

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
13-03-2018	21-03-2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T. SELVEM
AND
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.31869 of 2017 & W.M.P.35019 of 2017 and
W.P.No.1191 of 2018 & W.M.P.No.1494 of 2018

W.P.No.31869 of 2017

C. Kanagaraj .. Petitioner

Vs

1. The Registrar General,
Madras High Court,
Chennai 600104.
2. The Principal District Judge,
Ramanathapuram.
3. The Principal District Judge,
Thiruvallur District.
4. The District Munsif,
Thiruvallur
Thiruvallur District. .. Respondents

W.P.No.1191 of 2018

G. Kalaiselvi .. Petitioner

Vs

1. The District Munsif
Thiruvallur
2. The Principal District Judge,
District Court, Chengalpet.
3. The Registrar General
Madras High Court,
Chennai 600104. .. Respondents

Prayer in W.P.No.31869 of 2017

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records on the file of the 4th respondent in Proceedings D.No.329/2107 dated 7.10.2017 and quash the same and direct the respondents to settle all the retirement and monetary benefits to the petitioner forthwith.

Prayer in W.P.No.1191 of 2018

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari calling for the records of the charge memo D.No.330/2017 dated 7.10.2017 on the file of the 1st respondent and quash the same as illegal, arbitrary, as far as the part of the petitioner is concerned.

For Petitioner : Mr.S. Selvathirumurugan
[W.P.No.31869/2017]

Mr.R. Vasudevan
[W.P.No.1191/2018]

For Respondents: Mr.D. Kanagasundaram,
[both writ petitions]

C O M M O N O R D E R

[Order of the Court was delivered by N. SATHISH KUMAR, J.]

Above writ petitions are filed challenging the proceedings of the District Munsif, Thiruvallur in D.No.329/2017 and 330/2017 dated 7.10.2017. Since the petitioners in both the writ petitions are challenging the same proceedings, both the writ petitions are disposed of by a common order.

2. Brief facts leading to filing of W.P.No.31869 of 2017 are as follows:

2.(a) The petitioner entered into Judicial Ministerial Service as Amin (Senior Bailif) on 15.09.1978 and finally promoted to the level of Chief Administrative Officer and posted at Ramanathapuram in the month of May 2017. He has attained superannuation on 30.06.2017. However, he was permitted to retire from service on the above date with a rider that action if any as per the High Court's ROC.No.257/2016/VC and Roc.No.500/2017/VC shall be continued under Rule 9 of the Tamil Nadu Pension Rules 1978 in accordance with the procedure laid down in the said Rules.

2.(b) It is the case of the petitioner that the petitioner was served as Assistant in the District Munsif Court, Thiruvallur in between 4.2.1989 and 9.9.1991. In the meanwhile O.S.No.327 of 1977 pending on the file of the District Munsif, Thiruvallur, was disposed of on two occasions for default in the year 1984 and 1989. The same was restored to file in the years 1988 and 1991 respectively. When the suit was taken up for trial on 22.1.1992, the petitioner, who was working as Bench Clerk, brought to the notice of learned Judge that some of the records were not on record. The learned Judge made an endorsement on the docket sheet that three documents were not on record and the same had to be sent for from the record room and directed the office to search for the documents. The petitioner had searched the documents till May 1992 till his transfer. Thereafter his successor entered an office note for searching the documents. The petitioner was not aware whether the documents were procured or not. When the matter stood thus, in the month of July 2006 he was served with a memo qua the missing documents. The petitioner submitted his explanation in the month of September 2006. Thereafter, he has not received any memo and no further action was taken till the date of his retirement. The petitioner was all along under the impression that the documents have been traced out and further action has been dropped. But to his shock and disappointment, he received retirement order dated 30.06.2017 with a rider that proceedings shall be continued under Rule 9 of the Tamil Nadu Pension Rules 1978. The petitioner's retirement benefits have not been paid. Hence, he prayed for quashing the charge memo issued against him.

