IN HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.08.2019
Pronounced On	05.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14481 of 2019
and
W.M.P.No.14495 of 2019

M.Mary Kala Jayanthi ...Petitioner

-Vs-

1. The Chief Metropolitan Magistrate,
   Egmore at Allikulam Complex,
   Chennai - 600 003.

2. The Government of TamilNadu,
   rep. by its Hon'ble Secretary,
   Law Department, Fort St. Geroge,
   Chennai - 600 009.

3. The Registrar General,
   Madras High Court,
   Chennai - 600 104. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari or any other appropriate writ calling for the records culminating in the impugned official memorandum bearing reference number Dis.No.1102/2018 Con dated 15.04.2019 issued by Chief Metropolitan Magistrate and quash the same.

For Petitioner : Mr.V.Prakash, Senior Counsel
for M/s.RRN Legal

For R1 & R3 : Mr.V.Vijaya Shankar

For R2 : Mr.V.Shanmuga Sundar
Special Government Pleader

O R D E R

C.SARAVANAN,J.

The petitioner joined service in the year 1981 as a steno typist in the Metropolitan Magistrates Court, Egmore, Chennai. The petitioner has attained the age of superannuation on 30.4.2016 and was therefore allowed to retire.

2.Before her retirement, an enquiry in respect of a complaint against the petitioner was pending. However, the said complaint did not materialize into a full fledged departmental proceeding in form of a charge sheet against the petitioner either while in service or after her retirement.

3.Earlier, a complaint was lodged by one Thiru.Chinnaraju on 18.12.2013 with the Registrar General of this Court on 19.12.2013 regarding missing documents in C.C.No.19494-96 of 2005 which were transferred to the Fast Track Court during November 2012.

4.Three bundles dispatched by the petitioner to the Fast Track Court on 21.11.2012 were returned back to the XIV Metropolitan Magistrates Court by the Fast Track Court on 28.11.2012 with certain remarks.

5.The three case bundles were re- transferred back to the Fast Track Court on 09.07.2014 after duly indexing C.C.No.19494 of 2005 along with a note stating that the missing documents in the other two courts bundles were not traceable.

6.Though explanations were called for from the petitioner, the respondents did not speed up the proceeding. Meanwhile, the petitioner attained the age of superannuation and retired on 30.04.2016.

7.After her superannuation, the petitioner received a memorandum dated 20.06.2018 bearing reference DIS.No.1102/2018.Con from the 1st respondent stating that the explanation given by the petitioner was not satisfactory. The petitioner therefore sent an explanation to the first respondent on 18.07.2018.

8.Thereafter, the petitioner received an Office Memorandum in Dis.No.1102/2018 CON dated 31.10.2018 which called for an explanation from the petitioner on or before 19.11.2018 to proceed further in accordance with rule 9(1)(a) of the Tamil Nadu Pension Rules, 1978 to which the petitioner also replied on 16.11.2018.

9.In her reply, the petitioner stated that she was working as an interpreter before the XIV Metropolitan Magistrates Court, Egmore, Chennai from 10.05.2012 to 04.05.2013 and that post of both Bench Clerks and that an interpreter were vacant from 2011 and therefore, the XIV Metropolitan Magistrates Court, Egmore, Chennai was assisted only by FIR clerk And Record Clerk till then.

10.According to the petitioner, when she joined the office of the XV Metropolitan Magistrates Court, Egmore, Chennai on 10.05.2012 she found that the records were left unattended and due to vacancy.

11.According to the petitioner apart from handling the court were, she prepared the list based on available records for being transferred to the Fast Track Court. According to the petitioner, she personally suffered in updating the court records left unattended due to vacancy before her joining the XIV Metropolitan Magistrates Court, Egmore, Chennai.

12.The petitioner further stated that though the counsel for the complainant had complained about the missing documents from 2011, which was prior to her joining the said court, later an oral complaint was made by the said counsel for the complainant against the petitioner as if she was responsible for the missing documents.

13.After filing the above reply, the petitioner decided to challenge Office Memorandum dated 31.10.2018 bearing reference Dis.No.1102/2018 CON in W.P.No.30090 of 2018. The said writ petition was disposed by an order dated 24.01.2019. In the said order, the petitioner was directed to approach the 1st respondent. The 1st respondent was directed to pass a speaking order to the petitioner's reply dated the 16.11.2018 both in qualitative and quantitative terms while giving liberty to the petitioner to approach the competent authority in case the petitioner is aggrieved by the decision of the 1st respondent.

