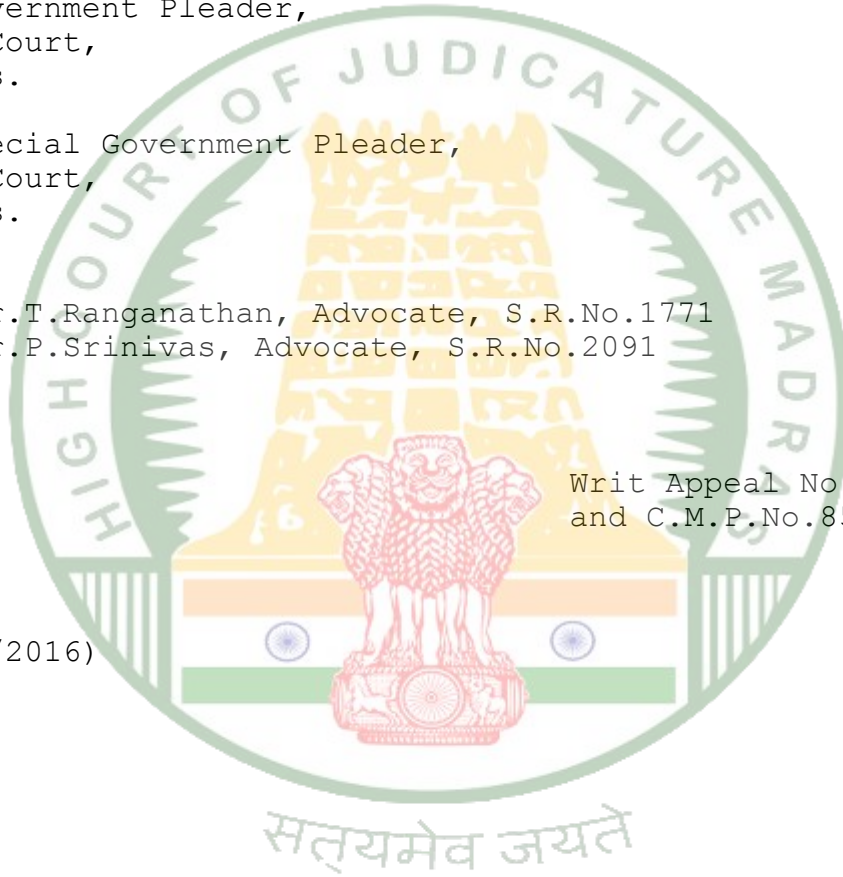
To

1. The Commissioner of Municipal Administration,
6th Floor, Ezhilagam,
Annexe Building,
Chepauk,
Chennai-600 005.
2. The Commissioner,
Tiruvallore Municipality,
Tiruvallore.
3. The Government Pleader,
High Court,
Madras.
4. The Special Government Pleader,
High Court,
Madras.

+1cc to Mr.T.Ranganathan, Advocate, S.R.No.1771
+1cc to Mr.P.Srinivas, Advocate, S.R.No.2091

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and C.M.P.No.85 of 2016

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