

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.09.2019

Pronounced on : 18.10.2019

CORAM

THE HONOURABLE Mr. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

W.P.No.44272 of 2016
and WMP.Nos.38115 to 38117 of 2016

- 1.Bharat Sanchar Nigam Limited
Represented by its Chairman and Managing Director
Corporate Office
Janpath, New Delhi - 110 001.
- 2.The Assistant General Manager (Pers-I)
Corporate Office BSNL, 4th Floor,
Janpath, New Delhi - 110 001.
- 3.The Deputy General Manager HR
BSNL Telecom Circle
PMG Circle, Trivandrum - 33. ... Petitioners

-Vs-

- 1.R.Duraisamy
Retd (AGM PG) BSNL
H1, 35 Lake View Residency
Ambattur, Chennai - 600 077.
- 2.The Registrar
Central Administrative Tribunal
Chennai Bench
Chennai - 600 104. ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Direction, to quash the order dated 29.04.2016 passed by the second respondent, the Central Administrative Tribunal, Madras Bench in O.A.No.1749/2014 and order dated 01.11.2016 in R.A.18/2016 against O.A.No.1749/2014.

For Petitioners : Mrs.K.Parameswari

For Respondents : Mrs.R.Saranya
for Mr.R.Sankara Subbu [R1]

ORDER

[Order of the Court was made by N.SESHASAYEE, J.,]

The Bharat Sanchar Nigam Limited (in short BSNL) along with two of its officials have come before this Court with a prayer to quash the Order of the Central Administrative Tribunal (Madras Bench) dated 29.04.2016, and also the Order dated 01.11.2016, dismissing an application in R.A.18 of 2016, filed for viewing the earlier mentioned Order.

2. The facts of this case roam within a narrow space, though the pleadings before the Tribunal runs to several pages. The material facts are :

- Duraiswamy, the first respondent herein, is a former employee of BSNL. In 1979, he joined as Junior Engineer in the Department of Post and Telegraphs and by 2003, he moved to a higher post as a Divisional Engineer. In between, the Department of Post and Telegraphs was incorporated to become BSNL, and he was absorbed therein.
- Till 2010, Duraisamy had a reasonably good run as an employee of the BSNL. In 2010, he was arrayed as an accused in as many as four criminal cases, and was arrested twice. In terms of his service Rules, he was also suspended twice. The details are as below :

Crime No.	Police Station	Offences in relation to	Period of Suspension	
			From	To
492/2010	Thirumangalam P.S.	341, 294(b) & 506 (ii) IPC	29.04.2010	16.08.2010
1039/2010	JJ Nagar P.S	332, 323, 326, 294(b), 307, 506 (ii) IPC	16.10.2010	25.09.2012

Crime No.	Police Station	Offences in relation to	Period of Suspension	
			From	To
1210/2011	Thirumangalam P.S	294(b), 323, 420, 506(i) IPC	16.10.2010	25.09.2012
1211/2010	Thirumangalam P.S	294(b), 323, 420, 506(i) IPC	16.10.2010	25.09.2012

- Even during the term of his second suspension , Duraiswamy was included in the list of officers of doubtful integrity, and was transferred to Kerala Circle on 18.07.2012.
- Be that as it may, Duraiswamy was superannuated on 31.05.2014. In the relieving Order issued by the first respondent, dated 30.05.2015, it is expressly indicated that the vigilance clearance in respect of Duraiswamy is withheld, and the concerned Circle was directed to grant Duraiswamy only provisional pension in terms of CCS (Pension) Rules, 1972. Aggrieved by the same, Duraiswamy approached the Tribunal in O.A.No.1479/2014, with a prayer to quash the Order of the first respondent dated 30.05.2004, directing the payment of full pensionary benefits.

3. The respondent in its reply statement before the Tribunal, and in the context of the prayer, would plead that Duraisamy had retired only provisionally, and has been allowed only provisional pension in terms of Rule 69 of CCS (Pension) Rules 1972.

