

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.08.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1105 OF 2016 &
W.M.P.No.843 of 2016

G.Ramanathan

[PETITIONER]

Vs

- 1 The Government of Tamil Nadu
Rep. by the Secretary to Government
Municipal Administration & Water Supply Department
Fort St. George Chennai 9.
- 2 The Commissioner of Municipal Administration
Chennai 5.
- 3 The Commissioner
Maduranthagam,
Kancheepuram District

[RESPONDENTS]

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus to call for the records relating to the impugned orders of the 2nd Respondent in Roc No. 30043/ 2005/K1-1 dt.30.05.2005 and Roc No. 30043 /2005/ K1-2 dt.30.05.2005 and quash the same and direct the Respondents to permit him to retire from service with effect from 31.05.2005 and grant him all retirement and other consequential benefits with interest.

For Petitioner :Mr.P.Manoj Kumar

For Respondents :Mr.M.Perumal - R1 & R2
Govt.Advocate

Mr.S.Pattabi Raman- R3

O R D E R

The order of suspension dated 30.5.2005 and the order not allowing the petitioner to retire from service as per the provisions contained under Rule 56(1)(c) of the Fundamental Rule are under challenge in this writ petition.

2.The petitioner was holding the post of Manager of Tambaram Municipality and he was due to retire from service on attaining the age of superannuation on 31.5.2005. However, a criminal case was registered against the writ petitioner on 3.12.1998, for the offence under sections 409, 420, 423, 467, 471 and 477 (A) IPC and the same is pending before the Court of Judicial Magistrate, Chengalpet in C.C.N.o.253 of 2009.

3.The learned counsel for the writ petitioner contended that the writ petitioner was placed under suspension in proceedings dated 30.5.2005 and the order retaining him from service was issued under F.R.56(1)(c) in proceedings dated 30.05.2016. However, the departmental disciplinary proceedings against the petitioner was initiated prior to the impugned order and the final order in the departmental disciplinary proceedings was issued by the respondents on 03.03.2000, and the punishment of stoppage of increment for one year with cumulative effect was imposed on the petitioner.

4.Under these circumstances, the learned counsel for the petitioner contended that the scope of re-opening the departmental disciplinary proceedings is very limited and even in case of conviction in the criminal case. In this view of the matter, the impugned orders are liable to be set aside. With this argument, the learned counsel further contended by stating that the right of terminal benefits and other benefits cannot be denied to the writ petitioner on the ground of pendency of criminal case for long years.

5.Substantiating the said proposition, the learned counsel for the petitioner cited the Judgment of the Hon'ble Division Bench in D.NARAYANAN v. DISTRICT REVENUE OFFICER, VIRUDHUNAGAR, VIRUDHUNAGA DISTRICT AND ORS. [(2009 4 MLJ 708)]. In that case, the departmental proceedings was concluded and the punishment of stoppage of increment was issued during the pendency of the criminal case. But, after the conviction in the criminal case, once again action was initiated under the Discipline and Control Rules and second punishment of dismissal from service was issued. Under those circumstances, the Hon'ble Division Bench held that the second punishment on the same set of allegations are impermissible in law.

6. Certainly, this Court is of the opinion that the Judgment of the Hon'ble Division Bench is binding on this Court. However, the facts in the writ petition on hand is different and not akin to that of the case before the Hon'ble Division Bench. In the present Writ Petition, no doubt disciplinary proceedings against the writ petitioner was concluded by imposing the punishment as stated supra, but, as on date admittedly, the criminal case is pending and no second punishment has been imposed. Thus, the reliance placed on the principle laid down by the Hon'ble Division Bench is irrelevant, as far as the facts of the present Writ Petition is concerned.

7. Thereafter, the learned counsel cited the Judgment rendered in the case of C.GOVINDAN v. JOINT DIRECTOR OF AGRICULTURE, DHARMAPURI AND ORS [(2014) 6 MLJ 489]. Relevant portion of the Judgement viz. paragraph No.12, is extracted hereunder:

"12. Since the Department decided to take departmental action in relation to the incident that took place on 02.03.2009, the pendency of criminal case relating to the said incident has no consequence, in view of the Division Bench judgment of this Court in D.NARAYANAN VS. DISTRICT REVENUE OFFICER, VIRUDHUNAGAR reported in 2009 (4) MLJ 708, i.e., even assuming that the criminal case would result in conviction, the Department cannot proceed against the petitioner, since the department had chosen to take action departmentally on the same incident and also imposed the punishment. It has been by the Division Bench that it is open to the department authorities either to follow the procedure contemplated under Rule 17(b) or the procedure under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, when Rule 17 (b) has already been followed and a punishment is imposed, it would not be permissible for the department authorities to again subject the very same delinquent to a fresh punishment on the self-same-allegation on the ground that such conduct has led to his conviction in a criminal case, which would amount to double jeopardy. "

8. The learned Judge relying on the Judgment of the Hon'ble Division Bench in D.NARAYANAN, referred supra, made an observation that even assuming that the criminal case would result in conviction, the Department cannot proceed against the petitioner, since, the Department had chosen to take action departmentally on the same circumstances and also imposed

punishment. It has been held by the Division Bench that it is open to the department authorities either to follow the procedure contemplated under Rule 17(b) or the procedure under Rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, when Rule 17(b) has already been followed and a punishment is imposed, it would not be permissible for the department authorities to again subject the very same delinquent to a fresh punishment on the self-same-allegation on the ground that such conduct has led to his conviction in a criminal case, which would amount to double jeopardy.

