

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/1/2017

C O R A M

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice M.Govindaraj

Writ Appeal No.234 of 2010

V.Ayyamperumal ... Appellant/Petitioner

Vs

1. Tamil Nadu Cements Corporation Ltd
rep. By its Director (Finance) &
Chairman of Executive Sub-Committee
LLA Building
735 Anna Salai
Chennai 600 002.

2. Chairman and Managing Director
Tamil Nadu Cements Corporation Ltd
LLA Building
735 Anna Salai
Chennai 600 002.

... Respondents/Respondent

Prayer: Appeal filed under Clause 15 of Letters Patent against the order, dated 12/12/2007 in W.P.No.41861 of 2006. Petition filed Under Article 226 of the Constitution of India seeking for Issurance of Writ of Certiorarified Mandamus calling for the records of the respondents and quash the order of the first respondent bearing RC No 2214/A1/99 dated 5/11/2003 and the order of the second respondent bearing No.2214/A1/99 dated 06.04.2000 and consequently direct the respondents for pay all the backwards other monetary benefits for the period from 03.09.1999 to 31.05.2003 along with terminal benefits such as gratutity, Provident fund etc..

For appellant ... Mr.G.Saravana Kumar

For respondents ... Mr.TM.Pappiah
Special Government Pleader

J U D G M E N T

On 8/12/2016, when we restored the writ appeal for hearing, Mr.G.Saravanakumar, learned counsel for the appellant submitted that on restoration of the appeal, the limited contention would be with reference to the jurisdiction of the authority, in proceeding against the appellant, even after retirement.

2. Though on 8/12/2016, we did not make any specific record of the above said submission, today, when the writ appeal came up for further hearing, learned counsel appearing for the appellant, reiterated the position.

3. Placing on record the above, we heard the appellant.

4. Inviting the attention of this Court to the memorandum of Review Application No.1 of 2000 in W.P.No.20580 of 2000, learned counsel for the appellant submitted that one of the grounds raised in the Review Application No.1 of 2000 is that the appellant had attained the age of superannuation, on 31/5/2003 and as per the service regulations of the Tamil Nadu Cements Corporation Limited, Chennai/first respondent therein, no power is conferred on the disciplinary authorities, to continue the disciplinary proceedings, after the age of retirement. He fairly admitted that the above said argument was not made when W.P.No.20580 of 2010 was disposed of.

5. It is the further submission of the learned counsel for the appellant that though in the subsequent writ petition No.41861 of 2013, the appellant/petitioner, while challenging the order of the first and second respondents therein, with a consequential direction, to pay all backwages and other monetary benefits, for the period from 3/9/1999 to 31/3/2003 along with terminal benefits such as gratuity, Provident Fund, etc., the appellant contended that there was no power for extending the service beyond the age of superannuation, for the purpose of continuing disciplinary proceedings and that the relationship of master and servant is seized off, the writ Court, while dismissing the subsequent writ petition No.41681 of 2006, dated 12/12/2007 has failed to advert to the same.

6. In support of the contention that Tamil Nadu Cement Corporation Limited, has no jurisdiction to continue the disciplinary proceedings after retirement as rules do not provide for the same, reliance was also made on the Hon'ble Division Bench judgment, made in W.P.Nos.18952 and 18953 of 2003 (P.Muthusamy Vs. Tamil Nadu Cements), dated 31/8/2006, to which one of us, Hon'ble S.Manikumar, J was a party).

7. We heard the learned counsel for the appellant.

8. Accepting the finding of the enquiry Officer, on the charges levelled, the appellant has been dismissed. He has filed an appeal to the Director (Finance) & Chairman of Executive Sub-Committee, Tamil Nadu Cements Corporation Limited, Chennai/first respondent. Punishment has been confirmed. Thereafter, he has filed W.P.No.20580 of 2000. During the pendency of the writ petition, appellant has attained the age of superannuation, on 31/5/2003.