4.1 The Tribunal, in its Order dated 29.04.2016, has chosen to reject the objection of the petitioners herein, and allowed the O.A. Its line of reasoning was two fold: (a) That there is no domestic/departmental enquiry pending against Duraisamy; and (b) That as per Rule 9 (6) (b) of the CCS (Pension) Rules, 1972, a judicial proceeding in the case of any criminal proceedings is deemed to have been instituted on the date on which the Magistrate takes cognizance, and inasmuch as the Magistrate has not taken cognizance in any of the four cases (refer to the table above), Duraiswamy could not be said to be facing a judicial proceeding.

4.2 Dissatisfied with the same, the appellant herein preferred an Application for review in R.A.18/2016, and this came to be dismissed by the Tribunal, Vide its Order dated 01.11.2016. As stated in the opening paragraph, the present writ petition is preferred by the employer challenging these Orders.

5.1 The fundamental plea of the appellant is that, as on the date of his superannuation all the four cases have already been charge-sheeted, and the Competent Courts too have taken cognizance of the offence. The details provided are:

Crime No.	Date of final report	C.C.No./ SC.No.
492/2010 V5 Thirumangalam Police Station	18.06.2010	CC.No.2812/2010 pending on the file of X Judicial Magistrate Court.
1210/2010 V5 Thirumangalam Police Station	09.12.2010	CC.No.5082/2010 pending on the file of X Judicial Magistrate Court.
1211/2010 V5 Thirumangalam Police Station	28.11.2010	CC.No.5083/2010 pending on the file of X Judicial Magistrate Court.
1093/2010 V3 JJ Nagar Police Station		SC.No.98/2011 pending on the file of FTC-I, Poonamallee

It then proceeded to explain how the Tribunal has missed this aspect, perhaps mistakenly, when it held that the judicial proceedings are not pending vis-a-vis, the criminal cases against Duraisamy, in terms of Rule 9 of the CCS (Pension) Rules 1972.

5.2 In the counter filed by Duraiswamy, SC.No.98/2011 is stayed by this Court in Crl.RC.No.1703 /2011, and as to the rest, it is essentially silent.

5.3 It may be stated here that sizable portion of the pleadings of the parties both before the Tribunal, as well as one now made before this Court, was seen allotted to the suspension part of Duraisamy's tenure, which, in the context of the prayer sought, are non-essentials.

6. Heard both sides. The learned counsel for the petitioners opened her argument with a statement that the issue has to be resolved in the context of BSNL Conduct, Discipline and Appeal Rules, 2006, (henceforth would be referred to as BSNL Rules) and to the extent, there is no specific provision therein, CCS (Pension) Rules, 1972, would govern. In particular, the learned

counsel relied on Rule 61 (4)(3) alongside (4)(5)(b) of the BSNL Rules. The other relevant Rule is Rule 9 of CCS (Pension) Rules, which enables withholding or withdrawing pension. Per contra, the learned counsel for Duraisamy (the first respondent) would contend that none of the criminal cases relates to any official misconduct, but are private in nature.

7. The relevant part of Rule 61 of the BSNL Rules, titled as "Disciplinary Provisions for Retiring Employees" reads:

(4)(3) In the case of the absorbed employee who has retired on attaining the age of superannuation or otherwise and against whom any disciplinary or judicial proceedings are instituted or where disciplinary proceedings are continued under this rule, a provisional pension shall be sanctioned with the prior approval of Department of Telecom.

(4)(5) For the purpose of this rule:-

(b) Judicial proceedings shall be deemed to be instituted :-

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court.

Its application would now require: (a) Pendency of a Departmental proceedings, and/or (b) a judicial proceedings as on the date of superannuation.

8. In the context of the present case, admittedly there is no domestic enquiry/departamental proceedings was pending as on the date of retirement of Duraisamy. Turning to judicial proceedings, in terms of the definition provided in Rule 61(4)(b) of the BSNL Rules, as concerning criminal case against an employee of the BSNL, a judicial proceeding is said to be pending only from the date on which the competent Criminal Court takes cognizance of the offence. Here, it is an undisputed fact that final report in all the four criminal cases laid against Duraisamy were charge-sheeted even long prior to Duraisamy's date of retirement. Therefore, reading Rule 61(4)(b) without anything more, would indicate that judicial proceedings indeed were pending against him.

