

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2646 of 2018

S.Rajendran ... Appellant/Writ Petitioner

v.

1. The State of Tamil Nadu,
Rep. by the Chief Secretary,
Secretariat, St. George Fort,
Chennai - 600 009.

2. The State of Tamil Nadu,
Rep. by the Secretary,
Department of Home,
Secretariat, St. George Fort,
Chennai - 600 009.

3. The Director General of Police,
Kamarajar Road, Mylapore,
Chennai - 4.

4. Tmt.Bala Naga Devi, IPS.,
Inspector General of Police,
Tamilnadu Uniformed Services Recruitment Board,
(Formally DIG of Police Coimbatore Range),
PIE, Sengalvarayan Naicker Building,
807, Mount Road, Chennai - 2. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 11.12.2017 made in W.P.No.24531 of 2014.

WP No.24531/14 : Petition filed under Article 226 of the
Constitution of India praying this Hon'ble Court to issue a writ
of mandamus directing the respondents to pay the petitioner a
sum of Rs.10,00,000/- jointly and severally for their act of
abuse of power in issuing the Charge Memo dated 24.9.2011 and
thereby causing delay in payment of the retirement benefit

For Appellant : Mr.N.Manokaran

For Respondents: Mr.P.S.Sivashanmugasundaram
Special Govt. Pleader [for R1 to R3]

J U D G E M E N T

(Order of the Court was delivered by S.MANIKUMAR, J)

Instant writ appeal is directed against the order dated 11.12.2017 made in W.P.No.24531 of 2014, by which the writ Court, rejected the request of the appellant to grant compensation on account of dropping of the charges against the appellant.

2. Short facts leading to the filing of writ appeal are as follows:

Appellant was appointed as a Grade-II Police Constable on 15.02.1972. He was promoted to the post of Grade-I Police Constable on 23.08.1979. He was further promoted as Sub Inspector of Police on 16.02.1992 and finally to the post of Inspector of Police on 19.05.2010. A charge memo was issued to the appellant. On 30.09.2011, the appellant was allowed to retire from service, without prejudice to the disciplinary proceedings initiated against him under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules. Lateron, it was dropped, vide proceedings, dated 01.02.2013, of the Inspector General of Police, West Zone, Coimbatore. Since the charges framed against him was dropped, appellant filed W.P.No.24531 of 2014, seeking for a direction to the respondents to pay a sum of Rs.10 Lakhs, jointly and severally, for their act of abuse of power, in issuing a charge memo dated 24.09.2011, and thereby causing delay, in payment of retirement benefits to him.

3. After hearing the learned counsel for both parties, a learned Single Judge, dismissed W.P.No.24531 of 2014 vide order dated 11.12.2017. Relevant portion of the said order is extracted hereunder.

"4. This Court is of the opinion that on account of certain allegations, the Disciplinary Authority framed charges against the writ petitioner. A mere dropping of the charges on account of certain factual aspects, the writ petitioner cannot file this writ petition, seeking compensation.

5. Under these circumstances, this Court is not inclined to entertain the writ petition in view of the fact that the writ claiming compensation against the dropping of the charges cannot be entertained. However, a public servant is accountable and he is

bound by the Service Regulations and the Rules. Whenever, the Disciplinary Authority or the Appointing Authority found that certain allegations are made out, then they are at liberty to frame the charges under the Discipline and Appeal Rules. If the charges are dropped or the disciplinary proceedings ended with an order of exoneration, this will not confer any right on the delinquent officials to file a writ seeking compensation. The only remedy available is that he can seek for all service benefits as per the rules, as if no charge memo or disciplinary proceedings were initiated against him.

6. In respect of grant of compensation, it involves trial and the delinquent officials, if at all raised any personal motive or mala fide intention on the part of the Disciplinary Authority, it is left open to approach the appropriate Civil Court for compensation for establishing that the charge memo was framed on malice, motive or on mala fide intention. Such an adjudication requires a full-fledged trial by adducing evidences, documents and other records. The said exercise cannot be done under Article 226 of the Constitution of India.

7. This being the factum to be considered in this writ petition, this Court is not inclined to entertained this writ petition, seeking compensation on account of dropping of the charges against the writ petitioner.

8. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. "

4. Aggrieved by the abovesaid order, appellant has filed the instant writ appeal on the following grounds,

(a) that a false case was registered in Crime No.10 of 2004 on the file of the District Crime Branch. After trial, it ended in acquittal in C.C.No.60 of 2006 on the file of the learned Magistrate No.3, Erode, by judgment dated 06.05.2011. Knowing the order of acquittal, the petitioner was penalized on the date of his retirement, by issuing a charge memo.

b) charge memo, dated 24.09.2011 issued just before his retirement on 30.09.2011, was quashed by this Hon'ble Court in WP No.23859 of 2011 dated 02.07.2012. Thereafter, the Superintendent of Police, Erode passed an order, dated 11.02.2013, to drop further action on the charge memo and unfortunately, after 40 years of service, was victimized, at the hands of the 4th respondent.

c) that in view of the vindictive action taken by the 4th respondent, reputation of the appellant was injured. His right to life with dignity, has been deprived of. The 4th respondent is solely responsible for taking disciplinary action against the appellant with a malafide intention.

d) the appellant is entitled to get compensation, for the malafide action taken by the respondents, because the appellant was subjected to harassment, humiliation and mental agony.

e) writ petition was dismissed, even though none of the respondents have chosen to file their counter affidavit. Contention of the appellant, his allegations against the respondents and his claim in the writ petition have not been refuted, by the respondents. Therefore, it has to be treated as deemed admission.

f) that the writ Court has enormous power to award compensation under Article 226 of the Constitution of India, for infringement of his fundamental right. He cannot be driven to undergo the ordeal of civil trial for years together.

g) in the absence of any objection, in the form of any counter affidavit filed, at the instance of the respondents, there is no need for the appellant to approach the civil court to prove malice, motive or malafide intention, on the part of the respondents.

h) an alternative remedy available before the civil Court is not an adequate and efficacious remedy. The appellant being a senior citizen has been made to suffer at the hands of the respondents. Since there was no denial or rebuttal on the side of the respondents, the appellant is entitled to get the relief as prayed for.

i) the writ petition was filed on 09.09.2014 and it was pending for more than 3 years 3 months, while so, it is inequitable to dismiss the writ petition as not maintainable, particularly, in the absence of any dispute or denial of the claim prayed for."

5. Heard Mr.N.Manokaran, learned counsel appearing for the appellant on the grounds raised. In support of his contention, he has also relied on a decision in Raghuvansh Dewanchand Bhasin v. State of Maharashtra reported in 2012 (9) SCC 791.

6. From the material on record, it could be deduced that disciplinary proceedings initiated by charge memo, dated 24.09.2011, has been quashed by this Court in W.P.No.23859 of 2011, dated 02.07.2012, on the grounds that departmental proceedings have been initiated after the appellant had attained superannuation. At this juncture, it is relevant to extract

paragraph 10 of the judgment in W.P.No.23859 of 2011, dated 02.07.2012,

"10. However, the learned counsel appearing on behalf of the respondents has not been in a position to show as to how the departmental proceedings can be initiated against the petitioner, based on the charge memo, dated 24.09.2011, after he had been allowed to retire from service, on 30.09.2011. Further, he has not been in a position to show that there are special provisions existing to initiate the departmental disciplinary proceedings against the petitioner, after he had been allowed to retire from service. Further, no monetary loss has been shown to have been caused, by the petitioner, to the respondent department. No doubt, the departmental disciplinary proceedings could have been initiated against the petitioner, by following the procedures established by law, even when the criminal proceedings are pending before the Criminal Court concerned. However, it is not open to the respondents to initiate the departmental disciplinary proceedings, against the petitioner, after he had been allowed to retire from service, on his attaining the age of superannuation, unless special rules are in existence, for initiating such proceedings. Even otherwise, when no monetary loss has been alleged to have been caused, by the petitioner, to the respondent department, such proceedings may not be appropriate."

