IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.04.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.12837 of 2006
And
W.P.M.P.No.14430 of 2006 and W.V.M.P.No.3 of 2009

M.K.Krishnan ... Petitioner

Vs.

1.The Director of Veterinary Services,
Chennai - 600 006.

2.The Regional Joint Director of Animal Husbandry,
Tiruvallore Region,
Tiruvallore.

3.The Assistant Director of Animal Huabandry,
Poonamallee,
Tiruvallore District. ... Respondents

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Impugned Charge Memos issued by (1) Na.Ka.No.2982/A/98 dated 12.01.1999 issued by the 3rd respondent (2) Na.Ka.No.5854/A/2000 dated 18.09.2004 and (3) the Consolidated Charge Memo in Na.Ka.No.3209/A/01 dated 15.03.2006 issued by the 2nd respondent quash the same.

For Petitioner : Mr.K.Premkumar
For Respondents: Mr.K.Ravikumar
Additional Government Pleader

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records relating to the impugned charge memos issued in Na.Ka.No.2982/A/98 dated 12.01.1999 by the third respondent; Na.Ka.No.5854/A/2000 dated 18.09.2004 and the consolidated charge memo in Na.Ka.No.3209/A/01 dated 15.03.2006 issued by the second respondent and to quash the same.

2.Mr.K.Premkumar, the learned counsel appearing for the petitioner would submit that though the first charge memo was issued by the third respondent on 12.01.1999, thereafter, the second respondent issued the very same charge memo on 18.09.2004 and another consolidated charge memo was also issued by the second respondent on 15.03.2006. The learned counsel would further submit that though the Enquiry Officer held in favour of the petitioner, the respondents 2 and 3 differed with the Enquiry Officer and issued the charge memo to the petitioner.

3.The learned counsel appearing for the petitioner would further submit that the petitioner was permitted to retire from service vide ROC.No.1201/B/2001, dated 20.05.2004.

4.The respondent has permitted the petitioner to retire from service without retaining him in service by invoking Rule 56 (1) (c) of the Fundamental Rules. In the absence of any suspension order or any order retaining the petitioner in service by invoking Rule 56 (1) (c) of the Fundamental Rules, the present case is squarely covered by the following decisions:

(i)The decision of the Hon'ble Supreme Court reported in (1999) 3 SCC 666 (Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and others), the relevant portion of which reads as follows:

> "7.In view of the absence of such provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95. there was no authority vested in the Corporation or continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

(ii)The decision of the Hon'ble Supreme Court reported in (2006) 4 M.L.J. 504 (P.Muthusamy vs. Tamil Nadu Cements Corporation Ltd., rep. by its Chairman and Managing Director, Chennai and another), the relevant portion of which reads as follows:

> "7.In the decision reported in Bhagirathijena v. B.D., O.S.F.Corporation AIR 1999 SC 1841 : 1999 (3) SCC 666 : 1999 (2) LLN 993, the Hon'ble Supreme Court

considered the effect of continuance of disciplinary proceedings after superannuation in the absence of specific provisions in Orissa State Financial Corporation Staff Regulations, 1975. The following conclusion in paragraph Nos.6 & 7 are relevant and the same is extracted below:

> "6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of departmental enquiry after superannuation.
>
> 7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on June 30, 1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement. "

A Division Bench decision of this Court reported in State of Tamil Nadu v. R.Karuppiah 2005 (3) CTC 4 : (2005) 2 mlj 555, which is also in line with the above referred decision of the Apex Court, supports the stand taken by the Writ Petitioner.

8. In view of the admitted factual position that there is no specific enabling provision in the TANCEM Service Rules and of the legal position as referred to above, we

hold that the order of the first respondent, reserving the right to continue the disciplinary proceedings after superannuation, is illegal and without jurisdiction. We also take note of the claim made in W.P. No.18953 of 2003 that though the Charge Memo was issued on 15.5.2001 and reply containing explanation therefor was sent on 30.06.2001, there was acute sluggishness on the part of the authority, for, the notice of enquiry was issued only on 27.06.2003, mentioning the enquiry date as 30.06.2003, the date on which the petitioner attained superannuation as per Rules."

(iii)The decision of the Hon'ble Supreme Court reported in 2007 (5) CTC 491 (N.Kunnai Gowder vs. 1.The Coimbatore District, Co-op. Milk Producers' Union Ltd., Pachapalayam, Perur Via, Coimbatore -10, rep. by its managing Director), the relevant portion of which reads as follows:

"7.1.Our view is also supported with the following decisions.

7.2.While dealing with the effect of continuance of disciplinary proceedings after superannuation in the absence of specific provisions, the Apex Court in Bhagirathi Jena v. Board of Directors, O.S.F.C., 1999 (3) SCC 666, held as under:

"7. In view of the absence of such a provision in the above said regulations, it must be held that the Corporation had no legal authority to make any reduction in the retrial benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

7.3. A Division Bench of this Court in State of Tamil Nadu v. R. Karuppiah, 2005 (3) CTC 4 : 2005 (2) MLJ 555, also held as under:

> "29. From the above note it is also clear that to proceed against a Government servant, who is under suspension on a charge of misconduct, after his retirement, the fulfilling of the requirements under Rule 56(1)(c) of the Fundamental Rules is a mandatory one, otherwise, the competent authority cannot have any jurisdiction on the retired Government servant to proceed against him and the non-compliance of the said rule has vitiated all the proceedings initiated against the first respondent and therefore, the same are not sustainable under law and are liable to be set aside."

7.4. Again a Division Bench of this Court in P. Muthusamy v. Tamil Nadu Cements Corporation Ltd., 2006 (4) MLJ 504, wherein taking note of the service rules of Tamil nadu Cements Corporation Limited, it was held that retiring a person with liberty to continue disciplinary proceeding, after superannuation, is illegal and without jurisdiction, in the absence of such a provision in the service rules."

5.In view of the above, since the respondents have permitted the petitioner to retire from service without retaining him in service by invoking Rule 56 (1) (c) of the Fundamental Rules, after retirement there is no master and servant relationship between the petitioner and the respondents. Hence, the writ petition is allowed and the impugned orders are hereby quashed. No costs. Consequently, the connected miscellaneous petitions are also closed.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director of Veterinary Services,
Chennai – 600 006.

2.The Regional Joint Director of Animal Husbandry,
Tiruvallore Region,
Tiruvallore.

3.The Assistant Director of Animal Huabandry,
Poonamallee,
Tiruvallore District.

+1cc to Government Pleader SR.No.28867

sm:4.5.2018

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