

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.07.2018
CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.29328 of 2007
and
M.P.Nos.1 of 2007 & 1 of 2008

V.Jeyananthan

...Petitioner

Versus

The Principal Secretary to the Government
Home (Prison-I) Department
Fort St.George, Chennai-600 009.

...Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records relating to the impugned charge memo issued by the respondent in Letter No.119305/Prison-I/2005-9 dated 2.11.2006 and quash the same.

For Petitioner : Mr.P.Manoj Kumar

For Respondent : Mr.K.Ravikumar
Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the charge memo dated 02.11.2006 issued by the respondent in Letter No.119305/Prison-I/ 2005-9.

2.The case of the petitioner is that the petitioner was initially appointed as Warder Grade-II in the year 1976 and subsequently promoted as Warder Grade-I in the year 2003. At the time of filing the writ petition, he was working as Warder Grade-I in the Central Prison, Chennai. While such being the position, the Principal Secretary to the Government, Home (Prison-I) Department, Chennai-9 has issued the impugned charge memo dated 02.11.2006. Even though, it is stated in the charge memo that it is issued in succession of the earlier charge memo dated 29.07.1997, no such charge memo was issued to the petitioner earlier or at any point of time. The charge framed against the petitioner is that he failed to check the cell of the remand prisoner Arjunan @ Palli @ Puttukkan properly and failed to seize the plastic tape from his possession, who had committed suicide inside the prison on 03.10.1995. Immediately after the death of such person, Section 148 proceedings were

initiated and the same is pending.

3.Heard both sides.

4.The learned counsel for the petitioner would submit that though the date of the occurrence was in the year 1995, however on perusal of the impugned order, the disciplinary authority has issued the charge memo in the year 1997, and the disciplinary proceedings were not proceeded further. Without canceling the charge memo dated 29.07.1997 and without conducting an enquiry, issuing of another charge memo in the year 2006 is not a permissible one in view of the decision reported in 2006(1)CTC in the case of Parameswaran Vs. State of Tamil Nadu.

5.The learned counsel for the petitioner would further submit that the petitioner retired from service in the year 2012. Without retaining in service under Rule 56(i)(c) of the Fundamental Rules, when a person is allowed to retire, there is no master and servant relationship to continue with the disciplinary proceedings against the petitioner, which also is not an acceptable one, in view of the decision rendered in the case of State of Tamil Nadu Vs.R.Karuppiah, Inspector of Police, High Court, Madras reported in (2005) 3 CTC 4.

6.The undisputed facts are that the petitioner is Grade-II warder in the Central Prison. The petitioner was issued with a charge memo No.720/CA/97-2 dated 29.07.1997 by the then Deputy Inspector General of Prisons, Chennai Range, on the allegations, viz., the imputations of misconduct or misbehaviour, for which an enquiry was proposed to be held. The petitioner was allotted first para duty in C.P. Block of Central Prison, Chennai on the night of 03.10.1995. At about 23.55 hours, one remand prisoner No.78011 Arjunan @ Palli @ Puttukkan, S/o.Pandian confined in Central Prison, Chennai and lodged in Cell No.10 of the C.P.Block of the said prison committed suicide, by hanging himself in the ventilator of the cell using a plastic tape- a prohibited article. Since, the petitioner failed to check properly the cell of the said prisoner and also failed to seize the plastic tape from his possession, the charge memo was issued in the year 1997. However, after lapse of 10 years, another charge memo was issued on 02.11.2006 for which there is no proper explanation for the delay in issuing the charge memo.

7.In view of the delay, the charge memo is not sustainable one, since the same has been given without retaining him in service under Rule 56(i)(c) of Fundamental Rules, in view of the decision made in 2006 (1) CTC 476, wherein it has been held as follows:

"9.In this regard, it is useful to refer the latest judgment of the Supreme Court in the case of

P.V.Mahadevan V. M.D., Tamil Nadu Housing Board, 2005(4) CTC 403. In that case, in respect of certain commissions and omissions in 1990, which were pointed out in the Audit Report in 1994-95, a charge memo came to be issued in 2000. Pointing out that the reason for delay was unacceptable and finding that the disciplinary proceedings was prejudicial to public interest and the interest of employee and taking note of the fact that the employee reached superannuation, and also considering that the mental agony and suffering of the employee due to protracted disciplinary proceedings, was more than punishment to be awarded, the Apex Court quashed the charge memo and permitted the employee to draw retrial benefits. The following observations made in para 14 of the said judgment are relevant;