14.The 1st respondent has now issued the impugned Official Memorandum in DIS.No.1102/2018.Con dated 15.04.2019 and has held that the petitioner was not entitled to exemption under Rule 9 (2)(b)(ii) of the Tamil Nadu Pension Rules, 1978.

15.The petitioner has impugned the Official Memorandum in DIS.No.1102/2018.Con dated 15.04.2019 on the ground that invocation of Rule 9(2)(b) of the Tamil Nadu Pension Rules, 1978 was not available inasmuch as neither a sanction of the government has been obtained nor the proposed action was within the period of limitation prescribed in Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978.

16.The 1st respondent has filed a counter stating that the writ petition is not maintainable and in any event as there is an alternate remedy by way of appeal. The impugned order is justified as the action has been taken within the period of limitation.

17.On merits, The 1st respondent has submitted that the petitioner was responsible for the missing documents in two of the case bundles and therefore cannot plead limitation under the aforesaid provisions of the Pension Rules.

18.It is submitted that the petitioner did not discharge duty her property as a custodian of the court documents and was therefore liable for being dealt under the aforesaid provisions of the Pension Rules.

19.Heard Mr.V.Prakash, learned Senior Counsel for the petitioner, Mr.V.Vijaya Shankar, learned counsel for the 1st & 3rd respondents and Mr.V.Shanmuga Sundar, Special Government Pleader for 2nd respondent.

20.The learned Senior Counsel submits that the invocation of the aforesaid provisions of the Tamil Nadu Pension Rules, 1978 was barred by law inasmuch as the event took place in November-December 2012 and the complaint was given on 18.12.2013 and received by the Registrar of this Court. However, proceedings have been initiated only in the year 2018 and therefore the proceedings were without jurisdiction.

21.Per contra, the learned counsels for the respondents submit that the impugned order is well reasoned and requires no interference in the present writ petition. It is further submitted that the petitioner cannot claim exemption from the operation of Rule 9(2) (b)(ii) of the Pension Rules, 1978 and therefore prayed for dismissal of the writ petition.

22.We have considered the arguments advanced. Short point that arises for consideration is whether the petitioner is justified in challenging the impugned Memorandum dated 15.04.2019 bearing reference Dis.No.1102/2018 Con passed the 1st respondent in the facts of the present case.

23.In the Memorandum dated 31.10.2018 Dis.No.1102/2018 Con impugned in W.P.No.3009 of 2019, the respondents stated that the explanation of the petitioner was not satisfactory and therefore the petitioner was liable to be proceeded under Rule 9 (1)(a) of the Tamil Nadu Pension Rules, 1978.

24.However, in the impugned order, the 1st respondent has justified invocation of Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978. It has been concluded that the proceeding has been instituted in respect of an event which took place within 4 years and therefore the petitioner cannot claim exemption under Rule 9(2)(b)(ii) of the Tamil Nadu Pension Rules, 1978.

25.The question for determination in the present writ petition is whether "departmental proceeding" has been initiated or could be initiated against the petitioner in the facts of the present case.

26.To dispose the present writ petition, it will be worthwhile to reproduce Rule 9 of the Tamil Nadu Pension Rules, 1978. Rule 9 of the Tamil Nadu Pension Rules, 1978 reads as under:-.

> Rule 9. Right of Government to withhold or withdraw pension,-
>
> (1) (a) The Government reserve to themselves the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, if, in any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any Co-operative Society comprising of Government Servants and registered under the Tamil Nadu Co-operative Societies Act,1961;
>
> Provided that before passing an order under this sub-rule withholding or withdrawing the pension of a person the Tamil Nadu Public Service Commission shall be consulted if the pensioner does not agree to such withholding or withdrawal of the pension. The Tamil Nadu Public Service Commission need not be consulted in cases where the pensioner agrees to withholding or withdrawal of the pension, but a copy of the order passed by the Government in such cases shall be sent to the said Commission;
>
> Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in sub-rule (5) of Rule 43.
>
> (b) In case there is any pecuniary loss caused to the Government or to any local body to any co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act,1961; and if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment

after retirement, the Government shall also have the right of ordering recovery from the pension or Death-cum-Gratuity of the whole or part or part of the pecuniary loss caused by such grave misconduct or negligence;

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed.

Explanation,- "Judicial Proceedings" shall include proceeding before any Tribunal constituted by an Act of Parliament or the State Legislature or by a Rule.

