**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 08.11.2016**

**PRONOUNCED ON : 17.11.2016**

**CORAM:**

**THE HONOURABLE MR.JUSTICE M.GOVINDARAJ**

**W.P.(MD) No.966 of 2011**
**and**
**M.P.(MD) No.1 of 2011**

K.Chitharanjan ... Petitioner

-vs-

1.The Secretary to Government
Home (Police) Department
Secretariat, Chennai-9

2.The Commissioner
Tribunal for Disciplinary Proceedings
No.5/1-B, Vinayaga Nagar
Madurai-625 020 ... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records relating to the charge memo formulated by the second respondent herein in his R.O.C.No.A-1/341/2008 (TDP No.13/2008, dated 05.08.2008, and quash the same.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.M.Rajarajan, Govt. Advocate

**O R D E R**

The prayer in this writ petition is for issuance of a writ of certiorari to quash the charge memo formulated in R.O.C.No.A-1/341/2008 (TDP No.13/2008), dated 05.08.2008, by the second respondent herein.

**2.** The writ petitioner was originally appointed as a Grade-I Police Constable on 01.02.1972 and promoted as a Head Constable on 06.03.1980, Sub-Inspector of Police on 20.12.1985 and Inspector of Police on 18.07.1997. On 30.04.2008, he was allowed to retire from servic on attaining the age of superannuation without prejudice to the departmental proceedings.

**3.** The writ petitioner was served with a charge memo, on 23.02.2010, in R.O.C.No.A-1/341/2008 (TDP.No.13/2008), dated 05.08.2008, by the second respondent. The allegation of the charge memo is that the petitioner had acquired assets and constructed a shopping complex in the name of his uncle, which is disproportionate to the known source of his income to the tune of Rs.4,38,777/-. The impugned order was for the check period from 01.01.1990 to 31.12.1994. The delay in initiating the disciplinary proceedings, according to the petitioner, has not been explained and the inordinate delay of 15 years is a fatal one. Challenging the action of the second respondent, the petitioner has filed this writ petition.

**4.** The first respondent has filed a counter affidavit stating that the petitioner was permitted to retire from service without detriment to the disciplinary enquiry by the Tribunal for the disciplinary proceedings initiated against him. The petitioner had constructed a shopping complex consisting of seven shops and named the same as "James-Thayammal Complex. The said property was inherited by the petitioner through a Will executed by his uncle James and his aunt Thayammal and from the date of execution of the Will, he is in possession and enjoyment of the said property. The construction of complex to the tune of Rs.3,19,940/- was found to be disproportionate to the known source of his income. The charges framed against the petitioner are, therefore, within the ambit of the powers and jurisdiction vested with the authority of the Government. The enquiry conducted by the investigation authority and the acquisition of the petitioner's property were taken for the period from 1990 to 1994 and the analysis reveals amassment of wealth of the petitioner. The enquiry going back for 15 to 18 years cannot be said to be delay. The tabulation prepared by the respondents clearly shows the details of the petitioner's amassment wealth and after a careful consideration only, the respondents have come to the conclusion to initiate action departmentally and permitted the petitioner to retire without prejudice to the departmental proceedings. Therefore, the action of the respondents is very much legal and there is no inordinate delay and the writ petitioner would be given ample opportunity to defend his case and he can let in evidence before the Tribunal for disciplinary proceedings and therefore, the writ petition is liable to be dismissed.

**5.** Heard both sides and perused the materials produced.

**6.** From the materials available before this Court, the undisputed fact remain that the petitioner had joined service in the year 1972 and retired on 30.04.2008 and an order permitting him to retire from service without prejudice to the departmental enquiry was also issued. Curiously, the charge memo came to be served on 23.02.2010 in R.O.C.A-1/341/2008 (T.D.P.No.13/2008), dated 05.08.2008. Admittedly, charge memo was served on the delinquent only after his retirement. The charge framed against the delinquent is extracted hereunder:

> *"While you were working as Inspector of Police at Palayamkottai Police Station, Tirunelveli City, you had acquired assets in your name and constructed a shopping Complex in your uncle Thiru.K.Jame's land disproportionate to your known sourses of income to the extent of Rs.4,38,777.08 as detailed in the Statements I to VII, which is disproportionate to your known sources of income."*

