

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1300 of 2016
and CMP No.16817 of 2016

1. The Secretary to Government,
Revenue Department,
Secretariat, Chennai 9.
 2. The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai 5.
 3. The District Collector,
Collectorate,
Erode District. Appellants/Respondents
- versus
- S.Rajakumar ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated 02.11.2012 passed in W.P.No.10747 of 2011.

Prayer in W.P.No.10747 of 2011:

Petition Under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the 3rd respondent vide proceedings No. Roc. No.60759/2007/A3 dt 1.12.10 and to quash the same and consequently direct the 3rd respondent to accord the petitioners promotion to the post of Tahsildar for the year 2007.

For appellants : Mr.M.Karthikeyan
Additional Govt. Pleader

For Respondent : Mr.S.Vijayakumar

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

This intra Court Appeal is at the instance of the respondents in WP No.10747 of 2011, challenging the order of the learned Single Judge dated 02.11.2012 made in the said Writ Petition. The respondent herein sought for issuance of Writ of Certiorarified Mandamus calling for the records relating to the charge memo in Roc No.60759/2007/A3 dated 01.12.2010 to quash the same and consequently grant promotion to the petitioner to the post of Tahsildar from the year 2007.

2. The respondent who was working as Deputy Tahsildar was charged for receiving a illegal gratification of Rs.2,000/- from one K.P.Muthukrishnan and he was also suspended. Criminal proceedings were launched in Spl. CC No.22 of 2009 before the Chief Judicial Magistrate, Erode. The Criminal proceedings in Spl. CC No.22 of 2009 ended in an acquittal on 18.04.2011. Pursuant to the charge memo, an Enquiry Officer was appointed and he filed his report on 31.03.2012.

3. The respondent based on the acquittal by the Criminal Court challenged the charge memo in the Writ Petition. The Writ Petition was taken up for final hearing on 02.11.2012 by the time the respondent was allowed to retire by the proceedings of the 3rd appellant, viz. the District Collector, Erode dated 18.07.2012. The learned Single Judge, who heard the Writ Petition, allowed the Writ Petition and quashed the charge memo on the sole ground that the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, cannot be continued after the respondent had been permitted to retire from service, reliance was placed by the learned Single Judge on the decisions of the Division Bench Judgment of this Court in 2011 (1) CTC 16 (Y.Raja v. The Joint Registrar of Co-operative Societies, Madurai) and 2011 (2) CWC 254 (The District Collector, Tiruchirappalli District v. N.Mohanraj).

4. Aggrieved the respondents in the Writ Petition had come forward with this Appeal.

5. We have heard Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the appellants and Mr.S.Vijayakumar, learned counsel appearing for the respondent.

6. It is not in dispute that the two Division Bench judgments which are relied upon by the learned Single Judge were subsequently over turned by the Full Bench of this Court in C.Mathesu v. The secretary to Government, Revenue Department, and others, reported in 2013 (3) CTC 369. While considering the effect of a delinquent official being allowed to retire during the pendency of the disciplinary proceedings, the Full Bench had observed as follows:

"28.(xvi). If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service."

It is not in dispute that Rule 9 (2) of the Tamil Nadu Pension Rules would apply to the respondent. Therefore, the sole ground on which the Writ Petition was allowed does not survive any more.

7. Mr.S.V.ijayakumar, learned counsel appearing for the respondent would however contend that the disciplinary proceedings cannot be pursued in view of the acquittal by the Criminal Court. It is settled law that the acquittal by the Criminal Court cannot prevent the appellants from proceeding with the disciplinary proceedings. In the case on hand, the disciplinary proceeding has been completed and enquiry report has also been submitted as early as on 31.03.2012. It is for the appellants to decide, as to whether, the disciplinary proceedings should be continued in the light of the acquittal by the Criminal Court. It is open to the respondent to place the judgment of the Criminal Court before the Disciplinary Authority and seek dropping of further action in the disciplinary proceedings. We are therefore of the view that the challenge to the judgment of the learned Single Judge quashing the charge memo has to succeed, in view of the dictum of the Full Bench C.Mathesu's case, referred to supra.

8. For the foregoing reasons, the intra Court Appeal is allowed the judgment of the learned Single Judge in WP No.10747 of 2011 is set aside, the Writ Petition will stand dismissed. We make it clear that it is open to the respondent to put forth the judgment of the acquittal passed by the learned Chief Judicial Magistrate, Erode, in Special CC No.22 of 2009 and seek dropping of all further proceedings. It is for the concerned Authority to consider the judgment of acquittal passed by the

Chief Judicial Magistrate, Erode, while taking a decision of continuance on the disciplinary proceedings or otherwise. There will no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

jv

TO

1. THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT,
SECRETARIAT, CHENNAI 9.
2. THE PRINCIPAL COMMISSIONER AND
COMMISSIONER OF REVENUE ADMINISTRATION,
CHEPAUK, CHENNAI 5.
3. THE DISTRICT COLLECTOR,
COLLECTORATE,
ERODE DISTRICT.

COPY TO

1. THE CHIEF JUDICIAL MAGISTRATE, ERODE.
2. THE SECTION OFFICER,
WRIT SECTION, HIGH COURT, MADRAS.

+1cc to the Government Pleader, S.R.No.39171

सत्यमेव जयते

W.A.No.1300 of 2016
and CMP No.16817 of 2016

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