7. True that the appellant has been acquitted in a criminal case, but that would not preclude the department from taking any disciplinary action. Reference can be made to a decision in *Ajay Kumar Nag v. G.M.(PJ) Indian Oil Corporation Ltd.*, reported in 2005 (7) SCC 764, wherein, the Supreme Court has explained the relative scope of departmental enquiry and criminal trial, the objectives, procedure and proof which are required in the proceedings before the Court of and domestic enquiry. At Paragraph 11, the Hon'ble Supreme Court held as follows:

"11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to

deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside."

8. From the order made in W.P.No.23859 of 2011, dated 02.07.2012, it could also be seen that the writ Court has not quashed the disciplinary proceedings, on the ground of any malafide action, taken by the 4th respondent. One of the grounds raised in the memorandum of grounds in the present writ appeal is that when the averments made by the petitioner in the supporting affidavit to the writ petition are not refuted by any counter affidavit, the same ought to have been accepted by the writ Court. We are not inclined to accept this proposition.

9. We are of the view, whatever is averred in the supporting affidavit to a writ petition, does not stand the test of proof, though not refuted by the respondent, but the person, who makes the averments or allegations, has to prove the same, in the manner known to law. Writ Court should not ordinarily come to a conclusion that merely because the facts are uncontroverted, the same are proved, as proof of allegations or averments made in the supporting affidavit. For arriving at a conclusion, averments have to be substantiated. Court should consider the averments and documents annexed, with reference to the remedy available under the law, whether private or public. In the case on hand, mala fide is attributed against the respondents, for initiating departmental enquiry.

10. The petitioner has alleged that his fundamental right has been infringed, by the action of the fourth respondent, by issuing a charge memo, which was later on, dropped. Let us consider, what is a fundamental right, guaranteed under the Constitution of India, vis-a-vis the right of the employer, to initiate disciplinary proceedings against a government servant, although on the last date of retirement. Do the disciplinary rules, mandate that no disciplinary action can be taken against a government servant, on the last date of retirement? Giving our anxious consideration to the rules in force, we are of the view that rules enable the appointing/disciplinary authority, to frame charges, even on the date of attaining superannuation, and not to allow the government servant, to retire from service. We deem it fit to extract Rule 56 of the Fundamental Rules, which reads as hereunder:

"56. (1) Retirement on Superannuation:-

(a) Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be retained after the age of sixty years except in very special circumstances:

Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years :

Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years."

11. In *Raghuvansh Dewanchand Bhasin v. State of Maharashtra* reported in 2012 (9) SCC 791, relied on by the appellant, a police officer arrested the appellant therein, when the NBW was cancelled. In such circumstances, the Hon'ble Supreme Court, in the matters involving infringement or deprivation of fundamental rights or abuse of process of law, harassment, at Paragraphs 17 to 22, held as follows:

"17. It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong

done to him but also to serve as a deterrent for the wrong doer.

18. In Rudul Sah Vs. State of Bihar & Anr. [(1983) 4 SCC 141], Y.V. Chandrachud, CJ, speaking for a Bench of three learned Judges of this Court had observed thus:

"One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt."

17. In Bhim Singh, MLA Vs. State of J & K & Ors. [(1985) 4 SCC 677], holding illegal detention in police custody of the petitioner Bhim Singh to be violative of his rights under Articles 21 and 22(2) of the Constitution, this Court, in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation to the petitioner. Relying on Rudal Sah v. State of Bihar [(1983) 4 SCC 141], O. Chinnappa Reddy, J. echoed the following views:

"When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation".

18. In Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & Ors. [(1993) 2 SCC 746], clearing the doubt and indicating the precise nature of the constitutional remedy under Articles 32 and 226 of the Constitution to award compensation for contravention of fundamental rights, which had arisen because of the observation that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial" in Rudul Sah (supra), J.S. Verma, J. (as His Lordship then was) stated as under:

"It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by

resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

21. In the same decision, in his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), explaining the scope and purpose of public law proceedings and private law proceedings stated as under:

"The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally

understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

22. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact- situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation."

12. The abovesaid judgment is inapplicable to the case on hand, because while initiating disciplinary action against a government servant, even taking it for granted, on the last date of his retirement, cannot be said to be infringement of a fundamental right, as envisaged in Article 21 of the Constitution of India.