"14. Under these circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government Official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

10. In the case before us, the alleged failure to utilise the advance amount and failure to complete the work entrusted to him by utilising the funds had taken place prior to 1985. It is not a case of misappropriation or retention of Government money. On the other hand, the allegation relates to negligence in monitoring the projects and non-utilising the funds within the time prescribed. Taking note of the same

and in the light of unexplained reason for not pursuing the first and second charge memos, when admittedly, the petitioner submitted his explanations denying all the allegations and considering the length of time involved, viz., 20 years, we are of the view that the judgment of the Supreme Court referred to above P.V.Mahadevan V. M.D., Tamil Nadu Housing Board, 2005 (4) CTC 403, is directly on the point. Further, the petitioner has already suffered enough mental agony on account of the protracted disciplinary proceedings. These material aspects have not been considered by the Tribunal, which has committed an error in dismissing the original application filed by the petitioner."

8.The issue involved in this case is whether the respondent can proceed with the charge memo after 10 years from the date of occurrence and whether the charge memo can be continued even after the retirement without passing any order retaining him in service under Rule 56(i) (c) of the Fundamental Rules.

9.This issue is covered by a decision rendered by this Court in the case reported in 2006 (1) CTC 476 and in 2005 (2) L.L.N.847 (State of Tamil Nadu Vs.R.Karuppiah). The relevant portion of the judgment is extracted hereunder:

"16.No doubt, as contended by the Special Government Pleader, a plain reading of the above rule reveals that a Government servant in the superior service shall retire on the last day of the month in which he attains the age of fifty-eight years and he shall not be retained in service except with the sanction of the Government on public ground.

17.However, sub-rule I(c) to rule 56 of the Fundamental Rules reads as follows:

(c)Notwithstanding anything contained in Cl (a), a Government servant who is under suspension.

(i)on a charge of misconduct; or

(ii)against whom an enquiry into grave charges of criminal misconduct or allegations of criminal misconduct, is pending; or

(iii)against whom an enquiry into grave charges is contemplated or is pending; or

(iv)against whom a complaint of criminal offence is under investigation or trial.

Shall not be permitted by the appointing authority to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge of misconduct or criminal misconduct or the enquiry into allegations of criminal misconduct or the

enquiry into contemplated charges or disciplinary proceeding taken under rule 17(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or rule 3 (c) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, as the case may be, in respect of item(iv) above is concluded and a final order passed thereon by the competent authority or by any higher authority. (emphasis supplied)

Explanation: For the purpose of this clause, the expression 'Criminal misconduct' shall have the same meaning as in S.13 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1988).

Instruction under Rule 56(1)(c)- Whether a Government servant referred to in Cl.(c) is fully exonerated or not, he shall be considered to have been on extension of service for the period from the date of retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of retirement and the salary during that period shall not exceed the pension which has accrued to the Government servant on that date.

18.A combined reading of the above rules make it clear that when a Government servant, who is under suspension, against whom an enquiry into grave charge is pending, rule 56(1)(a) of the Fundamental Rules has no role to play, whereas, rule 56(1)(c) alone can alone come into play as the same is mandatory in the case of a Government servant, who is under suspension, to have a jurisdiction over him.

19.As already stated above, though the first respondent was placed under suspension on certain grave charges, he was allowed to retire from service on 31 May 1990 without passing any order retaining him in service as required under rule 56(1)(c) of the Fundamental Rules. Though it is mentioned in the affidavit filed by the petitioners that the first respondent was not allowed to retire on 31 May 1990, no material is available on record in regard thereto.

20.In such circumstances, we can come to a conclusion that without fulfilling the requirement of rule 56(1)(c) of the Fundamental Rules, which is mandatory, the initiation of disciplinary proceedings against the first respondent is not sustainable under

law and therefore, we are of the view that the very proceedings are liable to be set aside.

10.The above said decision squarely applies to the facts of this case. In view of the categorical findings and settled legal provision, the petitioner has to be allowed to retire from service without any order of retention and the impugned proceedings of the respondent dated 02.11.2006 is liable to set aside. Accordingly, the impugned order passed by the respondent in Letter No.119305/Prison-I/2005-9 dated 2.11.2006 is set aside. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rm

To

The Principal Secretary to the Government
Home (Prison-I) Department
Fort St.George, Chennai-600 009.

+lcc to Mr.P.Rajendran, Advocate, S.R.No. 51983
+lcc to the Government Pleader, S.R.No. 52424

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GN(05/10/2018)

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