

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.Nos.456 & 457 of 2013
and
M.P.Nos.1 and 1 of 2013

A.Ezhilarasu .. Appellant in both W.As.

versus

1. The Principal Secretary to Government,
Revenue Department,
Secretariat,
Chennai - 9.
2. The District Collector,
Dharmapuri.
3. The Revenue Divisional Officer,
Dharmapuri .. Respondents in both W.As.

Writ Appeals filed against the common order dated 02.07.2012
made in W.P.No.26692 and 26693 of 2014.

Prayer in WP Nos 26692/2011, 26693/2011:

Writ Petition filed under Article 226 of the Constitution of
India seeking a writ of certiorari calling for the records
relating to the third respondent vide proceedings
No.N.K.14848/08/A3 dated 14.04.2008 proceeding No N.K.9788/08/A3
dated 16.06.2009 respectively and quash the same.

For Appellant : Mr.S.Vijayakumar
in both W.As.
For Respondents : Mr.T.M.Pappiah
in both W.As. Special Government Pleader

COMMON JUDGMENT

(Order of the Court was made by M.GOVINDARAJ, J.)

Challenging the common order passed in W.P.Nos.26692 & 26693
of 2011 dated 02.07.2012, negating the prayer to quash charge

memos issued to the appellant / writ petitioner by the Revenue Divisional Officer, Dharmapuri, the third respondent herein, in proceedings No.N.K.14848/08/A3 dated 14.04.2008 and N.K.No.9788/08/A3 dated 16.06.2009, the present writ appeals came to be filed.

2. While the writ petitioner was working as a Village Administrative Officer, charge memos dated 14.02.2008 and 16.06.2009, were issued under Rule 17 (b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, for certain allegations. He did not submit his reply in time and dragged on the enquiry with an ulterior motive. However, the enquiry proceedings were also completed. In the meanwhile, he attained the age of superannuation on 31.01.2010 and vide proceedings dated 31.01.2010, the 3rd respondent permitted him to retire from service, without prejudice to the disciplinary proceedings, pending against him. But, no separate order placing him under suspension or retaining him in service, was passed.

3. The writ petitioner, challenged the charge memos on the ground that the respondents have no jurisdiction to continue with the proceedings without an order of retention in service. Therefore, it is the contention that the competent authority has no jurisdiction to pass orders in the disciplinary proceedings.

4. The learned single judge after considering the arguments advanced by the writ petitioner, as well as the judgments passed by benches reported in 2007 (5) CTC 491 [N.Kunnai Gowder Vs. The Coimbatore District Cooperative Milk Producers' Union Limited and another], 2009 (8) MLJ 1313 [State of Tamil Nadu, represented by its Secretary to Government, Cooperation, Food and Consumer Protection Department, Fort St.George, Chennai 600 009 and others Vs. A.Chidambarakuttalam], 2010 (2) CTC 569 [M.K.S.Balasubramanian Vs. The Kancheepuram Central Cooperative Bank Ltd., represented by its Special Officer, 15-G, Sheikpet North Street, Kanchipuram 631 501] and 2005 (2) MLJ 555 [The State of Tamil Nadu represented by the Commissioner and Secretary to Government, Home Department, Chennai and others Vs. R.Karupiah, Inspector of Police (under orders of suspension), Manamadurai Circle, Sivagangai District and others), had held that there is no infirmity in the proceedings of the respondents and the question of quashing the charge memos, does not arise.

5. The matter was taken up for admission, today. The learned counsel appearing for the appellant produced the judgment of the Hon'ble Full Bench of this Court, reported in 2013 (3) MLJ 846 [C.Mathesu Vs. Secretary to Government, Revenue Department, Chennai and others]. In the said case, the Hon'ble Full Bench of this Court has elaborately discussed the cases that fall under FR 56(1)(c) read with Rule 9 of Tamilnadu Pension Rules and whether an employee, on attaining the age of

superannuation, could be allowed to retire, without prejudice to disciplinary proceedings. As per the judgment of the Hon'ble Full Bench, reference was answered as follows:

"27. Thus, the view taken by the Court which makes both the provisions viz., Rule 56(1)(c) of the Fundamental Rules and Rule 9 of the Pension Rules workable is to be preferred.

28. From the aforesaid discussion, the following broad principles emerge :

(xv) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(xvi) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(xvii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2)(b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(xviii) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(xix) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9(2)(b) of the Pension Rules."

6. In reply to reference at paragraph No.28(xix), it is found that disciplinary proceedings against the employees who are permitted to retire on attaining the age of superannuation, without prejudice to the disciplinary proceedings pending against him, can be permitted to be continued in terms to Rule 9 (2) (b) of the Pension Rules.

7. In the instant case, it also falls under the same category wherein the writ petitioner was permitted to retire from service without prejudice to the disciplinary action by an order dated Na.Ka.No.9788/08 A3 dated 31.01.2010.

8. In view of the judgment of the Hon'ble Full Bench, the disciplinary proceedings can be continued even after retirement, as the writ petitioner was permitted to retire without prejudice to the disciplinary action. Hence, the finding of the learned Single Judge that the question of quashing the charge memo, does not arise, is based on the rationale under FR 56(1)(c) read with Rule 9 of the Tamilnadu Pension Rules and it holds good. Therefore, we do not find any reason to interfere with the common order made in W.P.Nos.26692 and 26693 of 2011 dated 02.07.2012.

9. In the result, the Writ Appeals are dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

To

1. The Principal Secretary to Government,
Revenue Department, Secretariat, Chennai 9
2. The District Collector, Dharmapuri
3. The Revenue Divisional Officer, Dharmapuri

+1 CC to M/s. S. Vijaya Kumar, Advocate sr 7011

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and
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RP (CO)
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