

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.A. Nos. 2111 and 2112 of 2013

W.A. No. 2111 of 2013

M. Rajamanickam

... Appellant

Vs.

1. The State of Tamil Nadu
Rep. By its Secretary to Government,
Personnel & Administrative Reforms Dept.,
Fort St. George, Chennai - 600 009.
 2. The Director of Handlooms & Textiles,
Kuralagam, Chennai - 600 108.
 3. The Assistant Director of Handlooms & Textiles,
MG Pudur, III Street,
Opp. Collectorate,
Tirupur - 641 604.
- ... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 23.08.2013 in W.P. No. 14837 of 2013 on the file of this Court.

Prayer in WP No.14837 of 2013 : Writ Petition filed under Article 226 of the constitution of India for the issuance of writ of certioriafied mandamus Calling for the entire records relating the impugned charge Memos issued by the 3rd respondent in Na.Ka.2545/2011/B order dated 22/08/2012 and in Na.Ka.1611/20113/A order dated 23/05/2013 invoking the Rule 17 (b) of the Tamil Nadu Civil services (Discipline and appeal) Rules and quash the same as null and void without jurisdiction and authority and consequently direct the respondents to disburse the terminal benefits of the petitioner with interest at the rate of 12% per annum from the date of superannuation till the date of disbursement.

W.A. No. 2112 of 2013

M. Rajamanickam

... Appellant

Vs.

1. The Director of Handlooms & Textiles,
Kuralagam, Chennai - 600 108.
2. The Joint Director (Handlooms)
O/o. The Director of of Handlooms & Textiles,
Kuralagam, Chennai - 600 108.
3. The Assistant Director of Handlooms & Textiles,
14/11 - Bharathy Park, IInd cross,
Saibaba Colony, Coimbatore - 641 011.
4. The Assistant Director of Handlooms & Textiles,
MG Pudur, III Street,
Opp. Collectorate,
Tirupur - 641 604.

... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 23.08.2013 in W.P. No. 23241 of 2013 on the file of this Court.

Prayer in WP.23241 2013 : Writ Petition filed under Article 226 of the constitution of India for the issuance of Writ of certiorarified mandamus Calling for the entire records relating to the impugned orders passed by the 3rd respondent in his proceedings Rc. No.1803/2013/A dated 3.5.2013 and the consequential order passed by the 2nd respondent in his proceedings Rc. No.16827/ 2013/E3 dated 30.5.2013 and quash the same as null and void and without jurisdiction and authority and consequently direct the respondents to settle the retiral benefits including the sanction of pension and pensionary benefits with interest at the rate of 12% per annum from the date of superannuation till the date of disbursement.

For Appellant : Mr. R. Krishnamoorthy
(in both)

For Respondents : M/s. A. Sri Jayanthi
Spl. Government Pleader
(in both)

C O M M O N J U D G M E N T
(Delivered by M.M.Sundresh,J.)

The appellant herein filed writ petitions challenging the proceedings by which charges have been framed against him and he

was placed under suspension and not permitted to retire.

2. The learned Single Judge was pleased to dismiss the writ petitions, inter alia, holding that merely because the appellant was posted in the Cooperative Society as Special Officer, the respondent authorities would not lack jurisdiction to take action. On the second issue, it was held that the mere cancellation of the first charge memo followed by another one, cannot also be a ground to quash the charges. On the third issue, it was held that department can very well proceed with the departmental action during the pendency of the criminal case and also the surcharge proceeding against the delinquent employee.

3. Learned counsel appearing for the appellant would submit that the charges are pertaining to the functioning of the appellant as a Special Officer and, therefore, the respondent No.3 does not have the power or authority. He submitted that action has been initiated against the appellant touching upon his conduct while he was discharging his duties as a Special Officer on deputation. Reliance has been made on the judgments of the Apex Court in Dr. Gurjeewan Garewal v. Dr. Sumitra Dash and ors (2004) 5 SCC 263 and Mahavir Singh v. Khiali Ram and others (2009) 3 SCC 439.

4. Learned Government Pleader submits that the appellant is facing criminal cases and he is not allowed to retire, pursuant to the charges framed and, therefore, no interference is required.

5. By the impugned proceedings, charges have been framed against the appellant while not permitting him to retire. This Court is not supposed to go into the merits of the case at this stage. Merely because the appellant was on deputation and the issue is with respect to his conduct during the aforesaid period, it cannot be stated that the respondent No.3 does not have the power or authority to frame the charges. The appellant is not able to produce any Rule or Regulation prohibiting the Respondent No.3 from doing so. Resultantly, no such Rule or Regulation has also been produced to show that only the authority constituted by the Government has got the jurisdiction.

6. The judgments relied upon by the learned counsel for the appellant has got no relevancy. In the said case, the Apex Court was dealing with the Civil Post. However, we are dealing with the case of an employee who is a Government servant. It is well settled law by this time that pendency of the criminal case is not a bar to proceed departmentally. Consequential order passed is in tune with the order framing charges. The said order

cannot be termed as stigmatic. The appellant will have to stand up to the charges and come out clean.

Thus, we do not find any merit in these appeals and the two appeals stand dismissed. No costs. Consequently, M.P. No. 1 of 2013 (two petitions) are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ssm

To

1. Secretary to Government,
The State of Tamil Nadu
Personnel & Administrative Reforms Dept.,
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Saibaba Colony, Coimbatore - 641 011.

+1cc to Mr.K.Premkumar, Advocate SR.No.84393

+1cc to Government Pleader SR.No.85115

W.A. Nos. 2111 & 2112 of 2013

RR(CO)
GMY(29/01/2019)