

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.4316 of 2014 &
M.P.Nos. 1 to 3 of 2014

R.Periyasamy

... Petitioner

vs

1.Government of Tamil nadu
rep. By Secretary to Government
Municipal Administration & Water Supply Department
Secretariat, Chennai 600 009.

2.The Director of Town Panchayats
Chennai 600 108.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the second respondent in charge memo issued Letter No.3520/10/A1 dated 26.12.2013 and quash the same.

For Petitioner : Mr.M.Ravi

For Respondents: Mrs.K.Bhuvaneshwari
Government Advocate

O R D E R

The charge memo dated 26.12.2013, issued by the second respondent is under challenge in this Writ Petition.

2.The petitioner was appointed as Bill Collector on 11.06.1984 and promoted as Junior Assistant on 31.12.1992. Subsequently, the petitioner was appointed as Panchayat Executive Officer on 08.11.2006. On account of certain allegations with regard to the financial irregularities, initially a charge memo was issued against the writ petitioner on 17.05.2013, in relation to the financial loss to the Town Panchayat to the tune of about Rs.49,95,825/-. The above said charge memo dated 17.05.2013, includes other charges based on the Audit objections, citing huge amount of financial loss.

3.The writ petitioner was placed under suspension on 28.05.2013, and by way of separate proceedings on the same date, he was not allowed to retire from service and the petitioner's service was retained as per the provisions contained under Rule 56(1)(c) of the Fundamental Rules. In respect of the earlier charge memo dated 17.05.2013, the writ petitioner filed W.P.No.19479 of 2013 and this Court passed orders on 17.07.2013, directing the respondents 1 & 2 therein to complete the disciplinary proceedings pending against the writ petitioner dated 17.05.2013, within a period of six months from the date of receipt of a copy of that order. Challenging the charge memo dated 17.05.2013, the petitioner has also filed W.P.No.7353 of 2013.

4.The learned counsel appearing for the writ petitioner made a submission that the writ petitioner was placed under suspension on account of pendency of the charge memo dated 17.5.2013 and his services were also retained with regard to the charges framed earlier. Thus, the subsequent charge memo dated 26.12.2013, in respect of other allegations which was impugned in this Writ Petition, is unsustainable.

5.The learned counsel urged this Court that once an employee on the date of retirement was placed under suspension with reference to a particular charge, then the authorities cannot frame any other new charges under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules and they have to proceed the disciplinary proceedings against the delinquent employee only under Rule 9 of the Tamil Nadu Pension Rules. Thus, the subsequent charge memo issued under 17(b) of TNCS (D&A) Rules in proceedings dated 26.12.2013, is unsustainable in law. The learned counsel also emphasized that the charge memo under Rule 17(b) of the TNCS (D&A) Rules cannot be issued, if it was not referred in the order of suspension, which was issued on the last date of retirement. This apart, the learned counsel further contended that the writ petitioner was due to retire from service on 31.5.2013 and the further charge memo dated 26.12.2013, issued after a lapse of about 4 ½ years from the date of alleged incident, is liable to be scrapped.

6.This Court is unable to agree with the view expressed by the learned counsel for the writ petitioner. The order of suspension on the eve of retirement was issued only to facilitate the competent authorities to retain the services of the writ petitioner under Rule 56(1)(c) of the Fundamental Rules. The Rule 56(1) deals with retirement on superannuation, as under:-

"Rule 56(1) says that 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 may 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.

7. The circumstances narrated in the Fundamental Rules are several in nature. An employee who was placed under suspension on the last date of his retirement or prior to that can be retained in service after the actual date of retirement and he will be treated as suspended employee for all purposes, more specifically, for conducting the disciplinary proceedings under the Rules. The circumstances narrated in the case on hand are "on a charge of misconduct and an enquiry into the grave charges contemplated or pending". Even the Rule states that the enquiry into the contemplated charges are also the ground to retain the services of an employee. Thus, the Rule is unambiguous in this regard and it categorically enumerates that even the contemplation of the allegations are sufficient to retain the services of an employee, even after the date of retirement. Under these circumstances, the Court has to consider as to whether the contemplation and the charges framed are to be cited as reference in the order of suspension or in the order of retention. This Court is of the clear opinion that the references cited in the order of suspension and in the order of retention may not have much relevance and the actual fact prevailing to be considered in each and every case.

