

The Hon'ble Sri Justice V. RAMASUBRAMANIAN
and
The Hon'ble Sri Justice M. GANGA RAO
+ WRIT PETITION No.44278 OF 2017

Date:26.12.2017

Between:

%Syed Srtaj S/ o.Syed Khadir Mohiddin,
Aged about 70 years, Occ: Retired Sub-Registrar of
Assurances, P/ o.23-2-26/ 3, Bilal Nagar, Kanigiri Road,
Dubagunta Post, Ponnuluru RS, Kandukuru, Prakasam Dist.

...Petitioner

Vs.

\$ Sate of Andhra Pradesh,
Represented by its Principal Secretary to
Government, Revenue (VIG VI) Department,
Secretariat Buildings, Saifabad, Hyderabad and others

... Respondents

! Counsel for Petitioner : M/ s. P.S. Rajasekhar

^ Counsel for Respondents : G.P.for Services

< Gist :

> Head Note :

? Cases Referred : 2013 (4) Supreme Court Cases 161



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.44278 OF 2017

ORDER: (per V. Ramasubramanian, J)

Aggrieved by the dismissal of his original application challenging a charge memo, a retired Sub-Registrar of Assurances, has come up with the above writ petition.

2. Heard Mr.P.S Rajsekhar, learned counsel for the petitioner.

3. The petitioner reached superannuation and was retired from service on 29.02.2004. On 26.02.2008, a Government Order was passed in G.O.Ms.No.239, initiating proceedings under Rule 9(2)(b) of the Andhra Pradesh Revised Pension Rules, 1980 (for short 'the Rules'). On the same day, another order was issued in G.O.Ms.No.568 Revenue dated 26.08.2008, framing Articles of Charges. The sum and substance of the charge framed against the petitioner was that he registered a total of about seven documents, which were undervalued, resulting in loss of revenue. Six of these documents were presented for registration on 25.02.2004 and one document was presented for registration on 27.02.2004.

4. The petitioner challenged the charge memo on the short ground that a period of four years as prescribed in sub-clause (ii) of Clause (b) of sub-rule (2) of Rule 9 of the Rules, had expired on the date on which the charge memo was received by him.

5. On facts, there is no dispute that on the date on which the charge memo was actually served on the petitioner, a period of four years had actually elapsed. But, the question is as to whether the

receipt of the charge memo by the petitioner would be the criteria for determining the applicability of Rule 9(2)(b)(ii) of the Rules or not.

6. Rule 9(2)(b) of the Rules in entirety 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.”

7. It can be seen that Rule 9(2)(b) of the Rules actually speaks about institution of departmental proceedings. The word “instituted” occurs in the main portion of clause (b) and also in sub-Clause (i). The word “institution” appears in sub-Clause (ii) of Clause (b).

8. Sub-rule (6) of Rule 9 of the Rules states that for the purpose of Rule 9 of the Rules, departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or where the Government servant has been placed under suspension from an earlier date, on such date.

9. As a matter of fact, sub-rule (6) of Rule-9 of the Rules contains two parts, the first part dealing with the departmental proceedings and the second part dealing with judicial proceedings. Sub-rule (6) of Rule 9

of the Rules actually creates a deeming fiction. This deeming fiction is also divided into two parts, the first part dealing with a Government servant, who is not placed under suspension, and the second part dealing with a Government servant, who was placed under suspension with effect from an earlier date.

10. But, it must be remembered that Rule 9(6) of the Rules, as it is framed, has a correlation in all other cases, except the State of Andhra Pradesh, to Fundamental Rule-56. Fundamental Rule-56 enables the State, to place an employee under suspension on the eve of retirement to enable the Government to continue the departmental proceedings. Under Fundamental Rule-56, every State Government (except the State of Andhra Pradesh) is empowered to pass two orders on the eve of retirement, by one of which he will be placed under suspension and by the other, he will be deemed to be continuing in service, with a receipt of provisional pension not exceeding the subsistence allowance. This is with a view to enable the Government to impose all penalties available under the Civil Services (CCA) Rules, even after the retirement of the Government servant.

