

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 29448 OF 2017

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the respondents in issuing G.O.Rt No.687 PR & RD dated 07.10.2016 along with the articles of charges by the respondents by cancelling the same through G.O.Rt.No.455 of PR & RD dated 01.07.2017, which tantamount to the end of the inquiry exonerating the delinquent Officer i.e., petitioner and issuing the G.O.Rt.No.456 dated 01.07.2017 for fresh inquiry against him as illegal and arbitrary and consequently to set aside the same and suspend the G.O.Rt No.456, dated 01.07.2017.

It is the case of the petitioner that he is a graduate in Civil Engineering and appointed as the Assistant Executive Engineer in the engineering wing of the Panchayat Raj Department and joined in service on 19.02.1988. He was promoted as Deputy Executive Engineer on 01.01.2000 and retired on 31.05.2016 on attaining the age of superannuation. However, the petitioner was not granted pensionary benefits like gratuity, encashment of earned leave, commutation of pension etc., on the ground that some disciplinary proceedings were pending against him since 2009, while he was working on deputation with the Tribal Welfare Department. The 1st respondent issued a charge memo vide G.O.Rt.No.687, dated

07.10.2016 of PR & RD Department to the petitioner, after his retirement on 31.05.2016 i.e., after four months of his retirement. That the CCA (Classification, Control and Appeal) Rules are not applicable to the retired employees who are no more employee of the Department, but the charge memo issued under Rule 20 of the CCA rules 1991, as if the petitioner is in service employee, but he ought to have been issued charge memo duly invoking Rule 9(2) (b) (i) of the liberalized Pension Rules, 1980, after obtaining special permission from the government for this specific purpose. Petitioner submitted reply to charge memo on 09.12.2016 indicating the above grounds. That the 1st respondent after realizing the lapse in issuing the charge memo, issued G.O.Rt No.455, dated 01.07.2017 by cancelling the articles of charges against the petitioner vide G.O.Rt.No.687, dated 07.10.2016. That the 1st respondent also issued G.O.Ms.No.43, dated 01.07.2017 according special permission by the government to initiate disciplinary proceedings against the petitioner through G.O.Rt.No.456, dated 01.07.2017 under sub-clause (i) of clause (b) of sub-rule (2) of Rule 9 of Telangana Revised Pension Rules, 1980 (for short 'Rules of 1980') in accordance with the procedure laid down in Rule 20 of the Telangana Civil Services (Classification, Control & Appeal) Rules, 1991. Aggrieved by the same, present writ petition is filed.

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Services appearing for the respondents.

Learned counsel for the petitioner submits that the sanction of the government for issuing impugned charge memo was obtained vide G.O.Rt.No.43, dated 01.07.2017 after the petitioner retired from service on 31.05.2016, which is not permissible as per Rule 9(2)(b)(i) of Rules of 1980. He also submits that having issued charge memo vide G.O.Rt.No.687, dated 07.10.2016, the respondents cannot issue fresh impugned charge memo after retirement of the petitioner on 31.05.2016. He submits that when once the disciplinary proceedings are initiated, the same have to be concluded after conducting enquiry. He also submits that relevant documents were not supplied to the petitioner by the respondents, inspite of several requests, as such, the petitioner is not in a position to file reply to the impugned charge memo.

In order to appreciate the rival contentions, it is necessary to extract Rule 9 of the Telangana Revised Pension Rules, 1980.

“9. Right of Government to withhold or withdraw pension:

(1):

(2)...a).....

(b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment:

(i) shall not be instituted save with the sanction of the Government;

A perusal of the aforesaid provision makes it clear that if the disciplinary proceedings are not initiated against the person while in government service, it can be initiated before his retirement or during his re-employment and that the same can be instituted with the sanction of the government. In the present case, the impugned charge memo was issued on 01.07.2017 after obtaining sanction from the Government vide G.O.Ms.No.43, dated 01.07.2017, as such, it cannot be said that the same is in violation of the Rule 9 (2)(b)(i) of the Rules of 1980. Though earlier charge Memo vide G.O.Rt.No.687 dated 07.10.2016 was issued after retirement of the petitioner on 31.05.2016, admittedly, the same was withdrawn by the government as they should not have invoked the power under Rule 20 of the CCA Rules, 1991 and issued the present impugned charge memo, after obtaining necessary sanction from the government as required under Rule 9(2)(b)(i) of the Rules, 1980. Though in the writ affidavit, it is vaguely stated that borrowing department has initiated proceedings, but as per the petitioner's own affidavit, he has joined the respondent department and continued to work in the said department. It goes to show that the parent department itself initiated proceedings.

Learned counsel for the petitioner vehemently argued that though the petitioner applied for relevant documents for submitting reply to the impugned charge memo, the same

have not been supplied by the respondents till date. Respondents are obligated to supply relevant documents but that cannot be a ground to quash the disciplinary proceedings. In view of above facts and circumstances, I do not see any merit in the writ petition and the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. However, it is open for the petitioner to make necessary application for supply of relevant documents within a period of two weeks from today and on such application, the concerned authority is directed to consider the same and take action accordingly. Since the petitioner has retired on 31.05.2016 and his retirement benefits are withheld except paying provisional pension, the respondents are directed to conclude the disciplinary proceedings within a period of six months from the date of receipt of a copy of this order.

There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

A.RAJASHEKER REDDY, J

04-09-2017
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Date: 04.09.2017

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