

The Hon'ble Sri Justice V. RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO

WRIT PETITION No.38901 OF 2017

Date:17.11.2017

Between:

L. Nageswara Rao S/o.Suryanarayana Murthy,
Aged about 65 years, Assistant Engineer, (Retired)
Irrigation Section, Muktheswaram,
East Godavari District, R/o.D.No.1-1-69,
Opp.to RTO Office, Near Black Bridge, Amalapuram,
East Godavari District.

...Petitioner

Vs.

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Irrigation & CAD Department,
Secretariat Buildings, Velagapudi,
Guntur District and others.

... Respondents

For Petitioner : Sri Ravi Kondaveeti

For Respondents : G. P. for Services –I (AP)
Sri B. Narasimha Sarma



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.38901 OF 2017

ORDER: (per V. Ramasubramanian, J)

Challenging a charge memo issued under G.O.Pt.No.569 Irrigation and CAD dated 14.05.2012, on the two grounds, namely, (a) that it was issued beyond four years from the date of occurrence of the event, in violation of Rule-9 (2) (b) (ii) of the Andhra Pradesh Revised Pension Rules, 1980 and on the ground that there is abnormal delay in conclusion of the proceedings, a retired Assistant Engineer of the Department filed an application before the Andhra Pradesh Administrative Tribunal. The Tribunal held that since the occurrence of the event was found out much later than the date of event, the first contention could not be upheld and that on the second contention, a direction to the respondents to conclude the proceedings within a timeframe would suffice. The Tribunal disposed of the main application simply with a direction to the respondents to conclude the disciplinary proceedings within a period of six months.

2. Aggrieved by the aforesaid disposal of the original application, the original applicant before the Tribunal has come up with the above writ petition.

3. The main contention of Mr. Ravi Kondaveeti, learned counsel for the petitioner is that admittedly, the year in which the irregularity took place was 2008 and that the charge memo was issued on 14.05.2012, obviously beyond a period of four years. Therefore, his contention is that as per Rule 9(2)(b)(ii), the charge memo could not

have been issued. Rule 9(2)(b) of the Revised Pension Rules reads as follows:

“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;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the State Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.”

4. It is no doubt true that the Rule uses two sets of expressions, namely, (1) “any event which took place” and (2) “institution”. The date of institution of the proceedings in this case is 14.05.2012. If a literal interpretation is given to the Rule, the event in respect of which proceedings are initiated actually took place in 2008. But, according to the respondents, the event came to light only on 20.11.2011, when an appraisal report was submitted on the verification of works taken up by the Irrigation Department under a particular project. The petitioner retired from service on 31.08.2009. Therefore, the question that arises is as to whether the starting point for calculating the period of four years is the date on which the event actually took place or the date on which the event actually came to light. If we go only by the literal interpretation of the language employed in the rule, learned counsel for

the petitioner is perfectly right. But, unfortunately, that is not the way Rule 9 (2) (b) (ii) has to be interpreted. Let us take for instance a case where a construction took place in 2008. In a hypothetical case where due to total negligence on the part of the officials and the use of inferior materials, the entire building collapsed in the year 2011, can had be said that Rule 9 (2) (b) (ii) has to be literally interpreted to calculate the period from 2008. The date of occurrence of the event is always the date on which the effect of the event is felt or found out. Therefore, the first contention of the petitioner cannot be accepted. The second contention of the petitioner has been redressed by the Tribunal itself by directing the respondents to complete the enquiry within a timeframe. The Tribunal disposed of the Original Application, only on 14.09.2017. The Tribunal has given a reasonable period of six months for the respondents to complete the enquiry. If the respondents do not complete the enquiry within the timeframe, it is open to the petitioner to come back, seeking release of the benefits to the extent feasible under the Rules.

5. Therefore, with the above observations the writ petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

November 17, 2017
KTL