**7.** A reading of the charge simply states that the writ petitioner has acquired assets in his name and constructed a shopping complex in his uncle's name disproportionate to the known source of his income to the tune of Rs.4,38,777.08 as detailed in Statement I to VII. The statement annexed to the charge memo shows that a property was purchased in the name of his wife during 1987, and another in his name during 1983 and construction of a shopping complex in the year 1994 and construction of a house in the year 1994. The statements V to VII reveals that during the check period the income derived was Rs.3,87,849.20 and the pecuniary resources of the petitioner was only Rs.1,87,252.92. Whereas the assets acquired by the petitioner was to the tune of Rs.6,26,030/- and thereby the disproportionate asset comes to the tune of Rs.4,38,777.08.

**8.** It is the contention of the petitioner that the property alleged to have been acquired by him and the construction made therein are all false. In fact, the property on which the construction was done by Mr.James was acquired by the Government, under the Land Acquisition Act, and compensation was awarded by the Special District Revenue Officer, Tirunelveli, in his order, dated 23.01.2008, to the tune of Rs.6,86,628/- for demolition of shops for widening National Highways Road and the same was also disbursed to his uncle. The seven shops alleged to have been constructed by the petitioner does not exist for valuation and his uncle expired in the year 2003 and therefore, the petitioner could not get reasonable opportunity to defend himself and to disprove the charges due to the inordinate delay of 20 years. By deducting the valuation made by the respondents in respect of the Shopping Complex, there is nothing to show that the petitioner has acquired assets disproportionate to the known source of his income.

**9.** However, the learned counsel for the petitioner argued that issuance of a charge memo after the petitioner was allowed to retire is alien to Service jurisprudence. Even assuming that the disciplinary proceedings can be continued beyond the period of retirement, it should have been initiated while the petitioner was in service and that too for the incident, which had taken within four years before the date of attaining the age of superannuation. Therefore, the charge memo itself has been issued without jurisdiction and it is contrary to the statutory provisions.

**10.** In ***Dr.M.Ramula vs. State of Tamil Nadu***, reported in ***(2014) 1 MLJ 335***, cited by the learned counsel for the petitioner, the inordinate delay in issuing charge memo was held to be bad and the impugned charges were quashed by following the Judgment of the Hon'ble Supreme Court in ***P.V.Mahadevan vs. MD. T.N. Housing Board***, reported in ***(2005) 6 SCC 636*** as the initiation of the departmental proceedings belatedly prejudiced the petitioner.

**11.** In ***State of Tamil Nadu vs. R.Karuppiah***, reported in ***(2005) 2 MLJ 555***, cited by the learned counsel for the petitioner, an identical point had come up for consideration and in that case also, the delinquent Police Officer was allowed to retire and charge memo was issued after two months. In such circumstances, referring to the decision in ***N.M.Somasundaram vs. The Director General of Police***, reported in ***1997 WLR 120***, this Court had discussed about FR 56(1)(c) and came to a conclusion that without fulfilling the requirement Rule 56(1)(c), which is mandatory, initiation of disciplinary proceedings against the first respondent is not sustainable under law. Therefore, the proceedings were set aside. At this juncture, it would be more beneficial to have the assistance of FR 56(1)(c) of the Fundamental Rules, which reads as under:

> "***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 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."*

**12.** In the present case also, the charge memo was issued in contravention of Rule 56(1)(c) of Fundamental Rules and it is without jurisdiction and in view of the above discussions, this Court is of the view that the impugned proceedings are liable to be set aside.

**13.** In the result, the writ petition is allowed and the impugned charge memo framed in R.O.C.No.A-1/341/2008 (TDP No.13/2008), dated 05.08.2008, by the second respondent, is quashed. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

krk
To:
1.The Secretary to Government, Home (Police) Department,
Secretariat, Chennai-9.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
No.5/1-B, Vinayaga Nagar, Madurai-625 020.

+1CC to Mr.Ravi Shanmugam, Advocate Sr.No.70073
+1CC to Spl.Government Pleader Sr.No.70266

GJM/SS2/28.11.16-5p-5C

**PRE-DELIVERY ORDER**
**IN**
**W.P.(MD) No.966 of 2011**
**and**
**M.P.(MD) No.1 of 2011**
**17.11.2016**