(2) (a) The departmental proceeding referred to in sub-rule (1), if instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service; Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report regarding its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment –

i. shall not be instituted save with the sanction of the Government :

ii. shall not be clarify in respect of any event which took place more than four years before such institution : and

iii. shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Omitted

(4) In the case of a Government servant who has

retired on attaining the age of superannuation or otherwise and against whom any departmental proceedings are continued under sub-rule (2), or any enquiry is being conducted by Director of Vigilance and Anti-Corruption a provisional pension as provided in rule 60 and rule 69, as the case may be, shall be sanctioned.

(5) Where the Government decide not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule –

(a) departmental proceedings shall be deemed to include the enquiry pending before the Tribunal for Disciplinary Proceedings,

(b) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioned or if the Government Servent has been placed under suspension from an earlier date, on such date : and

(c) judicial proceedings shall be deemed to be instituted –

i. in the case of criminal proceedings, on the date of the complaint or report of a police officer, of which the Magistrate take cognizance, is made, and

ii. in the case of civil proceedings, on the date on which plaint is presented in the court.

Note (1) – As soon as proceedings, of the nature referred to in the above rule are instituted, the authority which institutes such proceedings should without delay, intimate the fact to the Accountant-General concerned.

Note (2) –If an officer against, whom an enquiry is held is unable to satisfactorily account for possession by himself or by any other person on his behalf, e.g., dependants, or pecuniary

> resources or property disproportionate to his known sources of income, a charge of corruption should be presumed to have been proved against him and the case will come within the purview of this rule. The position is that the term "grave misconduct" used in this rule is wide enough to include corrupt practices. In cases where the charge of corruption is proved only after pension has been sanctioned, and it is not therefore possible to invoke the provisions of rule 6, action to withhold or withdraw pension may be taken under this rule. In this connection the provisions of Rule 9(2) is to be noted carefully. In accordance with these provisions the property or pecuniary resources in respect of which the departmental proceedings are instituted under rule 9 should have been acquired by the person concerned or any other person on his behalf any time within the period of four years before the institution of such proceedings if not instituted while the officer was on duty either before retirement or during re-employment.

27.Under Rule 9(1)(a) of the Tamil Nadu Pension Rules, 1978, the Government has a right to withhold/withdraw a pension whether permanently or for a specified period if in any departmental or judicial proceeding, an officer is found guilty of grave misconduct or negligence during the period of his service.

28.Such withholding or withdrawing of the pension may be effected irrespective of the fact whether or not there was any pecuniary loss was caused to the Government or to any local body or to any Co-operative Society , comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961 on account of such misconduct or such negligence.

29.However, before passing an order under Rule 9(1)(a), the Tamil Nadu Public Service Commission has been consulted if the pensioner does not agree to such withholding or withdrawal of the pension.

30.Since the impugned proceeding has justified the invocation Rule 9(2)(b) of the Tamil Nadu Pension Rules,1978 we shall examine the case from the perspective of Rule 9(2)(b) of the aforesaid Rules.

31.Rule 9(2)(b) contemplates initiation of proceeding after a Government servant has retired subject to conditions laid therein. Such proceedings can neither be initiated without leave of the Government nor initiated in respect of for any event which took place more than four years before the institution of such departmental proceedings.

32.As Per Rule 9(4) of the Tamil Nadu Pension Rules, 1978 only in case of a Government Servant who has retired on attaining the age of superannuation or otherwise and against whom any "departmental proceedings" are continued under sub-rule (2) or any enquiry is being conducted by the Director of Vigilance and Anti-Corruption, a provisional pension as provided in rule 60 or 69 as the case may be sanctioned. This is not the case here.

33.In the present case, event took place on 18.11.2012 when the court bundles were sent by the petitioner to the Fast Track Court and were later returned on 21.11.2012. Thereafter, a complaint was given by the counsel for the complainant in C.C.No.19494-19496 of 2005 on 18.12.2013 regarding the missing deposition of PW1 in C.C.No.19495 of 2005 and missing cheque Viz. Ex P1 in C.C No.19496 of 2005.

34.If departmental proceedings were not initiated before the an employee retired, it cannot be instituted later without a prior sanction of the government. In any event, such proceeding can never be instituted after a lapse of four years of event.

