

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1056 of 2017

1. The Secretary to Government
Rural Development and Panchayat
Raj Department
Secretariat, Chennai 600 009
2. The Commissioner of Rural Development
and Panchayat Raj
Panagal Buildings
Saidapet, Chennai 600 015
3. The District Collector
Cuddalore District, Cuddalore ... Appellants/Respondents

-vs-

R.Gunasekaran ... Respondent/Petitioner

Appeal under Clause 15 of the Letters Patent, against the order dated 30.09.2016 made in W.P.No.22033 of 2013.

Prayer in W.P.No.22033 of 2013:

Writ petition filed under Article 226 of the constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order in ROC No 8854/2010/PA2, dated 27.04.2012 and R.O.C. No 285/2012/PA2, dated 30.04.2012 and the second charge memo in the letter Na.Ka. No PA2/8854/2010, dated 26.04.2013 of the 3rd Respondent, and to quash the same and consequently, to direct the respondents to settle all retired benefits.

For Appellants :: Mr.R.Prathap Kumar
Additional Government Pleader
For Respondent :: Mr.A.R.Nixon

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned Additional Government Pleader for the appellants and the learned counsel for the respondent.

2. We have perused the order of the learned single Judge. It appears that the respondent was earlier issued with a charge memo for certain alleged irregularities and the enquiry officer, after conducting a detailed enquiry into the charges, submitted his report holding that the charges were not proved. Thereupon the appointing authority, after considering the enquiry report and the explanation of the respondent, had dropped all the charges against the respondent. However, it appears that the respondent was not permitted to retire from service and on the same set of allegations, after a lapse of nearly one year, a second charge memo was issued to him and when the said orders were challenged by the respondent in the writ petition, the learned single Judge, having found that the respondent was earlier exonerated of all the charges after conducting a detailed enquiry in this regard, allowed the writ petition with a direction to the appellants/respondents to settle the retiral benefits to the respondent/writ petitioner forthwith. In fact, the learned single Judge has also referred to the judgment of the Supreme Court in the case of Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, wherein the Supreme Court has held as follows:-

"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...."

3. A Division Bench of this Court in the judgment in Union of India v. V.Sekar, 2005 (1) CTC 566, has 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."

4. In the case on hand, as rightly held by the learned single Judge, based on the earlier charge memo issued to the respondent, an enquiry was conducted and the enquiry officer, on completion of the enquiry, submitted his report holding that the charges were not proved and accepting the findings of the enquiry officer, the appointing authority had also dropped the charges. When the appellants have chosen to exonerate the respondent of all the charges by accepting his explanation and the report of the enquiry officer, as held by the Supreme Court

in Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28, the second enquiry would not be maintainable, since the second penalty based on the same cause of action would amount to double jeopardy. Considering the same, the learned single Judge has chosen to quash the second charge memo being issued against the respondent/writ petitioner. In that view of the matter, we do not find any illegality in the order passed by the learned single Judge. Accordingly, the writ appeal is dismissed. Consequently, C.M.P.No.14826 of 2017 is also dismissed. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ss

To

1. The Secretary to Government
Rural Development and Panchayat
Raj Department
Secretariat
Chennai 600 009
2. The Commissioner of Rural Development
and Panchayat Raj
Panagal Buildings
Saidapet
Chennai 600 015
3. The District Collector
Cuddalore District
Cuddalore

+1 Cc to Mr.A.R. Nixon, Advocate sr 67846.
+1 Cc to The Govt. Pleader sr 68884

WEB COPY

W.A.No.1056 of 2017

NMI (CO)
sp(10/10/2017)