11. But, insofar as the State of Andhra Pradesh is concerned, the Andhra Pradesh (Fixation of Age of Retirement) Act, 1983, has repealed Fundamental Rule-56. As a matter of fact, the Act deals only with the age of superannuation which forms part of sub-rule (1) of Fundamental Rule-56 alone. Therefore, instead of repealing sub-rule (1) of Fundamental Rule 56, the Act repealed the Fundamental Rule 56 in entirety, letting loose the Government servants on the date of retirement, after which, the only remedy available to the Government is to initiate action under Rule 9 of the Revised Pension Rules.

12. In the said context, we have to see that sub-rule (6) of Rule 9 of the Rules has a limited role to play. A deeming fiction provided under sub-rule (6) of Rule 9 of the Rules, cannot be extended beyond a particular point so as to have a lot of elasticity.

13. Sub-rule (2) of Rule 9 of the Rules itself, contemplates two situations, one where the departmental proceedings are instituted even when the Government servant was in service and another when the departmental proceedings are sought to be instituted after retirement. Therefore, the deeming fiction shall be taken to apply only to the category of cases where the departmental proceedings are instituted when the Government servant was in service and which are sought to be continued and concluded, even after retirement. The role of the deeming fiction is limited to such an extent.

14. If it is not limited, the consequences are not beyond comprehension. Let us take the case of a person, who has gone abroad after retirement. Suppose he comes back after four years, automatically by his own action he will be able to defeat the purport of Rule 9(2) of the Rules.

15. Mr. P.S. Rajasekhar, learned counsel for the petitioner places reliance upon a decision of the Supreme Court in *Union of India vs. Anil Kumar Sarkar*¹, where the Supreme Court reiterated the principles laid down in a catena of decisions to the effect that the departmental proceedings will ordinarily be said to be instituted only when a charge sheet is issued. But, it must be remembered that the word “issued” stands on a different footing from the word “received”. Therefore, the moment a G.O. is passed and it goes out of the desk, the word “institution” will come into operation. The focus in Rule 9(2)(b) of the

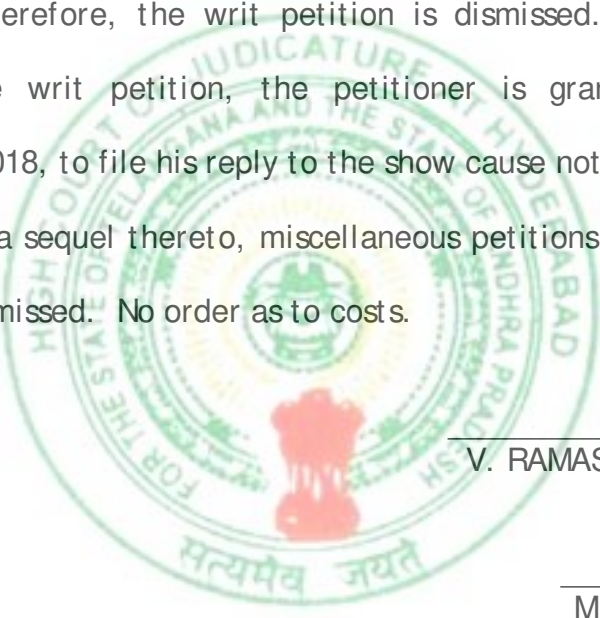
¹ 2013 (4) SCC 161

Rules is on the institution and not on the receipt of the charge memo by the officer nor upon the service of the charge memo upon the officer.

16. In cases of this nature, what is important for the Court to see is that by allowing the proceedings to go on, all that will happen to the Government servant is to go through the rigmarole and come out clean. But on the other hand, if charge memos are interfered even at that stage, they have the potential of preventing any enquiry into the allegations. Therefore, the Tribunal did well to err, if at all it erred, on the wrong side.

17. Therefore, the writ petition is dismissed. Since we are dismissing the writ petition, the petitioner is granted time upto 10th January 2018, to file his reply to the show cause notice.

18. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

December 26, 2017
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