3. The brief facts contained in W.P.No.1191 of 2018, in nutshell, are as follows:

3.(a) The writ petitioner was appointed as Junior Assistant on 16.2.1987 and from 01.07.1989 to 30.06.2004 she was working as Junior Assistant in the District Munsif Court, Tiruvallur. On 01.05.2017 she was promoted as Sherishtadar in the Kancheepuram District Court at Chengalpattu. When the matter stood thus, proceedings of the 1st respondent (District Munsif, Thiruvallur) dated 07.10.2017 was served on her with charge memo and the 1st respondent is proposed to conduct enquiry against the charges under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. It is the further case of the writ petitioner that the suit pending on the file of the District Munsif Court in O.S.No.327 of 1977 was dismissed for default on 03.02.1984 and the case records with index sheet without mentioning any plaint documents, returned to the Records Section. The above said suit was restored on 18.08.1988. Thereafter on 04.07.1989 the suit was dismissed for default and obviously returned to records on second time with the index. On 22.01.1992 an endorsement was made to the effect that "trace out 3 account books from the Record Room" and the case was posted to

27.01.1992. Again on 18.03.1996 the suit was again dismissed for default and restored on 18.06.1999. Though the memo in this regard was issued to others, this petitioner was not served any memo in the year 2006. All of a sudden, she was given a memo on 05.05.2017 in D.No.224/2017. It is the contention of the petitioner that even her tenure as Record Keeper from 03.08.1989 to 19.07.2002, the suit in O.S.No.327/1977 was dismissed for default on 03.02.1984 and 04.07.1989, on both the occasions suit was dismissed for default and the case bundle was received by the Records after due indexing. The index sheet provided by the first respondent showing the return of case bundle did not contain any mention of the plaint documents. When there was no entry about the plaint documents on the earlier occasions from 1984 to 1989 the subsequent record keeper cannot be fastened with the responsibility of missing documents. Now, the charge memo has been issued after the lapse of almost 27 years, at the time of promotion to the highest post in the Judicial Ministerial Service. Hence, challenging the proceedings of the 1st respondent viz., the District Munsif, Tiruvallur, framing charges under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, the present writ petition has been filed.

4. The following are the brief contents contained in the counter filed in W.P.No.31869 of 2017 by the 4th respondent viz., the District Munsif, Tiruvallur:

4.(a) The Executive Officer of one Sri Lakshmi Narasimha Swamy Devasthanam, Narasingapuram Village, Tiruvallur Taluk filed a suit in O.S.No.327 of 1977 against the State for the relief of Declaration of Title and Permanent Injunction in respect of the suit property. In the plaint, it is stated that out of 14 listed documents, document Nos.1 to 8, 10 to 14 were filed and Document No.9 was not filed and undertaking was given to file it later. However, document Nos.5 and 8, Miscellaneous Receipt Books of the Temple, document Nos.10 to 12 Muchalika books and document Nos.13 and 14 Cash books maintained by the plaintiff were found missing from the case bundle. The missing of documents was first brought to the notice of the Court on 22.01.1992 and the Court has made the following order on that date:

"Witness present. Plaintiff has filed
4 Account Books along with the Plaint. Out
of which 3 Account Books has to be traced
from the Record Room. Search the A/c book."

4.(b) Thereafter, Memos have been issued to the staff concerned viz., Thiru.P. Jaiganesh, Thiru P.Desapillai, Thiru C. Kanagaraj and Tmt.G. Kalaiselvi. Explanation submitted by Tr. P. Desapillai and Tr. P. Jaiganesh were accepted. However, not satisfied with the explanation submitted by the writ petitioner

and other delinquent, the District Munsif, Thiruvallur, issued charge memo under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules dated 17.10.2017. In the meanwhile 4th respondent also sought permission of the High Court to reconstruct the missing documents and the High Court also granted permission in Roc.No.68753/2017/F1 dated 29.11.2017.

5. Learned counsel appearing for the writ petitioner in W.P.No.31869 of 2017 submitted that the charge memo issued by the District Munsif, Thiruvallur is against law and without any materials. Admittedly, there was no material available on record to show that when the documents were found missing from the case bundle of O.S.No.327 of 1977. It is the further contention of the learned counsel for the writ petitioner that prior to the writ petitioner transferred to the District Munsif Court, O.S.No.327 of 1977 was dismissed for default on two occasions and the case bundle has been sent to the record room. As per Order XII Rule 7 of C.P.C., and circular order Rule 81, the documents along with plaint would not form part of the record until admitted in evidence. Therefore, they should not be placed on record nor entered in the index of papers on record.

