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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD) No.14622 of 2014

and

MP (MD) Nos.1 & 2 of 2014

P.Rasalin

... Petitioner

Vs.

- 1.The Superintendent of Police,
O/o. Superintendent of Police,
Tirunelveli District.
- 2.The Deputy Superintendent of Police,
Nanguneri Sub-Division,
Nanguneri,
Tirunelveli District.
- 3.The Deputy Superintendent of Police,
Ambasamudram,
Tirunelveli District.

... Respondents

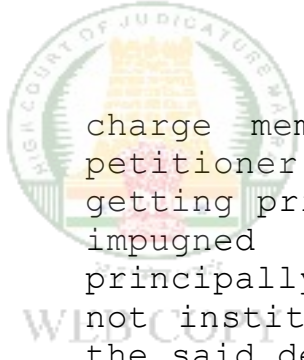
Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the records relating to the proceedings in Nil dated Tha Pa. No.132 of 2013 and proceedings in C.No.P1/Pr 132/2013 dated 03.12.2013 on the file of the Superintendent of Police, Tirunelveli, the first respondent herein and quash the same and consequently direct the respondents to drop the proceedings accepting the explanation offered by the petitioner in view of Rule 9(2) (b) (i) of T.N Pension Rules 1978.

For Petitioner : Mr.S.Sivathilakar

For Respondents : Mr.S.Kumar,
Additional Govt.Pleader

O R D E R

The writ petitioner retired as a Special Sub Inspector of Police in the Police department on 28.02.2010. In this writ petition, the petitioner questions the validity of the impugned <https://hcservices.courts.gov.in/hcservices/> and the consequential proceeding dated 03.12.2013 whereby an Enquiry Officer was appointed to enquire into the



charge memo. The substance of the charge memo is that the petitioner herein purchased a property on 18.11.2009 without getting prior permission from the department. The validity of the impugned charge memo is questioned by the writ petitioner principally on the ground that the departmental proceedings were not instituted within four years from the date of commission of the said delinquency.

2.The respondents have filed their counter affidavit denying the said contention of the writ petitioner. In Paragraph No.5 of the counter affidavit, it has been averred that the charge memo was pasted on the writ petitioner's residence on 12.11.2013 in the presence of the local Village Administrative Officer and that therefore, the said contention is not sustainable.

3.The power and authority of the disciplinary authority to initiate departmental proceedings even against a retired employee is not in doubt. But, two conditions will have to be fulfilled. Firstly, a departmental proceedings shall not be instituted except with the sanction of the Government. Secondly, it shall not be in respect of any event which took place more than four years before such an institution. The ambit and scope of Rule 9 of the Tamil Nadu Pension rules was considered in detail by a Full Bench of this Court in the decision reported in 2013 (3) CTC 369 (C.Mathesu Vs. The Secretary to Government, Revenue Department, Chennai-9 and others).

4.Though the writ petitioner had pleaded in the affidavit filed in support of this writ petition that there was no prior sanction obtained, the learned counsel for the writ petitioner fairly submitted that he is not pressing the said ground. It is seen that permission was actually accorded for institution of the impugned disciplinary proceedings. He would however press the point that the charge memo was not issued within the four years from the date of delinquency. The allegation against the writ petitioner is that the writ petitioner purchased 10 cents of land for a sum of Rs.1.00 lakh without obtaining prior permission from the department. Thus, the event in question took place on 18.11.2009. Therefore, the authority could have initiated departmental proceedings on or before 17.11.2013 and not thereafter.

5.In the present case, the categorical claim made by the writ petitioner is that such an institution did not take place before the said date. The charge memo issued by the disciplinary authority is enclosed at Page 15 to 20 of the typed set of papers. Though the month and year namely November 2013 is mentioned, the date of issuance of the charge memo is not found. Even though, the Superintendent of Police, Tirunelveli District has signed in as many as 5 places in the said charge memo, the signature does



not bear any date. When however a public authority affixes his signature, if the date is also mentioned along with the signature, no further proof is required in the absence of rebuttal evidence that there is back dating. This is because, official acts are presumed have been done regularly.

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6. In the present case, because of absence of the date along with the signature, I am unable to invoke the said presumptive rule in favour of the respondent. Following the issuance of the charge memo, the Enquiry Officer was appointed. This proceeding is dated 03.12.2013. In the said order also the date of issuance of charge memo is not mentioned. Thus, there is no internal evidence available in the impugned proceeding for holding that the departmental proceedings were instituted within four years from the date of delinquency.

7. All that the respondent would plead in the counter affidavit is that the charge memo was pasted on the writ petitioner's residence on 12.11.2013 in the presence of the local Village Administrative Officer. The respondents were aware that the writ petitioner was abroad even on 12.11.2013. If they had dispatched the charge memo through the registered post, that would have been a clinching proof. This mode was also not adopted.

8. It is true that the writ petitioner has not filed a rejoinder controverting the claim made in Paragraph No.5 of the counter affidavit that the charge memo was pasted on his residence on 12.11.2013. But, this omission to file a rejoinder will not go to the root of the matter. The writ petitioner had made a specific allegation that the requirement laid down in Rule 9(2) b (ii) of the Tamil Nadu Pension Rules was not complied with. Therefore, the onus is on the respondents to place convincing material before this Court that there was compliance of the said statutory requirement. Since the respondents have not placed any material before me as regards the compliance of the said statutory requirement, I am of the view that the writ petitioner is entitled to succeed.

9. I am also mindful of the nature of the allegation made against the writ petitioner. The writ petitioner retired as Special Sub Inspector. The learned counsel appearing for the writ petitioner would point out that the writ petitioner's wife is employed as a Teacher. The sale consideration is for a sum of Rs.1.00 lakh. The extent of property purchased is only 10 cents and this is virtually on the eve of retirement of the writ petitioner. The only allegation is that prior permission of the department was not obtained before effecting such a purchase. No moral turpitude is involved. Taking into account all these circumstances, I have no hesitation to set aside the proceedings impugned in this writ petition. They are accordingly set aside.



10. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police, O/o. Superintendent of Police, Tirunelveli District.
2. The Deputy Superintendent of Police, Nanguneri Sub-Division, Nanguneri, Tirunelveli District.
3. The Deputy Superintendent of Police, Ambasamudram, Tirunelveli District.

+1CC to Mr. S. Siva Thilagar, Advocate, SR.No. 40020

+1CC to the Special Government Pleader SR.No. 40128

W.P (MD) No. 14622 of 2014
and

MP (MD) Nos. 1 & 2 of 2014
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