35.Hon'ble Supreme Court in UCO Bank and another vs Rajinder Lal Capoor, 2007 (6)SCC 694 while dealing with Rules 13 of the Tamil Nadu Civil Supplies Corporation Regulations as stood prior it being amended in 2006 held as follows:-

> "21.The aforementioned Regulation, however, could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an Officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder i.e. continue "as if he was in service. Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a charge sheet is issued [Union of India Vs. K.V.Jankiraman ((1991) 4 SCC 109)]. This aspect of the matter has also been considered by this Court recently in Coal India

> Ltd. Vs. Saroj Kumar Mishra [(2007) 9 SCC 625], wherein it was held that date of application of mind on the allegations levelled against an Officer by the competent authority as a result whereof a charge sheet is issued would be the date on which the disciplinary proceedings are said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations.

36.The Court further held as follows:

> "23.An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law."

37.The decision of the Hon'ble Supreme Court rendered in UCO Bank and another vs Rajinder Lal Capoor [2008 (5) SCC 257] was pursuant to review of an earlier decision of the Hon'ble Supreme Court in UCO Bank and another vs Rajinder Lal Capoor [2007 (6) SCC 694] .

38.The Hon'ble Supreme Court in UCO Bank and another Vs. Rajinder Lal Capoor 2008 (5) SCC 257 had observed as follows:

> "29. In terms of the 1976 Regulations drawing up of a charge sheet by the disciplinary authority is the first step for initiation of a disciplinary proceeding. Unless and until, therefore, a charge sheet is drawn up, a disciplinary proceeding for the purpose of the 1976 Regulations cannot be initiated. Drawing up of a charge sheet, therefore, is the condition precedent for initiation of a disciplinary proceeding. We have noticed in Para-15 of our judgment that ordinarily no "disciplinary proceedings" can be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceeding despite the officers reaching the age of superannuation must be a statutory rule. A fortiori it must be a rule applicable to disciplinary proceedings.

> 30.There cannot be any doubt whatsoever that the employer may take resort to a preliminary inquiry, but it will bear repetition to state that the same has a limited role to play. But, in absence of the statutory rules operating in the field, resorting to a preliminary enquiry would not by itself be enough to hold that a departmental proceeding has been initiated."

39.It is evident that a "disciplinary proceeding" cannot be said to have been initiated until a charge sheet has been framed against a delinquent employee and a mere show cause notice or a preliminary enquiry is not sufficient to conclude that a disciplinary proceeding has been initiated.

40.The expression "departmental proceeding" has been defined in Sub Rule (6) to Rule 9 as extracted above. "Departmental proceedings" shall deem to include an enquiry pending before the Tribunal for Disciplinary Proceedings. "Departmental Proceedings" deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner or if the Government Servant has been placed under suspension from an earlier date, on such date.

41.As mentioned above, till date neither charges have been framed against the petitioner nor an enquiry is pending before the Tribunal for Disciplinary Proceedings. There have been mere exchange of communication and only preliminary enquiry has been conducted so far.

42.Therefore, no "departmental proceedings" have been initiated within a period of 4 years of event under Rule 9 (2) (b) of the Tamil Nadu Pension Rules, 1978. Even if further "departmental proceedings" were to be taken up pursuant to the impugned Memorandum, it will be merely an empty formality with no purpose at this point of time as the event took place on 18.11.2012 when the bundle were to be transferred to the Fast Track Court and were returned on 21.11.2012 with the defects in the transfer made by the petitioner. Thereafter, a complaint was given by the counsel for the complainant in C.C.Nos.19494-96 of 2005 on 18.12.2013. This is almost one year after the event. Even if the date of the said event is reckoned from 18.12.2013, i.e the date of complaint of the counsel for the complaint in C.C.Nos.19494 to 19496 of 2005 the proceeding will be time barred. Whichever way one looks also the proceedings will be time barred.

43.In our view, initiation of "departmental proceeding" on a future date will be time-barred. Therefore, the exercise under the impugned proceeding is an exercise in futility. Rather the invocation of Rule 9 of the Tamil Nadu Pension Rules, 1978 on a future date will be a mere empty formality.

44.We are of the view, that the proceeding under the aforesaid provisions of the Tamil Nadu Pension Rules, 1978 on a future date will be clearly time-barred from 18.11.2012.

45.In view of the above discussion, we are of the view that the present writ petition deserves to be allowed and is therefore accordingly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

jen

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Metropolitan Magistrate,
Egmore at Allikulam Complex,
Chennai – 600 003.

2.The Secretary,
Government of TamilNadu,
Law Department, Fort St. Geroge,
Chennai – 600 009.

3.The Registrar General,
Madras High Court,
Chennai – 600 104.

+1cc to Mr.V.Vijaysankar, Advocate, SR.No.76761
+1cc to M/s.RRN Legal, Advocates, SR.No.77026

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and
W.M.P.No.14495 of 2019

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