6. Prior to the writ petitioner joined in the District Munsif Court, Thiruvallur, the suit in O.S.No.327 of 1977 was dismissed on two occasions and the case bundle was sent to Records. Whether the documents were available at the time of dismissal of suit on the prior occasion or not, there is no material. However, in the year 1992 i.e., on 26.01.1992 when the suit was taken up for trial, it was brought to the notice of the Court that some of the documents were not on the record. At the relevant point of time, the writ petitioner was the Bench Clerk, he brought to the notice of missing of certain documents to the concerned Presiding Officer. But no action at that point of time was taken. Whereas, memo was issued to the Bench Clerk/writ petitioner in the year 2006, after the lapse of 24 years, which also properly explained by the writ petitioner vide his explanation dated 7.9.2006. Thereafter, no action was taken. When the writ petitioner attained superannuation on 30.06.2017, the Principal District Judge, Ramanathapuram issued proceedings, permitting the writ petitioner to retire from service with a rider that action if any as per the High Court's Roc.No.257/2016/VC and Roc.No.500/2017/VC shall be continued under Rule 9 of the Tamil Nadu Pension Rules 1978. It is the contention of the writ petitioner that charges were framed under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, after retirement from Government Service cannot be permitted. Further any action to proceed under Tamil Nadu Pension Rules also against the law. To institute any proceedings under 9(2b) of Tamil Nadu Pension Rules, the allegations or irregularities or misconduct should have been

taken place within four years from such action. Whereas the alleged missing of the records is of the year 1992. Hence, the proceedings of the learned District Munsif, framing charges are liable to be quashed.

7. It is the contention of the learned counsel for the writ petitioner in W.P.No.1191 of 2018 that the writ petitioner was working as Record Keeper. Before her joining as Record Keeper, the suit in question was dismissed for default twice and the case bundle was sent to Records Section. Therefore, without establishing the fact that when the records were actually went missing, she cannot also be fastened with the disciplinary proceedings. Admittedly, she was not served with any memo in the year 2006, now she is working as Sherishtadar and expecting her promotion. Only after 27 years of alleged lapse, now charges have been framed against her under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules and the same is liable to be quashed.

8. We have perused submission of the learned counsel on both sides and the entire materials.

9. Both the writ petitioners challenged the charge memo issued by the District Munsif, Thiruvallur, in D.No.329/2017 and 330/2017 dated 7.10.2017 respectively, framing charges under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules for imposing major penalties holding an enquiry for missing of certain documents from the case bundle O.S.No.327 of 1977. We have perused the records. The District Munsif, Thiruvallur, has framed charges under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules for imposing major penalties. The allegations found in the charges are that the documents No.5,8,10,11,12,13 and 14 filed along with suit in O.S.No.327 of 1977 were found missing and the writ petitioners who have worked as Bench Clerk and Record Keeper are responsible for those documents. It is to be noted that the missing of the alleged documents originally brought to the notice of the Presiding Officer on 22.01.1992 by one of the writ petitioners. This fact is not in dispute. But no action was taken against any of the staff. For the first time, explanation was sought for from one of the writ petitioners viz., Mr.C. Kanagaraj in the year 2006. He has also given his explanation dated 7.9.2006. Thereafter, office of the fourth respondent (in W.P.No.31869/2017) remained as a spectator and not taken any action. But suddenly woke up only in the year 2017 for issuing a charge memo both the writ petitioners. Perhaps it may be due to the fact that normally if any documents are found missing the same has to be reported to the High Court. Perhaps due to Roc.No.257/2016/VC and Roc.No.500/2017/VC pending with the Registrar(Vigilance), only to show that some action has been taken against the staff, this proceedings have been initiated in the year 2017. We are

constrained to hold that such action of issuing of charge memo after 27 years of the alleged irregularities may be due to Roc.No.257/2016/VC and Roc.No.500/2017/VC pending with the Registrar (Vigilance) and nothing else. Be that as it may.

10. The counter of the respondent/District Munsif shows that while filing the suit in the year 1977, though 14 documents were listed in the plaint, one of the documents viz., Document No.9 was not filed. That being the position, whether all the documents listed in the plaint were originally filed or not at the time of numbering the plaint, there is no material available on record. Even assuming that those documents were filed thereafter only the plaint was numbered. The admitted facts by both sides clearly show that much prior to these writ petitioners posted to the concerned District Munsif Court, the suit in question was dismissed twice and restored to file subsequently. It is to be noted that under Order XIII Rule 7 CPC till the documents are admitted in the evidence, the same shall not form part of the record and shall be returned to the person respectively produce them. In this regard it is useful to refer Circular Orders issued under Rule 81, which reads as follows:

"Rule 81 - CIRCULAR ORDERS

I. GENERAL INSTRUCTIONS REGARDING THE PROCEDURE TO BE OBSERVED IN DEALING WITH DOCUMENTS PRODUCED BY PARTIES:-

(a) Order XIII, Rule 7, Civil Procedure Code, provides, that such documents shall not form part of the record until admitted in evidence. Therefore, they should not be placed on record nor entered in the index of papers on record.