13. In *Moti Ram Deka v. N.E. Frontier Railway* reported in AIR 1964 SC 600, the Hon'ble Supreme Court held that an appointment to a public post is always subject to the pleasure of the President, the exercise of such pleasure being restricted in the manner provided by the Constitution. A person appointed substantively to a post does not acquire a right to hold the post till he dies. He acquires merely a right to hold the post subject to the rules. If employment is validly terminated, the right to hold the post is determined even apart from the exercise of the pleasure of the President or the Governor. public servant cannot claim to remain in office so long as he is of good behavior. Such a concept of the tenure of a public servant's post is inconsistent with Articles 309 and 310 of the Constitution.

14. Merely because the appellant was served with a charge memo, on the verge of his retirement, it cannot be contended that his fundamental right has been affected. Question, as to whether, the 4th respondent, actuated with malice has initiated disciplinary action, against the appellant, with an intention to cause loss of reputation to the appellant, warranting payment of compensation, is a question of fact and therefore, as rightly held by the writ Court, the same has to be proved only by leading evidence, before the civil Court. At this juncture, it is also useful to refer the meaning of the word, "Compensation",

(i) The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a court orders to be done or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss or be made whole in respect of his injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received; recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused by a breach of contract or duty; remuneration or wages given to an employee or officer."

(ii) In State of Gujarat v. Shantdal Mangaldas reported in (1969) 1 SCC 509, the Hon'ble Supreme Court has defined the word, "compensation", as follows:

"In ordinary parlance the expression compensation means any thing given to make things equivalent; a thing given to or to make amends for loss, recompense, remuneration or pay; it need not therefore necessarily be in terms of money."

(iii) In Divisional Controller, KSRTC v. Mahadeva Shetty reported in 2003 (7) SCC 197, the Hon'ble Supreme observed as follows:

"The term 'compensation' as stated in the Oxford Dictionary, signifies that which is given in

recompense, an equivalent rendered. 'Damages' on the other hand constitute the sum of money claimed or adjudged to be paid in compensation for loss or injury sustained, the value estimated in money, of something lost or withheld. The term 'compensation' etymologically suggests the image of balancing one thing against another; its primary signification is equivalence, and the secondary and more common meaning is something given or obtained as an equivalent.

.....

'Compensation' means anything given to make things equivalent, a thing given or to make amends for loss, recompense, remuneration or pay: it need not, therefore, necessarily be in terms of money, because law may specify principles on which and manner in which compensation is to be determined and given. Compensation is an act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss; or be made whole in respect of his injury; something given or obtained as equivalent; rendering of equivalent in value or amount; an equivalent given for property taken or for an injury done to another; a recompense in value; a recompense given for a thing received; recompense for whole injury suffered; remuneration or satisfaction for injury or damage of every description. The expression 'compensation' is not ordinarily used as an equivalent to 'damages', although compensation may often have to be measured by the same rule as damages in an action for a breach. The term 'compensation' as pointed out in the Oxford Dictionary signifies that which is given in recompense, an equivalent rendered; 'damages' on the other hand constitute the sum of money, claimed or adjudged to be paid in compensation for loss or injury sustained. 'Compensation' is a return for a loss or damages sustained. Justice requires that it should be equal in value, although not alike in kind."

(iv) In Ghaziabad Development Authority v. Balbir Singh reported in 2004 (5) SCC 65, the Hon'ble Supreme Court said that,

"The word 'compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical mental or even emotional suffering, insult or injury or loss."

15. In view of the discussion and decisions, we do not find any ground to interfere with the order impugned. Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

skm

To

1. The Chief Secretary,
State of Tamil Nadu,
Secretariat, St. George Fort,
Chennai - 600 009.

2. The Secretary,
The State of Tamil Nadu,
Department of Home,
Secretariat, St. George Fort,
Chennai - 600 009.

3. The Director General of Police,
Kamarajar Road, Mylapore,
Chennai - 4.

+1cc to Mr.N.Manokaran, Advocate SR.No.83299

+1cc to Government Pleader SR.No.83724

W.A.No.2646 of 2018

SV(CO)
GMY(08/07/2019)

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