8. In the case on hand, no doubt the subsequent charge issued to the writ petitioner has not been referred in the suspension order or in the order of retention. However, the fact remains that the writ petitioner was placed under suspension and his services were retained in accordance with the Fundamental Rules. Once the services of an employee is retained under the Fundamental Rule, for all purposes, he is to be treated as an employee so as to invoke the provisions of the TNCS (D&A) Rules

by the competent authorities. The very purpose and object of suspending the employee and retaining him in service are to continue the disciplinary proceedings in accordance with TNCS (D&A) Rules. Once the employee is suspended with reference to a particular charge and the services are retained beyond his actual date of retirement, then he should be treated as an employee for all purposes and therefore, a mere technical ground that all the charges or contemplated charges were not cited in the suspension order, cannot have any relevance at all. The fact remains that the employee is retained in service. Thus, for all legal purposes, he is an employee of the Department and therefore, there is no bar for the competent authorities to initiate disciplinary proceedings under the TNCS (D&A) Rules. The very purpose and object of the Rule is that a person who committed misconduct in his official capacity should not be allowed to escape from the clutches of the disciplinary proceedings. All public officials who are involved in the allegations of misconduct or criminal cases, have to be suitably dealt with in accordance with law. The very purpose and object of the Fundamental Rules cannot be defeated by extending the benefits on certain ypertechnical grounds, including that of non-mentioning of the subsequent charges in the order of retention or in the order of suspension, which would not have any relevance at all.

9. In the case on hand, the writ petitioner was placed under suspension and his services were retained by way of separate proceedings issued on 28.05.2013. Once the services were retained under Rule 56(1)(c) of the Fundamental Rules, there is absolutely no bar for the competent authorities to initiate any fresh proceedings on the contemplated charges or conducting enquiry in accordance with the provisions of TNCS (D&A) Rules.

10. This being the factum of the case, the interpretation of the Fundamental Rules are to be constructed in a pragmatic manner so as to achieve the goal under the Rules. Thus, the contentions of the learned counsel that the charge memo impugned has not referred either in the suspension order or in the retention order, may not have any impact in respect of the continuance of the disciplinary proceedings under the provisions of the TNCS (D&A) Rules.

11. On a perusal of the allegations levelled against the writ petitioner, even in earlier charge memo dated 17.5.2013 and the charge memo impugned in this Writ petition dated 26.12.2013, undoubtedly a full-fledged enquiry is certainly warranted. The allegations are large in magnitude and the alleged financial losses are huge in nature. Thus, the truth must be culled out by the officials in this regard and the loss if any to the Public Exchequer to be taken care of by conducting full-fledged enquiry into the allegations. It is left open to the writ

petitioner to submit his explanations/objections on the allegations levelled against him and prove his innocence before the enquiry proceedings so initiated. The writ petitioner is duty bound to participate in the enquiry proceedings and defend his case in accordance with Rules by availing all the opportunities provided under the Rules.

12.No writ can be entertained against the charge memo in a routine manner and the writ petition can be entertained only (i) if the charge memo has been issued in violation of the Statutory Rules (ii) such a charge memo was issued by incompetent authority having no jurisdiction or (iii) on the ground of mala fide. If any allegation of mala fide is raised against the authority, the said authority has to be impleaded as party respondent in the writ petition in his personal capacity. In the absence of any of these grounds, no writ can be entertained against the charge memo. It is left open to the writ petitioner to submit his objections/explanations. Contrarily, the Writ Petition moved at the stage of charge memo, cannot be adjudicated on the merits raised in the Writ Petition.

13.Judicial review of charge memo is very much limited and the Courts are to be cautious while intervening with the charge memo. Intermittent interventions against the charge memo are certainly not preferable and the Court can entertain a writ only on exceptional circumstances and not otherwise. The other grounds raised by the writ petitioner in relation to the merits regarding the allegations and his innocence in relation to the charges, cannot be considered in this writ petition and it is left open to the writ petitioner to make use of the opportunities under the Rules and defend his cases before the enquiry proceedings, to be conducted.

14.Under these circumstances, this Court is of the opinion that the points raised by the learned counsel that details regarding the issuance of charge memo has not been stated either in the suspension order or in the retention order, cannot have any legal implications so as to quash the charges and this Court is of the opinion that merely on this ground the disciplinary proceedings initiated against the writ petitioner in accordance with the provisions cannot be quashed. Further, a positive interpretation to be followed in respect of Rule 56 (1)(c) of the Fundamental Rules and once services are retained under relevant Rules and it is retained for all purposes, even for initiating other contemplated/pending charges against the delinquent employee, including new charges to be framed or yet to be framed.

15.In this view of the matter, no further adjudication on merits and on the grounds raised in this writ petition requires to be considered. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

rpa

To

1.Secretary to Government
Government of Tamil nadu
Municipal Administration & Water Supply Department
Secretariat, Chennai 600 009.

2.The Director of Town Panchayats
Chennai 600 108.

+1 CC to Mr.M. Ravi, Advocate sr 74074.

+1 Cc to Govt. Pleader sr 75753.

W.P.No.4316 of 2014

SV(CO)
SP(08/11/2017)

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