(b) Documents produced by the Plaintiff should be kept together in a separate bundle and similarly those produced by the Defendant. If there are more Plaintiffs or Defendants than one, the documents produced by each should be kept, in a separate bundle.

(c) The lists put in by parties, of documents produced by them should be entered in the index, but the documents themselves should only be so entered when they have been admitted in evidence and made part of the record.

(d) When a document is admitted in evidence the fact should be noted in the list put in by the Plaintiff or Defendant as the case may be.

(e) Documents not admitted in evidence should on being endorsed as required by Section 142 (now Order XIII, Rule 6) of the Code of Civil Procedure, be kept with the records of the case to which they relate, but sufficiently apart from them so that they may be returned to the parties or their pleaders as required by Order XIII, Rule 7. Such documents should be returned in any case within seven days after judgment is pronounced and a receipt should be taken therefor. (H.C.Cir.Dis.No.880 dated 10th September 1905.)"

From the Order XIII, Rule 7 of C.P.C. and Circular order it is very clear that unmarked documents would not form part of the record and it should be kept in a separate bundle and not form part of the index. When such was the position, it is highly difficult to fix the responsibility on the Record Keeper or Bench Clerk for those missing documents. It is further to be noted that as already stated the documents not form part of the records should have been kept separately. Prior to the writ petitioners joining in the District Munsif Court, in the year 1988 the suit was dismissed for default twice and case bundle has been sent to the Records. During such period whether those documents were sent to the record or kept in the bundle, absolutely there is no material. Even the counter is silent on this aspect. Therefore, in the absence of any material fixing responsibility to the writ petitioners, we are of the view that the disciplinary proceedings cannot be mechanically initiated after the lapse of 27 years of the alleged incident.

11. Therefore, without any materials merely on the basis of some allegations of missing records the writ petitioners cannot be fastened with responsibility. Admittedly till the retirement of the writ petitioner in W.P.No.31869 of 2017 no action was taken and charge memo has been issued after 4 months of his retirement under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. The initiation of the charges under 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules for the persons who have already retired is not permissible. Further, even to initiate a proceedings under Rule 9 (2) (b) of the Tamil Nadu Pension Rules, the alleged act should have been happened within four (4) years prior to the initiation of such proceedings. Whereas in this case, the alleged missing records were taken place in the year 1992 hence the proposed proceedings under Rule 9 (2) (b) of Tamil Nadu Pension rules 1978 also will not be maintainable.

12. On perusal of materials and charge memos, we are of the view that framing of charges under Rule 17(b) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules is nothing but futile exercise on the part of the District Munsif, Thiruvallur, when there is no evidence available on record to show that when the documents were found missing, merely on the ground that missing documents were reported only in the year 1992, it cannot be presumed that only at the relevant time when these writ petitioners worked in the above court, the documents went missing. Admittedly, now the High Court has also granted permission to reconstruct the documents.

13. It is relevant to refer judgment of the Honourable Apex Court reported in AIR 1990 SC 1308 [The State of Madhya Pradesh v. Bani Singh and another] wherein it is held as follows:

"4. The appeal against the order dated 16.12.1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

14. Having regard to the above judgement and also the fact that absolutely there is no material to proceed against the writ petitioners in a departmental proceedings, particularly in the absence of any evidence when the documents were found missing, we are of the view that the disciplinary action initiated after a long gap of 27 years is liable to be quashed.

15. Accordingly, the writ petitions are allowed and the charge memos issued by the District Munsif, Thiruvallur in D.Nos.329/2017 and 330/2017 dated 7.10.2017 are quashed. Consequently, connected Miscellaneous Petitions are closed. The respondents are directed to settle all the retirement and monetary benefits to the writ petitioner in W.P.No.31869 of 2017 forthwith.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

ggs

To

1. The Registrar General,
Madras High Court,
Chennai 600104.
2. The Principal District Judge,
Ramanathapuram.
3. The Principal District Judge,
Thiruvallur District.
4. The Principal District Judge,
Chengalpattu.
5. The District Munsif,
Thiruvallur
Thiruvallur District.

+ 13 ccs to Mr. Vasudevan, Advocate Sr.22146

+ 1 cc to Mr. S. Selvathiru Murugan, Advocate Sr.21488

W.P.No.31869 of 2017 &
W.M.P.35019 of 2017 and
W.P.No.1191 of 2018 &
W.M.P.No.1494 of 2018

NMI (CO)
EU (12/04/2018)