9. The learned Government Advocate opposing the contentions raised by the learned counsel for the petitioner, stated that during the pendency of the criminal case, the Government employee cannot be allowed to retire from service and necessarily he is to be retained in service as per the provisions contained under the Fundamental Rules. Thus, there is no infirmity in the orders impugned in this writ petition and the respondents have violated the Rules regarding the disciplinary proceedings. Further, it is stated that conclusion of Departmental Disciplinary Proceedings, cannot be a ground to set aside the order of suspension and retaining the writ petitioner in service under Rule 56(c) of the Fundamental Rules. This Court is of the view that the pendency of the criminal case is not a bar for conducting the departmental disciplinary proceedings. The departmental disciplinary proceedings were initiated against the writ petitioner during the pendency of the criminal case and the same was concluded by passing the final orders on 3.3.2000, imposing the punishment of stoppage of increment for one year with cumulative effect.

10. There is no quarrel in respect of the principles laid down in the above referred Judgment. No person can be punished twice for the same set of allegations and such order will certainly violative of the principles of double jeopardy. However, this Court is of the opinion that there is a provision under Tamil Nadu Civil Services (D&A) Rules to review the order of punishment by the Government. Part VI of Rule 37 deals with Power to Review, which reads as follows:

PART VI -

REVIEW. 37. Power to Review The State Government may, at any time, either on their own motion or otherwise, review any order passed by them under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to their notice; Provided that no order

imposing or enhancing any penalty shall be made by the State Government unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed or where it is proposed to impose any of the major penalties specified in rule 8 or to enhance the minor penalty imposed by the order sought to be reviewed to any of the major penalties and if an inquiry under sub-rule (b) of rule 17 has not already been held in the case, no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary. "

11. The Government has got a suo motu power to review the order of punishment passed on account of the changing circumstances. This Court is able to visualise that in the event of getting an order of acquittal in the criminal case, certainly, no further action is required in the case of the writ petitioner. However, in the case of conviction by the Criminal Court, the State Government may review the order of punishment issued earlier on 03.03.2000. The power of review by the Government is unlimited and it can be exercised at any point of time, even after the Judgment delivered in the criminal case. Therefore, there is a possibility of reviewing the order of punishment after the Judgment delivered by the Criminal Court. Such a situation is to be treated as 'changing circumstances', warranting review.

12. When the power of review is available with the Government, it is necessary to retain the employee in service during the pendency of the criminal trial. The purpose of this power of review and retaining the Government employee in service during the pendency of the criminal case is that the public servants have to maintain absolute integrity and conduct, both inside and outside the Office, when they are in employment. The good conduct of the public servant is the ultimate motto in prescribing such restrictions both in Tamil Nadu Civil Services (Discipline and Appeal) Rules and in the Conduct Rules. Thus, an employee, if convicted by the Criminal Court, should not be allowed to escape from the clutches of disciplinary proceedings.

13. This apart, Rule 8 of Pension Rules deals with pension subject to future good conduct. Rule 8, reads as follows:

"Rule 8: Pension subject to future good conduct -

(1) (a) Future good conduct shall be an implied condition of every grant of pension and its continuance under these rules:

(b) the pension sanctioning authority may by order in writing withhold or withdraw a pension or part thereof, when permanently or for a specified period, if the pensioner convicted of a serious crime or is found guilty of grave misconduct;

provided that no such order shall be passed by the authority subordinate to the authority competent to make an appointment to the post held by the pensioners immediately before his retirement from service:

provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43.

(2) Where a pensioner is convicted of a serious crime by a Court, action under sub-rule (1) shall be taken in the light of a judgment of the Court relating to such conviction."

14. Even if a Government employee is allowed to retire from service, in the event of no knowledge about the criminal case, an action can be initiated by the competent authorities under Rule 8 of the Tamil Nadu Pension Rules, 1978. All these Rules are framed in order to maintain the good conduct of the public servants and they have to serve in the interest of public by conducting themselves in accordance with law. With these objects, such restrictions are imposed in the Rules, cited supra. However, initiation of proceedings under the Pension Rules does not arise in the case on hand and cited as an instance.

15. In the light of the provisions contemplated under Rule 56(1)(c) of the Fundamental Rules, the power of Review in Part VI of Rule 37 of Tamil Nadu Civil Services (Discipline and Appeal) Rules, the order passed by the respondents in retaining the services of the petitioner after the date of his superannuation by invoking Rule 56(1)(c) of the Fundamental Rules, is absolutely in order and there is no infirmity in the order impugned in this Writ Petition. Since there is a scope for reviewing the earlier order of punishment imposed on the departmental disciplinary action on receipt of the final Judgment in criminal case, the writ petitioner has to be

retained in service necessarily for all purposes both under TNCSS (D&A) Rules.

16.This being the legal principles, no further consideration is required to be shown on the grounds raised in this Writ Petition. Accordingly, the Writ Petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Rpa

To

- 1 The Secretary to Government
The Government of Tamil Nadu
Municipal Administration & Water Supply Department
Fort St. George Chennai 9.
- 2 The Commissioner of Municipal Administration
Chennai 5.
- 3 The Commissioner
Maduranthagam,
Kancheepuram District

+1 cc to the Government Pleader sr 60570
+1 cc to Mr.P.Rajendran Advocate sr 60112

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