9. While adverting to one of the grounds that dismissal of the statutory appeal was made by a three Member Committee, in which admittedly, the person, who passed the original order, dated 6/4/2000 was also a member of the Committee and participated in the proceedings of the appeal Committee, Writ Court by observing that such a procedure is not valid, void ab initio, set aside the order, dated 6/7/2000, and remitted the matter to the Corporation, for disposal afresh.

10. A perusal of the order, made in W.P.No.20580 of 2000, dated 8/9/2003, shows that an argument has also been advanced by the learned counsel for the petitioner that the petitioner had attained the age of superannuation and retired, on 31/5/2003 and therefore, the matter need not be remitted back to the Appellate Committee, instead, be disposed of by the Court itself, on other aspects. However, not accepting the said submission, writ Court, vide order, dated 8/9/2003, in W.P.No.20580 of 2000 has set aside the order, dated 6/7/2000 and remitted the matter to the Appellate Committee, granting permission to the appellant, to raise all the points before the Appellate Authority. Writ Court has also granted permission to the petitioner, to file an application before the Appellate authority with regard to the subsequent developments, by way of additional grounds, within a period of two weeks, from the date of receipt of the order, made in W.P.No.20580 of 2000, dated 8/9/2003.

11. In W.P.No.20580 of 2000, dated 8/9/2003, the appellant has not made any submission that disciplinary proceedings cannot be continued after retirement, as rules do not empower retention after retirement. On the other hand, a mere request has been made to the writ Court, to consider all issues raised therein and dispose of the writ petition. Original authority, was a member of the three member Committee and the order under appeal, was erroneous appears to have been the main challenge, and therefore, the Court has remitted the matter to the appellate authority to consider and permitted the appellant to raise all the grounds permissible. At this juncture, it is to be noted that the appellant was already dismissed from service by the order of the original authority, viz., Chairman-cum-Managing Director, Tamil Nadu Cement Corporation Ltd., and while setting aside the order of the

appellate authority, respondent No.1, there cannot be any order of reinstatement in service, as he had attained the age of superannuation during the pendency of the writ petition. Further, when the matter was remitted to the appellate authority, for the purpose of disposing of the appeal, no default has been recorded by the writ Court, regarding the procedure followed in the enquiry, warranting retention in service for the purpose of rectifying any defect in the enquiry.

12. Further, a perusal of the order of the appellate authority, dated 5/11/2003, passed pursuant to the order of the writ Court, in W.P.No.20580 of 2000, dated 8/9/2003, does not indicate as to whether the appellant has raised the above said jurisdictional issue before the appellate authority, when the matter was remitted. In the said order, dated 5/11/2003, appellate authority has summarised the grounds of challenge made in appeal/petition, dated 1/10/2003 and the representation, dated 20/10/2003, respectively. Though vide order in R.A.No.1 of 2000 made against order in W.P.No.20580 of 2000 dated 8/9/2003, the appellant was permitted to raise all the grounds taken in the review application including the jurisdiction, from the material on record, it could be deduced that there is nothing to indicate as to whether the appellant has raised the jurisdiction before the Committee. Therefore, the appellate authority has passed orders on the points raised in the appeal/petition, dated 1/10/2003. Had the appellant pointed out any procedural/jurisdictional error, certainly the appellate authority is bound to consider the same, in the light of the order passed in R.A.No.1 of 2000.

13. Material on record discloses that when the review application came up for hearing, after arguing the matter for some time on merits, learned counsel for the appellant had submitted that pursuant to the order of remand in W.P.No.20580 of 2000 dated 2/12/2000, the first respondent therein had passed an order, dated 5/11/2003. Further submission has been made that the appellant would challenge the said order separately in addition, any other grounds available to him and that the review application may be disposed of. Recording the above submission, vide order, dated 17/10/2006, review petition has been dismissed.

14. Though the appellant has raised the very same contention in the subsequent writ petition No.41861 of 2006 and contended that the writ court had failed to advert to the above point, in the order, dated 12/12/2007, made in W.P.No.41861 of 2006 and prayed for reversal of the same, we are not inclined to accept the said contentions for the reasons that as observed earlier, from the material on record, we can only deduce that nowhere before the appellate authority, the appellant has raised the point of jurisdiction that no disciplinary proceedings can be continued after retirement. If no such plea had been raised,

appellate authority cannot be found fault with. It can also be considered that the appellant has subjected himself to the jurisdiction of the appellate authority and suffered an order.

