

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.43027 of 2016

ORDER :

Heard the counsel for petitioner, and Sri A. Jagan, counsel for respondents.

2. This Writ Petition has been filed by the petitioner assailing the charge-memo dt.25.12.2004 issued by the 5th respondent on the ground that no enquiry pursuant to the said charge memo was conducted by the enquiry officer, and that petitioner was allowed to retire from service on 31.08.2014.

3. The counsel for petitioner contends that once the petitioner is allowed to retire from service the relationship of 'employer' and 'employee' between petitioner and Corporation where he was employed snaps, and there cannot be any continuation of disciplinary proceedings post his retirement in the absence of any law permitting the same.

4. The counsel for petitioner relied upon the decisions of the Supreme Court in **Secretary, Ministry of Defence and others v. Prabhash Chandra Mirdha¹; Bhagirathi Jena v. Board of Directors, O.S.F.C. and others²** and **Dev Prakash Tewari v. Uttar Pradesh Co-operative Institutional Service Board, Lucknow and**

¹ (2012) 11 SCC 565

² (1999) 3 SCC 666

others³, wherein the Supreme Court has held that long delay in conduct of enquiry causes serious prejudice to the employees, and the charge memo is liable to be quashed.

5. In the affidavit / counter-affidavit filed by the 4th respondent, it is stated that charge memo was issued to petitioner to which petitioner submitted explanation and that an Enquiry Officer was also appointed on 27.03.2004, but the Enquiry Officer did not submit any report and the Corporation could not finalise the disciplinary proceedings against the petitioner.

6. It is not the case of respondents that there is any law permitting respondents to continue the disciplinary proceedings against the petitioner once he has retired from service in the year 2014.

7. The counsel for respondents also do not dispute the legal position laid down in **Bhagirathi Jena** (2 supra) and **Dev Prakash Tewari** (3 supra) that once an employee retires from service, the proceedings of enquiry lapse in the absence of any specific provision for continuance of the enquiry after retirement.

8. Though the counsel for respondents seeks to blame the petitioner for non-cooperation in the enquiry, such an allegation is not contained in the counter-affidavit filed by the 4th respondent.

³ (2014) 7 SCC 260

9. It is inexplicable why for a period of about 10 years after issuance of charge-memo, the respondents could not proceed with the disciplinary proceedings initiated against the petitioner.

10. In this view of the matter, and having regard to the above legal position, the impugned charge-memo dt.25.12.2004 of the 5th respondent is declared illegal, arbitrary and violative of Article 14 of the Constitution of India; and the same is accordingly quashed.

11. The respondent nos.2 to 5 are directed to release the retrial benefits of petitioner forthwith with interest at the rate of 8% per annum from the date of retirement till the date of payment.

12. Accordingly, the Writ Petition is allowed with the above directions. No order as to costs.

13. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-06-2017

Ndr/*