9. In this regard, it may be relevant to refer to Rule 9 of CCS (Pension) Rules. It reads:

Rule 9. Right of President to withhold or withdraw pension:

[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement..."]

For withholding or withdrawing pension, in terms of Rule 9 cited above, the staff concerned should have been found guilty of grave misconduct either in a Departmental proceedings or in a judicial proceedings. However, for grant of provisional pension mere pendency of a judicial proceeding is sufficient.

10. As is demonstrated above, Duraisamy cannot now contend that no criminal Court has taken cognizance in any of the criminal cases laid against him, nor can he contend that no judicial proceedings is pending in terms of Rule 64(4)(b) of the BSNL Rules. Now, it is more like an arithmetic formula of applying the Rules to indisputable facts before the Court, and the result is to state the obvious: That the Tribunal was in error in allowing O.A.No.1749/2014.

11. In the result, this petition is allowed and the Order passed by the Central Administrative Tribunal, Madras Bench, dated 29.04.2016 in O.A.No.1749/2014, and the Order dated 01.11.2016 in R.A.18/2016 are hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

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Sub Assistant Registrar

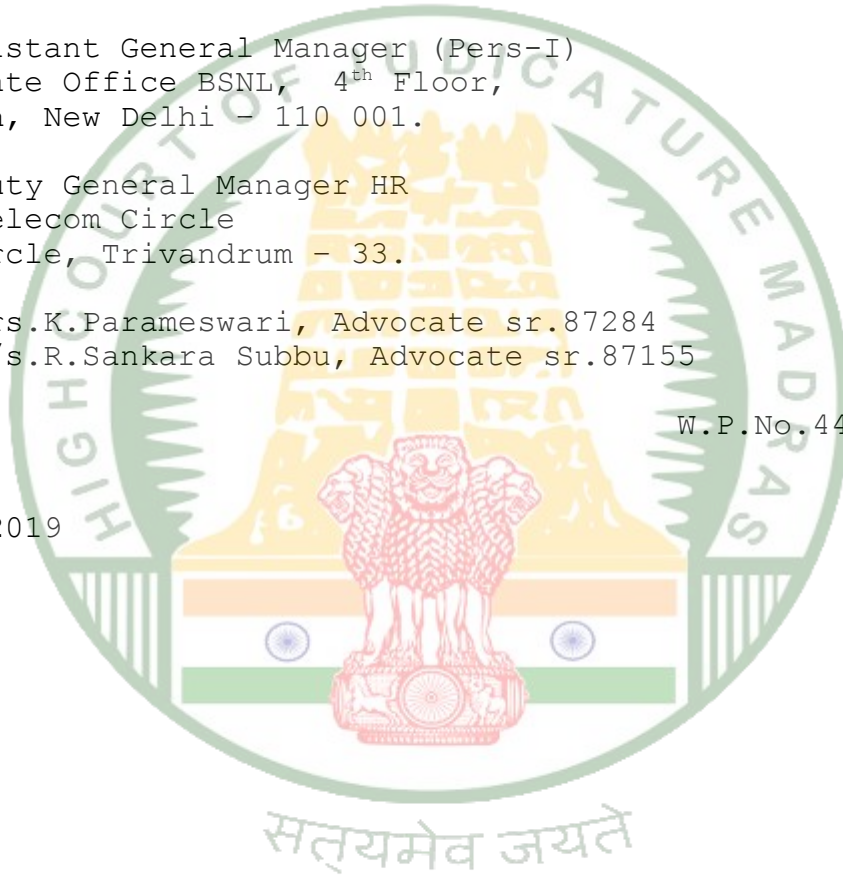
To:

- 1.The Registrar
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Chennai - 600 104.
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+1cc to Mrs.K.Parameswari, Advocate sr.87284
+1cc to M/s.R.Sankara Subbu, Advocate sr.87155

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