15. Though after remand, the appellate authority has passed an order, dated 5/11/2003, material on record discloses that the review application has been numbered only in the year 2006. It appears that in the same year, Writ petition No.41861 of 2006 has been filed. As regards the submission recorded by this Court, in R.A.No.1 of 2000, to challenge the subsequent order, dated 5/11/2003, passed by the appellate authority, by way of another writ petition, writ Court has not made any observation.

16. Thus basically, no jurisdictional issue has been raised that the appellant cannot be retained in service, beyond the age of superannuation, and secondly, the enquiry proceedings are already over. Yet another factor, which requires to be taken note of is that, when the first appellate order dated 6/7/2000 was passed, the Chairman-cum-Managing Director was a member of the Appeal Committee and when the second order was passed by the appellate authority, it has been issued in the name of Director (Finance) and Chairman of the Executive Sub-Committee, Chennai and not in the name of the Chairman and Managing Director of the Tamil Nadu Cements Corporation Ltd., Chennai. On the facts and circumstances of this case, the judgment relied would not lend any support to the appellant, as no issue was raised before the appellate authority, as stated supra.

17. In the light of the above discussion, we are not inclined to interfere with the order of the writ Court.

18. In the result, this writ appeal is dismissed. No costs.

सत्यमेव जयते
s/d-

Assistant Registrar(CO)

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Sub-Assistant Registrar

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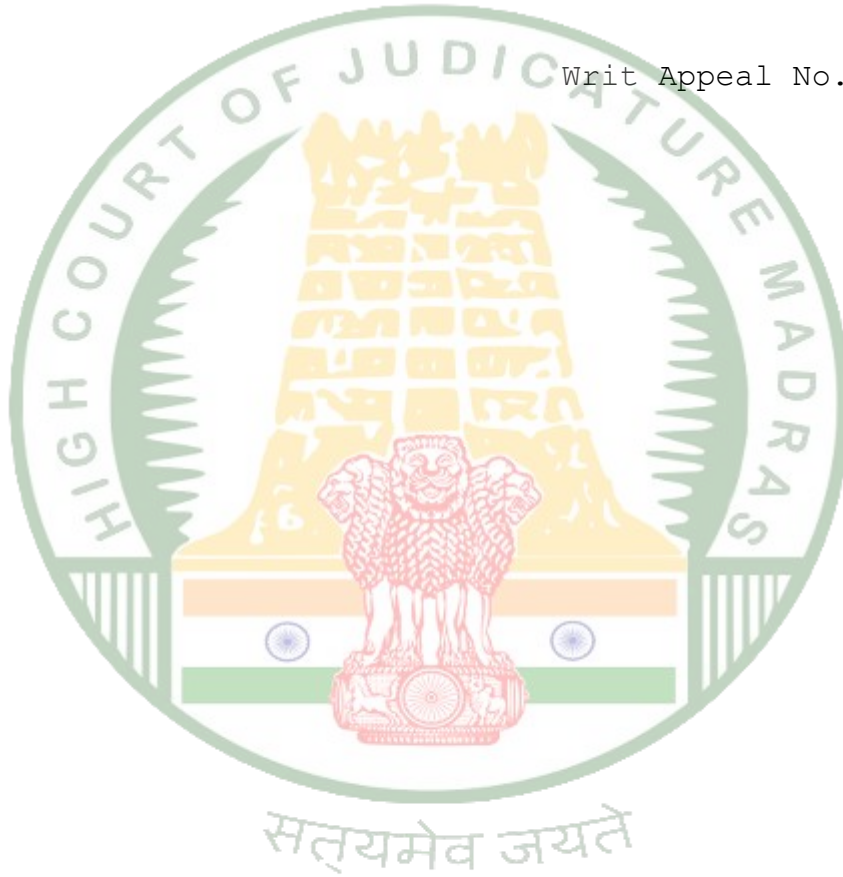
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SR (CO)
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